

Sri Krishna Singh vs Mathura Ahir And Ors on 21 December, 1979

Equivalent citations: 1980 AIR 707, 1980 SCR (2) 660, AIR 1980 SUPREME COURT 707, 1980 ALL. L. J. 299, 1981 (3) SCC 689, (1980) 2 S C R 660

Author: A.P. Sen

Bench: A.P. Sen, Syed Murtaza Fazalali

PETITIONER:
SRI KRISHNA SINGH

Vs.

RESPONDENT:
MATHURA AHIR AND ORS.

DATE OF JUDGMENT 21/12/1979

BENCH:
SEN, A.P. (J)
BENCH:
SEN, A.P. (J)
FAZALALI, SYED MURTAZA

CITATION:
1980 AIR 707 1980 SCR (2) 660

ACT:

Hindu Law-Whether a Sudra can enter the order of Yati or Sanyasi-'Sant Math' Sampradaya, denomination of Dasnami Sect-Whether a Sudra cannot enter the order of sanyasi in the Sant Math and whether a Brahman alone can be a sanyasi among Dasnamis-Essential ceremonies for the initiation of Dasnamis-Performance of Atma Sradh and reciting Pravesh Mantra Sant Math Sampradaya-Mode of succession among the Sant Math-Raght to after-acquired property of a Mahant out of Math funds, whether accrues to natural son.

Abatement of appeal-Maxim of "actio personalis moriture cum persona", applicability of in the case of suits by Mahant for the recovery of Math property -Order XXII Civil Procedure Code.

HEADNOTE:

Respondent Mathura Ahir alias Swami Harswanand, the

Mahant of Garwaghat Math filed a suit for declaration of title to and possession of house No. C/27/33 situate in Mohalla Jagatgunj, Varanasi, for arrears of rent and mesne profits in respect thereof. The said property was purchased by his Guru Atma Vivekanand Paramahans (ne Baikunth Singh) from out of the income of the Math i.e. the offerings (Bhent) made by the devotees. The appellant who was impleaded as defendant 5 to avoid further litigation claimed that this property acquired by his late father Baikunth Singh alias Swami Atma Vivekanand, after he became a Guru and out of Math funds devolved upon him the natural son and disciple. Since the claim went in favour of the respondent Mahant the appellant came in appeal by special leave to this Court. The original plaintiff died during the pendency of the appeal.

The contentions of the appellant were: (i) the plaintiff Mathura Ahir being a Sudra could not be ordained to a religious order and become a Sanyast or yati and therefore installed a mahant of the Garwaghat Math, according to the tenets of the Sant Math Sampradaya, (ii) In the absence of proof of the performance of Atma Sradh and the recitation of Pravesh Mantram, neither the plaintiff nor his two predecessors Swami Sarupanand and Swami Atma Vivekanand could be regarded as Hindu Sanyasi; and (iii) the first respondent Harsawanand the original plaintiff having died during the pendency of the appeal, the appeal abated in its entirety.

Dismissing the appeal, the Court

^

HELD: 1. A math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity and of the manager of the secular properties of the institution of the Math. [671 D-E]

The property belonging to a Math is in fact attached to the office of the mahant, and passed by inheritance to no one who does not fill the office. The

661

Head of a Math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the institution. [671 A-B]

In the instant case, the evidence on record sufficiently establishes that a Math came to be established at Garwaghat and the building known as "Bangla Kuti" and certain other buildings including the house in suit constituted the endowment of the math itself. [671 E-F]

Sammantha Pandara v. Sellappa Chetti (1879) ILR 2 Mad. 175; Gyanasambhandan Pandara Sannadhi v. Kandaswami Tambiram (1887) ILR 10 Mad. 375; Vidya Purna Thirthaswami v. Vidyanidhi Thirtha Swami (1904) ILR 27 Mad. 435; Ram Prakash

Das v. Anand Das (1915-16) 43 I.A. 73 (PC); Vidya Vanthi Thirtha v. Baluswami Iyer (1920-21) 48 I.A. 302; referred to.

2. The math at Garwaghat belongs to the 'Sant Mat' Sampradaya, which is a religious order and the suit property is Math property. Though the Math at Garwaghat established by Swami Sarupanand was of recent origin, the religious order denominated as 'Sant Math' has had large following in Punjab and some other parts of India since more than a century. In a sense, therefore, Swami Sarupanand himself did not for the first time evolve any new religious order. [672 E, 673 F-G]

The institution was really built up by Swami Atma Vivekanand, who was held in great veneration by the followers of the sect. He preached the tenets of 'Sant Mat' and had a large following. His 'Sant Mat' fraternity comprised of thousands of Girhastha and Virakta disciples who made large Offerings. Such offerings in cash or kind or in the shape of immovable property which were endowed to the Math. Swami Atma Vivekanand was the Mahant of the Garwaghat Math. The two houses at Varanasi including the suit house were purchased by Swami Atma Vivekanand from out of the offering (Bhent) made by his disciples. [675A-D]

3. Succession to Mahantship of a Math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. [675 G-H]

Genda Puri v. Chatar Puri, [1886] 13 I.A.100 @ 105; Sital Das v. Sant Ram, A.I.R. 1954 SC 606; Mahalinga Thambiran v. La Sri Kasivasi, [1974] 2 SCR 74; followed.

4. The succession to the office of the Mahant according to Sant Sampradaya is by nomination, i.e. from Guru to Chela, the Guru initiates the chela after performing the necessary ceremonies. The person initiated as a Chela adopts the life of a sanyasi and is pledged to lead a life of celibacy and religious mendicancy. The sitting Mahant hands over the management of the Math to one of his virtuous Chelas fittest to succeed when he nominates and when he wishes to install as Mahant after him in his place. He makes clear this desire to the members of his Sampradaya, and also authorises the nominated chela to give Bhesh Dikshwa. After the death of the Mahant, the Bhesh and Sampradaya give Chadar Mahanti of the math to the said disciple at the time of the Bhandara. [672 A-C]

662

5. Asceticism in India has been under the definite and strong sanction of religion. In the doctrine of the four asramas, asceticism was made an integral part of the orthodox Hindu life, and it became the duty of every Hindu, as advanced age overtook him, homeless and a wanderer to chasten himself from earthly ties, and of realizing union with Brahman. And a religious motive was thus supplied for

that which in itself was a welcome release from responsibility, care and the minute requirements of an elaborate social code. In due course, with the advancement of knowledge, the shackles of the caste system were broken through and the privileges and powers of the ascetic life were extended to Sudras and in due recognition of their status, they were treated as Hindu Sanyasis. At the present time, there is no distinction or barrier; any one may become an ascetic, and the vows are not necessarily life long. Some sects, however, still restrict membership to Brahmans, or at least to men of the three higher castes. [681 E-H, 682 G-H]

6. One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Entrance to a religious order is tantamount to civil death so as to cause a complete severance of his connection with his relations, as well as with his property. Neither he nor his natural relatives can succeed to each other's properties. [676 A-B]

Any property which may be subsequently acquired by persons adopting religious orders passes to their religious relations. The persons who are excluded on this ground came under three heads; the Vanaprastha or hermit; the Sanyasi or Yati, or ascetic and the Brahmachari or perpetual religious student. In order to bring a person under these heads, it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a person calls himself a Byragi or religious mendicant, or indeed that he is such, does not of itself disentitle him to succeed to property. Nor does any Sudra come under this disqualification, unless by usage. This civil death does not prevent the person who enters into an order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance. But it would be otherwise if there is no civil death in the eye of the law, but only the holding by a man of certain religious opinions or professions. The after-acquired property passes on his death not to his natural but to his spiritual heirs. [676 A-E, 683 A-B]

Dharmapuram v. Vivapandiyan, [1899] I.L.R. 22 Mad. 202, Harish Chandra v. Alia Mahamed, [1913] I.L.R. 40 Cal. 545, explained.

7. The 'Sant Mat' sampradaya is a religious denomination i.e. a sub sect of one of the Dasnami sects founded by the Great Sankracharya. Sankara was an ascetic and founded schools of ascetics. Sankara established four Maths or seats of religion at four ends of India-the Sringeri Math on the Sringeri Hills in the South, the Sharda Math at Dwarka in the West, the Jyotir Math at Badrikashram in the North, and the Govardhan Math at Puri in the east. The monks ordained by Sankara and his disciples were called Sanyasis. Each Math has a sanyasi at its head who bears the title of Sankaracharya in general. Sankara is said to have

four disciples who were all brahmans, from whom the
663

ten divisions of the order-hence named as the ten-named or 'dasnami Dandis' originated. They are: Thirtha, shrine; Ashrama, order; Vana, wood; Aranya, Forest or desert; Saraswati and Bharati, the goddesses of learning and speech; Puri, City; Giri and Parvata, a hill; and Sagara, the ocean. [683 C-G]

Dandis or staff bearers occupy a place of pre-eminence. They worship Lord Siva in his form Bhairava; the 'Terrible' and profess to adhere Nirguna and Niranjana, the deity devoid of attribute or passion. A sub section of this order are the Dandi, Dasnamis or Dandi of ten names, so called from their assuming one of the names of Sankara's four disciples and six of their pupils. [658 B-C]

The Dandis keep themselves very distinct from the rest of the community. They are Brahmins, and receive disciples only from the Brahmins. They lead a very austere life. They do not touch fire or metal or vessels made of any sort of metal. It is equally impossible also for them to handle money. They shave their hair and beard. They wear one long unsewn reddish cloth, thrown about the person. [686 A-B]

There are but three and part of a further ascetic class, or those called Tirtha, Asrama, Saraswati and Bharati who are still really regarded as Sankara's disciples. The rest i.e. the remaining six and a half of the Dasnamis who are considered as having fallen from the purity of practice necessary to the Dandis, are still, in general religious characters usually denominated and are Atits. These are the Atits or A'Dandis viz. the Vanas, Aranytas, Puris, Giris, Parvata, Sagaras and half the Bharatia, reputed to have fallen to some extent from orthodoxy, but are still looked upon as religious avatars. Unlike the Dandis, the Atits do not carry the shaft i.e. a Trishul. They differ from the former also in their use of clothing money and ornaments, their methods of preparing food and their admission of members from any order of Hindus. Some of them lead an ascetic life, while others mix freely in the world, carry on trade and acquire property. Most of them are celibate but some of them marry and are often known as Samyogi or Gharbari Atits. They are collected in Maths and monasteries. They wear ochre coloured garments, and carry a rosary of rudraksha seeds sacred to Lord Siva. Their religious theories (when they have any) are based on the advaita Vedanta of their founder Sankaracharya. [686 H, 687 A-D]

There is also a sub division of the Puri division of the Dasanami Sect. They have tenets much in common, based on the central idea that the Supreme deity is incomprehensible or 'unseeable'. They denounce idolatry. This more or less conforms to the tenets of the 'Sant Mat' Sect. [678 D-E]

The followers of the 'Sant Mat' treat the Guru as the incarnation of God. They have no faith in inanimate idols installed in temples nor do they worship them in their cult.

There are no caste restrictions and any one can be admitted into the Sant Mat fraternity. According to the custom and usage of the Sant Mat Sampradaya, the initiation of a chela by the Guru results in complete renunciation of the world and he ceases to have all connection with his previous Ashramas before becoming a Sanyasi. For becoming a sanyasi it is not necessary that he should be of a particular Varnashram previously, i.e. even a Sudra can become a Sanyasi. [671 G-H, 672 E]

8. Though according to the orthodox Smriti writers a Sudra cannot legitimately enter into a religious order and although the strict view does not
664

sanction or tolerate ascetic life of the Sudras, the existing practice all over India is quite contrary to such orthodox view. In cases, therefore, where a Sudra can enter into a religious order in the same way as in the case of the twice-born classes, such usage should be given effect to. [670E-F]

9. In order to prove that a person has adopted the life of a Sanyasi, it must be shown that he has actually relinquished and abandoned all worldly possessions and relinquished all desire for them or that such ceremonies are performed which indicate the severance of his natural family and his secular life. It must also be proved in case of orthodox sanyasis, that necessary ceremonies have been performed such as Pindadana or Birajahoma or Prajapathiyesthi without which the renunciation will not be complete. [687 G-H]

Amongst Dasnamis, a ceremony called the Bijla Homa i.e. the Biraja Homa has been considered essential. The recitation of the Pravesha Mantram or the renunciation formula is of course indispensable. [688 A]

In the instant case: (a) there is overwhelming evidence in proof of the fact that the requisite ceremonies of Biraj homa or Prajapathiyesthi were performed in case of Swami Sarupanand and Swami Atma Vivekanand. If the Prajapathiyesthi or Biraj Homa ceremonies were performed then it must necessarily give rise to the irresistible inference that Swami Atma Vivekanand must have performed his Atma Sradh before he was initiated as a chela; (b) The appellant was precluded from contending that his father Baikunth Singh was not a Hindu Sanyasi in view of his express admission in the plaint filed in an earlier suit. The burden of proof shifted upon him to disprove it; (c) Swami Harsewanand (Mathura Ahir) was the validly initiated chela of Swami Atma Vivekanand and upon his demise was duly installed as the Mahant of 'Garwaghat Math' according to the tenets of 'Sant Mat' Sampradaya. [689 G, H, 693 C-D]

10. The question whether a suit abates in its entirety or not upon the death of the plaintiff must necessarily depend upon the nature of the suit. This is not a class of case to which the maxim, *actio personalis moritur cum*

persona applies. [694 C-D]

11. According to Hindu jurisprudence, a religious institution such as a math is created as a jurisdic entity with a legal personality capable of holding and acquiring property. It therefore follows that the suit instituted by the mahant for the time being, on its behalf, is properly constituted and cannot abate under the provisions of Order 22 of the Code of Civil Procedure on the death of the mahant pending the decision of the suit or appeal, as the real party to the institution is the institution. The ownership is in the institution or the idol. From its very nature a math or an idol can act and assert its rights only through human agency known as a mahant or shebait or dharmakarta or sometimes known as trustee. It follows that merely because the mahant for the time being dies and is succeeded by another mahant, the suit does not abate. [695 B-C, E]

Ram Swarup Das v. Rameshwar Das v. ILR 29 Pat. 989, over-ruled.

12. The general rule is that all rights of action and all demands whatsoever existing in favour of or against a person at the time of his death survive to or against his legal representative within the meaning of s. 2(11) of C.P.C. [699 A,F]

Muhamed Hussain v. Khushalo, ILR 9 All. 131; approved.
665

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1802 of 1971.

Appeal by Special Leave from the Judgment and Order dated 2-11-1971 of the Allahabad High Court in S.A. No. 768 of 1964.

Y. S. Chitale, Lalji Sahai Srivastava, B. P. Singh and Mukul Mudgal for the Appellant.

R. K. Garg, S. P. Singh and Sudama Ojha for Respondent No. 1.

S. T. Desai and Uma Datta for Respondent No. 3.

M. Veerappa for Respondent No. 4.

The Judgment of the Court was delivered by SEN J.-This is an appeal by special leave from a judgment and decree of the Allahabad High Court dated November 2, 1971 in a suit for declaration of title to, and possession of house No. C-27/33 situate in Mohalla Jagatganj, Varanasi for arrears of rent and mesne profits in respect thereof.

The principal point in controversy between the parties in this appeal is, whether the plaintiff, Mathura Ahir, being a Sudra could not be ordained to a religious Order and become a Sanyasi or Yati and, therefore, installed as a Mahant of the Garwaghat Math according to the tenets of the 'Sant Mat' Sampradaya. A subsidiary question arises as to whether in the absence of proof of the performance of Atma Sradh and the recitation of Pravesh Mantra neither the plaintiff nor his two predecessors Swami Sarupanand and Swami Atmavivekanand could be regarded as Hindu sanyasis. It also raises a further question namely whether the first respondent, Harsewanand, the original plaintiff having died during the pendency of the appeal, the appeal abates in its entirety.

The facts of the case are set forth with utmost particularity in the judgment of the High Court. It will, therefore, not be inconvenient to deal with them as briefly as possible. The history of the Garwhaghat Math is as follows: In 1925, Swami Sarupanand Paramhans, disciple of Swami Advaitanand, a Hindu ascetic belonging to the 'Sant Mat' sect, came from the North-Western Provinces, and took his abode at Garwaghat, Mouza Ramna Malhija, in the vicinity of Varanasi City. He was a religious preceptor of great learning and from his hermitage preached the tenets and precepts of the 'Sant Mat' and soon had a large following. He was treated with great veneration and some of his devotees by a registered gift deed dated March 18, 1935 endowed the land and building, which he named as 'Bangla Kut'. Subsequently the said Bangla Kut and other lands and buildings appurtenant and adjacent thereto came to be known as the Garwaghat Math of which Swami Sarupanand was initially the mahant. He paid a visit to village Khuruhja for a couple of days and Baikunth Singh, father of defendant No. 5, Sri Krishna Singh, the appellant, was greatly influenced by his preachings and left for Varanasi for good. In due course, Baikunth Singh was initiated as chela by Swami Sarupanand who named him as Atmavivekanand. Swami Atmavivekanand Paramhans was the chief disciple of Swami Sarupanand and was given full rights of initiation and Bhesh by his Guru. Swami Sarupanand took his samadhi at Meerut in 1936 and after his death, according to his wishes, his Bhesh and Sampradaya gave Swami Atmavivekanand Chadhar Mahanti of Garwaghat Math and made him the mahant. Swami Atmavivekanand also had a large following and his 'Sant Mat' fraternity which comprised of thousands of Grihastha and Virakta disciples made large offerings and gifted extensive properties to him as their religious or spiritual leader.

In 1937, Swami Atmavivekanand initiated the plaintiff Mathura Ahir as his chela and named him as Harsewanand according to the custom and usage of the 'Sant Mat' sect. During his lifetime, he purchased the two properties viz., house No. C-27/33, situate in Mohalla Jagatganj and house No. C-4/83, situate in Mohalla Sarai Gobardhan in the city of Varanasi by registered sale deeds dated December 3, and December 22, 1942 from out of the income of the math i.e., the offerings (Bhent) made by the devotees and formed the properties of the math. Swami Atmavivekanand died at Varanasi on August, 23, 1949. A Bhandara was held on October 3, 1949 and according to the wishes of Swami Atmavivekanand, the mahantas and sanyasis of the Bhesh and Sampardaya gave the Chadhar Mahanti to the plaintiff and installed him as the mahant of the math in place of Swami Atmavivekanand on October 4, 1949 in accordance with the custom and usage of the Sampradaya. The mahants and sanyasis of the 'Sant Mat' Bhesh who had assembled for the Bhandara also executed a document to that effect acknowledging him to be the mahant. The plaintiff having been installed as the mahant, the entire property of the Garwaghat Math along with the two houses in the city of Varanasi, devolved upon him as successor to Swami Atmavivekanand.

On August 21, 1951 the plaintiff-respondent No. 1, Harsewanand, brought the suit, out of which this appeal arises, in the court of the City Munsif, Varanasi for ejectment of respondents Nos. 2 to 5 from house No. C-27/33, situate in Mohalla Jagatganj, Varanasi. It was pleaded that respondent No. 2, Avadesh Narain, defendant No. 1, had taken the house on rent from Swami Atmavivekanand, the late mahant. It was alleged that he had unlawfully sub-let the premises to the respondents Nos. 3 to 5, who were defendants Nos. 2 to 4. The suit was contested by these respondents who denied the tenancy and inter alia pleaded that they were in occupation of the house as chelas of Swami Atmavivekanand in their own right by virtue of the licence granted to them by him. They denied the plaintiff's title as well as right to sue alleging that he was neither a chela of Swami Atmavivekanand nor his successor. It was also alleged that the house in suit was the personal property of Swami Atmavivekanand and, therefore, on his death his natural son and disciple, Sri Krishna Singh, the appellant became the owner thereof. The suit which was originally framed by the plaintiff-respondent No. 1, Harsewanand, as a suit between a landlord and tenant had, therefore, to be converted into a suit for possession based on title by impleading the appellant, Sri Krishna Singh as defendant No.

5. It is not necessary to mention in detail the other averments in the plaint, nor is it necessary to mention the various pleas raised in the written statement filed by the defendants. It will be sufficient, however, to mention that the appellant Sri Krishna Singh in his written statement denied the existence of the math as pleaded by the plaintiff and asserted that the house in it, in any case, was not math property. He further pleaded that the plaintiff Mathura Ahir being a Sudra, was legally incompetent to become a sanyasi, and that the plaintiff was not the mahant of the Garwaghat Math. He further claimed that after the death of Swami Atmavivekanand, he became the owner of the house in suit by inheritance, as also of the properties alleged by the plaintiff to belong to Garwaghat Math. All these properties, according to the appellant, were secular and personal properties of his father Baikunth Singh, who was also known as Swami Atmavivekanand.

In the trial, the issues, as finally framed by the learned Munsif were seventeen in number. Of these, the following are relevant: (1) Whether the plaintiff is the owner of the premises in suit? (8) Whether the plaintiff was nominated as a mahant and given Chadar in accordance with the custom? Is there any custom as alleged by the plaintiff? (12) Was Swami Atmavivekanand a sanyasi and had he ceased to be a Grihasti? (13) Is the plaintiff a Sudra and not entitled to become sanyasi according to Hindu law? (14) Is the plaintiff chela of Swami Atmavivekanand and entitled to succeed to properties left by him in preference to his son Sri Krishna? (15) Is the house in suit a Math property?

It appears that the case came up for hearing before the learned Munsif on October 5, 1953 when the plaintiff's counsel accompanied by his parocar made oral pleadings under O. 10, r. 1 of the Code of Civil Procedure to the effect:

"The 'Sant Mat' Sampradaya is one of the Dasnami sanyasis founded by the great Sankaracharya, and is governed by Naranjini Math Akhara."

The learned Munsif found each and every of these issues in favour of the plaintiff and accordingly decreed the suit.

x x x x x x x On appeal the III Addl. Civil Judge, Varanasi by his judgment dated January 14, 1964 reversed some of the aforesaid findings while maintaining the rest.

From the judgment of the Addl. Civil Judge, the appellant alone preferred an appeal to the High Court which by its judgment dated November 2, 1971 on a careful marshalling of the entire evidence, in the light of well- settled principles, agreeing with the learned Munsif, set aside the findings of the learned Civil Judge and decreed the plaintiff's suit in its entirety.

A learned Single Judge, Kirty J., in the course of his judgment observed that the evidence on record sufficiently established that there had come into existence a math at Garwaghat, of which Swami Atmavivekanand was the mahant. He referred to the overwhelming evidence led by the plaintiff showing that the building known as 'Shanti Kuti' and certain other buildings constituted an endowment to the math itself, which was a monastic institution presided over by the mahant. He further held that the house in dispute was not the personal property of Swami Atmavivekanand but formed an accretion to the math as it had been acquired by him from out of the offerings (Bhent) made by the disciples to him as their religious or spiritual leader for the purposes of the spiritual order of the fraternity and, therefore, the natural heirs of Swami Atmavivekanand could have no claim to the property, which must descend to the plaintiff as a successor to him.

x x x x x x x On the question whether the plaintiff and his two predecessors, Swami Atmavivekanand and Swami Sarupanand were not legally com-

petent to hold office of the mahant of the math in question, the learned Single Judge observed:

"The finding of the court below on this point is in appellant's favour, the reason given therefor being that the plaintiff failed to prove that he or his predecessors had performed Atma Sradh and uttered Pravesch Mantra as mandatorily prescribed by Hindu law. The factual part of the finding, viz., the performance of the Sradh and the utterance of the Mantra, is binding in second appeal, but the conclusion drawn therefrom is one of law."

After referring to the authorities on the subject, he observes:

"A reading of the judgments in the above-noted cases will show that the various observations therein in regard to performance of Atma Sradh and other rites (Prajapathiyesthi Viraja Homam etc.) and the utterance of Pravesch Mantra etc. were made with reference to particular sects or categories of sanyasis claiming to belong to a particular religious order or class of such order, or with reference to "Sanatan", i.e., orthodox, Hindu Dharma. It is true that on cursory reading it would appear as if the observations formulate indispensable legal requirements of the Hindu law universally applicable to every (Hindu) ordained sanyasi, but, upon a careful analysis I have found that that is not so. The law as stated therein is generally or usually, but not invariably, applicable."

In conclusion, he observes:

"In the absence of any proof that the followers of Sant Math or the tenets of that Math required of its Mahant that he must necessarily belong to the twice- born class of Hindus and be a Sanyasi in accordance with all the rites and ceremonies mentioned in the aforesaid cases, I am not prepared to hold that Swami Sarupanand and Swami Atmavivekanand were legally incompetent to be Mahants of the Math or that the plaintiff is a person disqualified from assuming and holding that office."

He accordingly held that the plaintiff and his predecessors, Swami Sarupanand and Swami Atmavivekanand were not legally incompetent to be the mahants of the math. They did not inflict themselves on the religious fraternity of Sant Mat Sampradaya nor had they been foisted into the office of mahant against the will or in spite of the disapproval of the religious fraternity. In any event, even if the plaintiff was disqualified being a Sudra, he was entitled to sue as the de facto mahant.

During the pendency of the appeal, the respondent- plaintiff Mahant Harsewanand having died, respondent No. 1, Mahant Harshankranand was brought on record as an heir and legal representative.

It would be convenient, at the outset, to deal with the view expressed by the High Court that the strict rule enjoined by the Smriti writers as a result of which Sudras were considered to be incapable of entering the order of yati or sanyasi, has ceased to be valid because of the fundamental rights guaranteed under Part III of the Constitution. In our opinion, the learned Judge failed to appreciate that Part III of the Constitution does not touch upon the personal laws of the parties. In applying the personal laws of the parties, he could not introduce his own concepts of modern times but should have enforced the law as derived from recognised and authoritative sources of Hindu law, i.e., Smritis and commentaries referred to, as interpreted in the judgments of various High Courts, except where such law is altered by any usage or custom or is modified or abrogated by statute.

On the main, in agreement with the High Court, we are inclined to take the view that though according to the orthodox Smriti writers a Sudra cannot legitimately enter into a religious Order and although the strict view does not sanction or tolerate ascetic life of the Sudras, it cannot be denied that the existing practice all over India is quite contrary to such orthodox view. In cases, therefore, where the usage is established, according to which a Sudra can enter into a religious order in the same way as in the case of the twice born classes, such usage should be given effect to.

The first question, therefore, to consider here is:

Whether there was a math in existence at Garwaghat, and if so, whether the house in suit was an accretion to the math? Math means a place for the residence of ascetics and their pupils, and the like. Since the time of Sankaracharya, who established Hindu maths, these maths developed into institutions devoted to the teaching of different systems of Hindu religious philosophy, presided over by ascetics, who were

held in great reverence as religious preceptors, and princes and noblemen endowed these institutions with large grants of property. Dr. Bijan Kumar Mukherjea in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts, 4th ed., p. 321, succinctly states:

"'Math' in ordinary language signifies an abode or residence of ascetics. In legal parlance it connotes a monastic institution presided over by a superior and established for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superior."

x x x x x The property belonging to a math is in fact attached to the office of the mahant, and passed by inheritance to no one who does not fill the office. The head of a math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the institution. He is bound to spend a large part of the income derived from the offerings of his followers on charitable or religious objects. The words 'the burden of maintaining the institution' must be understood to include the maintenance of the math, the support of its head and his disciples and the performance of religious and other charities in connection with it, in accordance with usage. See: Semmantha Pandara v. Sellappa Chetty [1879] ILR 2 Mad. 175; Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran (1887) ILR 10 Mad 375; Vidya Purna Tirtha Swami v. Vidyaniidhi Tirtha Swamy (1904) ILR 27 Mad 435; Ram Prakash Das v. Anand Das (1916) 43 I.A. 73 (PC), Vidya Varuthi Thirtha v. Babuswamy Iyer (1920-21) 48 I.A. 302; Kailasam Pillai v. Nataji Thambiran (1910) ILR 33 Mad, 265.

From the principles, it will be sufficiently clear that a math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the math. In the instant case, the evidence on record sufficiently establishes that a math came to be established at Garwaghat and the building known as 'Bangla Kutu' and certain other buildings, including the house in suit constituted the endowment of the math itself.

From a review of the general mass of evidence the High Court, agreeing with the learned Munsif, held that the followers of the 'Sant Mat' fraternity are members of a religious order. The long line of witnesses who were all disciples of Swami Sarupanand and/or Swami Atmavivekanand have clearly established that it is a religious institution of monastic nature. It is established for the service of the 'Sant Mat' cult, the instruction in its tenets and observance of its rites. The Swamiji who is the Guru is the Mahant, the spiritual and religious leader of the fraternity.

According to the custom and usage of the 'Sant Mat' Sampradaya, as pleaded by the plaintiff, the initiation of a chela by the Guru results in complete renunciation of the world, and he ceases to have all con-

nection with his previous Ashramas before becoming a sanyasi. For becoming a sanyasi it is not necessary that he should be of a particular Varnashram previously, i.e., even a Sudra can become a sanyasi. The succession to the office of the Mahant is by nomination, i.e., from Guru to chela, the Guru initiates the chela after performing the necessary ceremonies. The person initiated as a chela adopts the life of a sanyasi and is pledged to lead a life of celibacy and religious mendicancy. The sitting mahant hands over the management of the math to one of his virtuous chelas fittest to succeed whom he nominates and whom he wishes to install as mahant after him in his place. He makes clear this desire to the members of his Sampradaya, and also authorises the nominated chela to give Bhesh Dikshaw. After the death of the mahant, the Bhesh and Sampradaya give Chadar Mahanti of the math to the said disciple at the time of the Bhandara.

The Courts below have concurrently found that the custom or usage, so pleaded has been established. They further found that the plaintiff Mathura Ahir was initiated as a chela by Swami Atmavivekanand and nominated to be his successor. They have also found that at the Bhandara held after Swami Atmavivekanand's death, the plaintiff was installed as the Mahant of Garwaghat Math by the Mahants and Sanyasis belonging to the 'Sant Mat' Sampradaya, according to the wishes of Swami Atmavivekanand Paramhans.

From the evidence on record, there can be no doubt that the math at Garwaghat belongs to the 'Sant Mat' Sampradaya, which is a religious Order. No doubt, the plaintiff Harsewanand, P.W. 15, asserts:

"Followers of any religion can become a sanyasi in our cult. The practice of becoming sanyasi has been prevalent since Satyuga. Man's life is divided into three Ashramas. (Again said): there are four Ashramas viz., Brahmacharya, Grihastha, Vanaprastha and Sanyas. Varnas are three, Dashnami Sanyasis came into existence after Shankaracharya. They are Puri, Giri, Bharti, Vana, Tirtha, Aranya, Parvat, Sagar and Saraswati. I am failing to recollect the name of one of them. The Sanyasis of Sant Mat are not Dashnami Sanyasis. Swarupanandji my Guru or I are not Dashnamis, but all these cults are related with Sant Math. I know Niranjani and Nirvani Akharas. They belong to Dashnami Sanyasis and Sant Mat Sanyasis. We have connections with Nirvani and Niranjani Maths. Some customs of the Maths of those Akharas are observed by us also."

(Emphasis supplied) This is, however, contrary to what he had stated in his oral pleadings under O.10, r. 1 of the Code of Civil Procedure. The fact that the 'Sant Mat' Sampradaya is one of the Dashnami sects cannot be doubted.

There is unimpeachable testimony of Swami Viveksukhanand, who along with Swami Atmavivekanand and others was initiated as a chela by Swami Sarupanand on the same day, at the same time. During his cross-examination, this witness states:

"Sri Swarupanandji was Sadhu of Sant Sanyas Sampradai. Sant Sanyas Sampradai has been obtaining from ancient time. This Sampradai is of those ten Sampradai which were founded by Swami Shankracharji. This (Sampradai) out of the Das-nam

is Purinama. There is no branch in Purinama (Sampradai).....Niranjani and Nirvani Akharas are the Akharas of Giri Sampradai. If a Sanyasi of Giri, Puri, Bharti, or of any Das Nam Sampradai abandons sanyas and re-enters into the Grahast Ashram he is called a Gosain. The rules for making disciples in Giri and Puri Sampradai for making chief disciples, and appointing successor are also one and the same. The rules, rituals and the ceremonies which are performed at the time of installation to gaddi in both these Sampradai are also one and the same. There is no difference in Giri and Puri Sampradai. The rules, practices, rituals and customs followed at the time of installation to gaddi in all the ten sampradaiyas founded by Swami Shankracharyaji are one and the same.' (Emphasis supplied) Though the math at Garwaghat established by Swami Sarupanand was of recent origin, the High Court observes that the religious order denominated as 'Sant Mat' has had large following in Punjab and some other parts of India since more than a century. In a sense, therefore, Swami Sarupanand himself did not for the first time evolve any new religious order.

As regards the origin of the Math, it observed:

"I have, therefore, no hesitation in holding, in agreement with the finding of the trial court, that there had come into existence a Math at Garwaghat, Varanasi of which Swami Sarupanand was the Mahant. Here I may also mention that from the evidence on record it appears that 'Sant Mat' is not of very recent origin. Although the evidence is somewhat scanty on the point, yet it sufficiently indicates that this Math has had numerous followers in Punjab and some other parts of India since more than a century. In a sense, therefore, Swami Sarupanand himself did not for the first time evolve any new religious order. Here it may also be mentioned that defendants other than the appellant did not seriously dispute the plaintiff's allegation in regard to the Math in question and the allegation that Swami Sarupanand and thereafter Swami Atmavivekanand were its Mahants."

Referring to the nature of the property, it said:

"Swami Atmavivekanand before becoming a follower of the Sant Mat was a Grihasth with a family. From the evidence on the record it transpires that he became a devotee and a disciple of Swami Sarupanand and severed all connections with his family. In course of time he was held in high esteem by the followers of the Sant Mat at Varanasi and other places and large offerings were made to him by the devotees. Swami Sarupanand had nominated him to be his successor and after his death Swami Atmavivekanand did assume the office of Mahant of the math. There is no evidence from which it can be reasonably inferred that he treated or set apart the offerings either in their entirety or some portion thereof as belonging to him personally. On the contrary the evidence on record and the circumstances show that there was a complete blending of such offerings with the funds of the math and used for its purposes. There is also no reliable evidence to establish that the offerings which were made to him were made not for the purposes of the spiritual order or the fraternity

but for his personal aggrandizement. Indeed, when a person renounces his family connections and takes to ascetism it would be difficult to hold that he would thereafter start amassing wealth and property for his personal benefit or for the benefit of his family with which he had severed his connection. Unless specifically proved to the contrary, under such circumstances it must be held that the offerings made to such a person were not offerings made to him personally for his personal benefit but had been made for the benefit of the math or the religious institution itself. In such a case, to my mind, the natural heirs of the person concerned could have no claim to the property which the person came by in his capacity as the religious or spiritual leader. The house in suit must be held to be an accretion to the Math."

All this is borne out by the testimony of plaintiff's witnesses. The institution was really built up by Swami Atmavivekanand, who was held in great veneration by the followers of the sect. He preached the tenets of 'Sant Mat' and had a large following. His 'Sant Mat' fraternity comprised of thousands of Grihastha and Virakta disciples who made large offerings. All the witnesses speak of such offerings in cash or kind or in the shape of immovable property which were endowed to the math. There are a number of documents showing the endowment by the disciples of their properties to the math, wherein they have described themselves as 'disciples of Swami Atmavivekanand' and he is described therein as 'Mahant of the Garwaghat Math'. Even Avadesh Narain, a Judicial Magistrate, D.W. 1, who practised as a lawyer at Varanasi before he was appointed as a Judicial Officer, admits that Swami Atmavivekanand had a large number of disciples in Uttar Pradesh and Bihar, and that the property of 'Bangla Kuti' might be worth lakhs of rupees. The two houses at Varanasi, including the suit house, were purchased by Swami Atmavivekanand from out of the offerings (Bhent) made by his disciples. We have, therefore, no hesitation in upholding the finding of the High Court as regards the existence of a math at Garwaghat and the suit property being the math property.

We may now deal with the main questions on which the decision of the appeal must turn. It has been argued that according to the Smritis a Sudra cannot be a sanyasi and, therefore, the plaintiff could not enter the Order of a yati or sanyasi. It has further been argued that there is no evidence on record in proof of the fact that the plaintiff and his two predecessors Swami Sarupanand and Swami Atmavivekanand had performed Atma Sradh or recited Pravesh Mantra and, therefore, they cannot be regarded as Hindu sanyasis. It, therefore, becomes necessary to trace the origin of Hindu sanyasis belonging to the Dasnami sects founded by the great Sankaracharya, of which the 'Sant Mat' Sampradaya appears to be a religious denomination i.e., a sub-sect. The first question is, whether a Brahman alone can become a sanyasi among Dasnamis? The second question is, what are the essential ceremonies prerequisite for the initiation of a Dasnami sanyasi? The third question is, what is the mode of succession to the office a mahant of a math or Asthal belonging to any of the Dasnami sects? It will be convenient to take up the last point first.

The law is well settled that succession to mahantship of a math or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment: vide *Genda Puri v. Chatar Puri* [1886] I.A. 100 @ 105, *Sital Das v. Sant Ram* A.I.R. 1954 SC 606; *Mahalingam Thambiren v. La Sri Kasivasi* [1974] 2 S.C.R.

74.

x	x	x	x	x
x	x	x	x	x

One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Entrance to a religious order, is tantamount to civil death so as to cause a complete severance of his connection with his relations, as well as with his property. Neither he nor his natural relatives can succeed to each other's properties. Any property which may be subsequently acquired by persons adopting religious orders passes to their religious relations. The persons who are excluded on this ground come under three heads, the Vanaprastha or hermit; the Sanyasi or Yati, or ascetic, and the Brahmachari, or perpetual religious student. In order to bring a person under these heads it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a persons calls himself a Byragi, or religious mendicant, or indeed that he is such, does not of itself disentitle him to succeed to property. Nor does any Sudra come under this disqualification, unless by usage. This civil death does not prevent the person who enters into an order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance. But it would be otherwise if there is no civil death in the eye of the law, but only the holding by a man of certain religious opinions or professions(1).

Special rules are propounded for succession to the property of a hermit, of an ascetic, and of a processed student. Yajnavalkya states a special rule of succession in regard to the wealth of ascetics and the like: "The heirs who take the wealth of a Vanaprastha (a hermit), of a Yati (an ascetic) and a Brahmacharin (a student) are in their order, the preceptor, the virtuous pupil, and one who is supposed brother and belonging to the same order". The Mitakshara explains thus(2): "A spiritual brother belonging to the same hermitage (dharmabhratrekatirthi) takes the goods of the hermit (vanaprastha). A virtuous pupil (sacchishya) takes the property of a yati (as ascetic). The preceptor (acharya) is heir to the Brahmachari (professed student). But on failure of these, any one belonging to the same order or hermitage takes the property; even though sons and other natural heirs exist."

The property that is referred to is explained in Mitakshara and in the Viramitrodaya as consisting of clothes, books and other requisite articles. Practically, however, such cases seldom arise. When a hermit or ascetic holds any appreciable extent of property, he generally holds it as the head of some math or as the manager of some religious or charitable endowment, and succession to such property is regulated by the special custom of the foundation.

Succession to the office of the Mahant or Mathadhipathi or Pandara Sannadhi is to be regulated by the custom of the particular institution. Even where the Mahant has the power to appoint his successor, it is the custom in the various Maths that such appointments should be confirmed or recognised by the members of the religious fraternity to which the deceased belonged.

According to the text of Yajnavalkya referred to above, the property of a life-long student goes to his preceptor, that of a hermit or Vanaprastha goes to his religious brother and that of a sanyasi or Yati goes to his virtuous disciple. The principle, so far as it affects maths, is shortly this, viz., 'a virtuous

pupil takes the property'. The particular mode in which the virtuous pupil, that is, not merely a chela, or a shishya, fittest to succeed, is ascertained or selected is a matter either of express direction on the part of the founder or of custom in the case of each foundation. There are instances of maths in which the mahantship descends from Guru to chela i.e., the existing mahant alone appoints his successor, but the general rule is that the maths of the same sect in a district, or maths having a common origin, are associated together-the mahants of these acknowledging one of their member as a head who is for some reason pre-eminent; and on the occasion of the death of one, the others assemble to elect a successor out of the chelas or disciples of the deceased, if possible-or if there be none of them qualified then from the chelas of another mahant.(1) According to the Dharmasastras, in the strict legal sense, a Sudra cannot become a sanyasi or ascetic. Mahamopadhya Dr. P. V. Kane in 'History of Dharmasastra', Vol. 2, Pt. 1, p. 163, observes:

"As the sudra could not be initiated into Vedic study, the only asrama out of the four that he was entitled to was that of the householder. In the Anusasanaparva (165. 10) we read 'I am a sudra and so I have no right to resort to the four asramas'. In the Santiparva (63. 12-14) it is said, 'in the case of a sudra who performs service (of the higher classes), who has done his duty, who has raised offspring, who has only a short span of life left or is reduced to the 10th stage (i.e. is above 90 years of age), the fruits of all asramas are laid down (as obtained by him) except of the fourth'. Medhatithi on Manu, VI. 97 explains these words as meaning that the sudra by serving brahmanas and procreating offspring as a householder acquires the merit of all asramas except moksa which is the reward of the proper observance of the duties of the fourth asrama."

Although the orthodox view does not sanction or tolerate ascetic life of the Sudras, the existing practice all over India is quite contrary to such orthodox views. In Mukherjea's Hindu Law of Religious and Charitable Trusts, 4th ed., p. 328, it is said:

".... the practice of establishing Maths which began with Brahmin ascetics gradually spread to the Sudras and in course of time it was adopted by dissenting religious sects like the Jains, Kabir Panthis, Nanak Panthis, Jangamus and others though they do not believe in the authority of the Vedas or in the tenets of orthodox Hindu religion."

At page 338, it is observed:

"..... according to orthodox Smriti writers, a Sudra cannot legitimately enter into a religious order. Consequently, the texts of Hindu Law relating to exclusion from inheritance applicable to a yati or a sannyasi do not, in terms, apply to Sudra ascetics. On this view, it has been held in a series of cases that a Sudra ascetic is not incapable of inheriting the property of his natural relations under the ordinary law of inheritance. Although orthodox view does not sanction or tolerate ascetic life of the Sudras, it cannot be denied that the existing practice all over India is quite contrary to such orthodox views. In cases, therefore, where the usage is established, according to which the property of a Sudra ascetic devolves in the same way as the property of

the ascetics of the twice born classes, such usages should be given effect to."

(Emphasis supplied) In the words of the Privy Council in *Collector of Madura v. Moottoo Ramalinga*(1), 'under the Hindu system of law, clear proof of usage will outweigh the written text of the law'.

Golapchandra Sarkar Sastri in his *Hindu Law*, 8th ed., at pp. 65356, in a passage based on translation of slokas from *Maha-Nirvana Tantra*, observes that in Kali Yug, with numerous sects having their peculiar rites for being ordained to a religious order, there are five castes (varnas), i.e., a fifth caste comprising of all other beings. He further observes that sanyasam according to Vedic rites does not exist and that all the five castes can become Avadhutha Sanyasis:

"... in the advanced state of the Kali age, the Brahmanas and the other (four) castes are all entitled to these two orders of life. The Brahman, the Kshatriya, the Vaisya, the Sudra, and the general body of human beings, these five are entitled to be initiated as Sannyasis or ascetics according to Tantric system."

The orthodox rule laid down in the *Mitakshara* that only the Brahman can enter the fourth Asram of life and are eligible to become sanyasis, has therefore, been commented upon by Golapchandra Sarkar Sastri at p. 662:

"It has been held that a Sudra cannot become a sannyasi or ascetic. This is undoubtedly the doctrine propounded in the *Smritis*. But the learned Judges have not taken into consideration the modern usages introduced by the Vaishnava and Tantrika and other systems according to which a Sudra and even a non-Hindu such as Mohamedan may become a Hindu sannyasi. There are many religious sects of ascetics among whom caste distinction is unknown, who accordingly initiate and admit Sudras into their brotherhood if otherwise qualified. In esoteric Hinduism also, caste is individualistic not hereditary, it being determined by qualification and not by birth. The highest virtue taught by the Hindu religion is that a man should regard other persons and beings as his own self reproduced in them, as the same Supreme Soul pervades them all." (Emphasis supplied) Here the question arises as to what classes of Hindus should be denominated as Sudras. It is undoubted that there were originally four classes: (1) the Brahmanas, (2) the Kshatriyas, (3) the Vaishyas, and (4) the Sudras. The first three were the regenerate, or twice-born, classes; the latter, the servile class. The three regenerate classes exist, it is true; but it often becomes difficult to distinguish a Sudra from one of the regenerate classes. It is pointed out by Golapchandra Sarkar Sastri at p. 113:

"The *Smritis*, which have thrust into prominence this system, divide men into two large classes namely, the Sudras and the Twice-born. The study of the sacred literature forms the principle of this distinction. They ordain that by birth all men are alike to Sudras, and the second birth depends on the study of the sacred literature. Thus Sankha, one of the compilers of the *Dharma-Shastras*, declares "Brahmanas (by

birth) are, however, regarded by the wise to be equal to Sudras until they are born in the Veda (i.e., learn the sacred literature), but after that (i.e., this second birth) they are deemed twice-born".

Passages to the same effect are found in most of the codes, according to which the recognition of the title of the Twice-born to superiority over the Sudras, depends upon acquisition of the knowledge of the Vedas."

The learned author then goes on to say at p. 184:

"According to the Smritis, every man is by birth a sudra; it is by learning the sacred literature, that a man becomes twice-born. The privilege of studying the sacred literature is, no doubt, denied to the sudras as well as to the females of the so-called twice-born classes. But the status of being twice-born depends on the acquisition of knowledge of the sacred literature. Manu ordains that a twice-born man shall abide with the preceptor, and study the Vedas for thirty-six years or half or a quarter of that period, or until knowledge of the same is acquired."

The consequence of omitting to do the same, according to Manu, is that a twice-born man, who without studying the Vedas, applies diligent attention to anything else, soon falls even when living together with his descendants, to the condition of a Sudra. The learned author has observed that the majority of the so-called twice-born classes have accordingly become long since reduced to the position of Sudras by reason of neglecting the study of the Vedas from generation to generation.

The learned Single Judge accordingly observes:

"It will thus be seen that originally every person was deemed to be born a Sudra and that it was by virtue of intensive study of Vedas that a person attained the status of a twice-born person. With the passage of time running into thousands of years, it is evident that the original hall-marks for classification of Sudras and twice-born people gradually disappeared and degenerated into the rigid caste system based on birth."

As Dr. Mukherjea observes, the disciples of Sankara were all Brahmans and originally, according to the rule laid down in Sanyas Grahana Paddhati, the authorship of which is imputed to Sankara himself, only the twice-born people can become sanyasis of the Dasnami orders. As the four stages of life have, in the Vedas, been prescribed only for the twice-born, no Sudra can, strictly speaking, become an ascetic, and that is the view entertained by the Smriti writers.(1).

According to the Mitakshara, only the Brahmans can enter the fourth Asram of life and are eligible to become sanyasis; and this view is supported by certain passages from Manu where 'Pravrajya', i.e. exit from the house, has been spoken of or prescribed for the Brahmans alone, and a text of the Sruti which says "the Brahmans should become ascetics". According to Nirnaya Sindhu, which has been quoted in West and Buhler's Digest of Hindu Law(2), a Kshatriya and a Vaishya can also enter into an order of sanyasis.

Upon a view of all these authorities, it was held by the Madras High Court in *Dharampuram v. Virapandiyan*(3) and the Calcutta High Court in *Harish Chandra v. Atir Mahamed*(4), that a Sudra can not become a sanyasi under Hindu Law, and consequently the devolution of property of a Sudra who purported to renounce the world and become an ascetic would be governed by the ordinary law of inheritance.

Asceticism in India, perhaps more than in any other country, has been under the definite and strong sanction of religion. In the doctrine of the four asramas, asceticism was made an integral part of the orthodox Hindu life, and it became the duty of every Hindu, as advanced age overtook him homeless and a wanderer to chasten himself with austerities. Formally this was to be done for the sake of detaching himself from earthly ties, and of realizing union with Brahman. And a religious motive was thus supplied for that which in itself was a welcome release from responsibility, care, and the minute requirements of an elaborate social code. In due course, with the advancement of knowledge, the shackles of the caste system were broken through and the privileges and powers of the ascetic life were extended to Sudras.

Hindu asceticism represented, further, a revolt from, or at least a protest against, the tyranny of caste. In its origin probably remote from Brahmanism, and conveying the ordinary idea that bodily pain was profitable for the advancement and purification of the spirit, the ascetic life became, in association with Hinduism and under the prescriptive sanction of Hindu law itself, a refuge from the burden of caste rules and ostracisms.(1) In *Encyclopaedia of Religion and Ethics*, Ed. by James Hastings, Vol. II, p. 91, it is observed:

"....In the first instance apparently, the right and privilege of asceticism, according to Hindu custom or law, belonged to Brahmans alone; it was then extended to all the twice-born, and finally all restrictions were removed, and admission into the ranks of the ascetics was accorded to men of every position and degree."

This is based on the following passage from the *Ramayana*, *Uttara Kanda*, 74.9ff., quoted in J. Muir's *Original Sanskrit Text*, i.119f:

"Formerly in the *krta* age Brahmans alone practised *tapas*; none who was not a Brahman did so in that enlightened age.... then came the *treta* age,.... in which the *Ksatriyas* were born, distinguished still by their former *tapas* Those Brahmanas and *Ksatriyas* who lived in the *treta* practised *tapas*, and the rest of mankind obedience..... In the *dvapara* age *tapas* entered into the *Vaisyas*. Thus in the course of three ages it entered into three castes; and in the three ages righteousness (*dharma*) was established in three castes. But the Sudra does not attain to righteousness through the (three) ages.. such observance will belong to the future race of Sudras in the *kali* age, but is unrighteous in the extreme if practised by that caste in the *dvapara*." (Manu: i. 86) It is, therefore, evident that with reluctance the right to ascetic life was extended to Sudras and in due recognition of their status, they were treated as Hindu sanyasis. At the present time, there is no distinction or barrier; any one may become an ascetic, and the vows are not necessarily lifelong. Some sects,

however, still restrict membership to Brahmanas, or at least to men of the three higher castes.

The principle laid down by the Madras High Court in *Dharmapuram v. Virapandiyan* (supra) and the Calcutta High Court in *Harish Chandra v. Atir Mahamed* (supra) regulating the mode of devolution of property of a Sudras who becomes an ascetic is, however, not applicable to after-acquired property of a Hindu sanyasi. As has been said above, when a layman becomes an ascetic, his connection with his natural family and existing property rights are extinguished. If he acquires any property subsequent to his becoming an ascetic, such property passes on his death not to his natural but to his spiritual heirs.

It would be convenient next to deal with the question, firstly, as to whether in the 'Sant Mat' Sampradaya which being a sect of the Dasnamis, a Sudra cannot enter the order of a yati or a sanyasi; and secondly, whether performance of Atma Sradh and the recitation of Pravesha Mantra are ceremonies essential for the initiation of a chela in the 'Sant Mat' fraternity. That depends on whether the matter falls to be governed by the Smritis or is regulated by the custom or usage of the 'Sant Mat' Sampradaya which was one of the Dasnami sects.

About the eighth century A.D., Sankaracharya, the greatest Hindu scholar and philosopher of modern India, defeated the Buddhists in argument and re-established Hinduism as the dominant religion of India. Sankara was an ascetic and founded schools of ascetics. Hindu scholars and philosophers like Mandana Misra, attempted to prove against him that such ascetism was against the law of the Hindus. But all opposition was overborne by the commanding influence of Sankara, who established four maths or seats of religion at four ends of India-the Sringeri Math on the Sringeri Hills in the south, the Sharda Math at Dwarka in the west, the Jyotir Math at Badrikashram in the north, and the Govardhan Math at Puri in the east and Mandana himself became a Sanyasi disciple under the name of Sureswara. The monks ordained by Sankara and his disciples were called Sanyasis. Each of the maths has a sanyasi at its head who bears the title of Sankaracharya in general. Sankara is said to have four principal disciples who were all Brahmans, from whom the ten divisions of the Order-hence named the 'ten-named' or 'Dasnami Dandis' originated. These are: Tirtha, 'shrine'; Ashrama, 'order'; Vana, 'wood'; Aranya, 'forest', 'desert', Saraswati and Bharti, 'the goddesses of learning and speech'; Puri, 'city'; Giri and Parvata, 'a hill'; and Sagra, 'the ocean'.

The orthodox Hindu recognises no other sanyasis.(1) Kabir and Nanka also established monasteries on the lines of Sankara. Chaitanya, the pure, the subtle mystic of Naidia, the greatest exponent and exam-

ple of Bhakti, originally belonged to one of Sankara's orders, namely Bharati, though he violently repudiated Sankara's pantheism, and his followers founded the class of

ascetics known as Byragis, who too have their establishments. But it is the schools of Sanyasis founded by Sankara that are now predominant and are the wealthiest, and it is of them that we should speak first.

Sankara founded his monastic system on the lines of the Buddhistic Sangharamas, which were found existing at the time. The rules of the Hindu and the Buddhistic institutions, so far as the internal management was concerned, were very similar. The Sangharama had a superior under whose management the establishment was and so had all the Maths of Sankara, the superiors of which were called Mahants and Acharyas, etc. The superior of a Math had the control of all the property, for he was the Guru whose power no one could question, and the nomination of his successor ordinarily lay with him. As a rule, the best and most erudite among the disciples, upon whom the choice of the congregation would naturally fall, was nominated and there was rarely any contention. In course of time, however, as the wealth of the Maths increased and worldliness and all the vices of an idle luxurious life took the place of stern austerity and scholarship above that of all Buddhists and other schismatics, by which Sankara intended the Sanyasis, specially, the superiors, should be distinguished, worldly ideas became the ruling ideas of the establishments.

In imitation of the Maths of Sankara, the followers of Ramanuja also founded Maths reaching the Vishishtadwaita system in various parts of India. The followers of Madhvacharya, the chief exponent of the Dwaita system, also founded Maths, the chief among whom are the well-known eight Maths at Udipi. Similarly, there are Maths of the followers of Ramanund and Nimbacharya among the orthodox and of Nanak and Kabir among schismatics. There are also many Maths founded by lesser teachers. All the strictly orthodox Maths are Maths of the three regenerate classes. But the followers of Chaitanya in Bengal and of a teacher named Shankara in Assam have Maths or Akharas in which Sudras are admitted. It is, however, only in Madras that the Shaivas have Sudra Maths. The Tantras allow Sudras to become Sanyasis and probably, these are based on the Tantras. The Sudra Maths of Dharmapuram and Tiruvaduthurai are the chief among the Sudra Maths of the Saiva Siddhantam School: Sammantha Pandara v. Sellappa Chetti,(1) G. S. Pandara Sannadhi v. Kandaswami Tam-

biran(1), Vidyapurna Tirthaswami v. Vidhyanidhi Tirthaswami(2), and Kailasam Pillai v. Nataraja Thambiran(2).

The most respectable members of this Order of Hindu ascetics known as Saiva Gosains are the spiritual descendants of Sankaracharya, the very incarnation of the strictest Brahmanism. Saiva Gosains fell into two classes- monks known as Mathadhari as contrasted with Gharbari, or laymen. The true Dandi should, in accordance with the precepts of Manu Laws (VI. 41ff) live alone near to, but not within a city.

Of Saiva mendicants and ascetic orders, Dandis or staff-bearers, occupy a place of pre-eminence. They worship Lord Siva in his form of Bhairava, the 'Terrible' and profess to adore Nirguna and Niranjana, the deity devoid of attribute or passion. A sub-section of this Order are the Dandi Dasnamis or Dandi of ten-names, so-called from their assuming one of the names of Sankara's four disciples and six of their pupils. (4 & 5) It is customary to consider the two religious orders of Dandis and Dasnamis as forming but one division. The classification is not, in every instance, correct but the practices of the two are, in many instances, blended and both denominations are accurately applicable to the same individual(6).

The Dandis, properly so-called, are the legitimate representatives of the fourth Asrama, or mendicant life, into which the Hindu, according to the instructions of his inspired legislators, is to enter, after passing through the previous stages of student, householder and hermit. Adopting, as a general guide, the rules laid down in the original works, the Dandi is distinguished (5 & 6) by carrying a small Dand, or wand, with several processes or projections from it, and a piece of cloth dyed with red ochre in which the Brahmanical cord is supposed to be enshrined, attached to it. They develop within themselves a complete detachment from the things of enjoyment either of this world or the next. Many Brahmans, even Pandits, or learned Brahmans, come to them for instruction, which they impart freely, without the smallest recompense. All classes of the community pay them the great honour, even worship them(1).

The Dandis keep themselves very distinct from the rest of the community. They are Brahmans, and receive disciples only from the Brahmans. They lead a very austere life. They do not touch fire or metal, or vessels made of any sort of metal. It is equally impossible also for them to handle money. They shave their hair and beard. They wear one long unsewn reddish cloth, thrown about the person. Although they are on principle penniless, yet they do not beg. Their dependence on the kindness and care of others is thus of the most absolute character. Yet they are not reduced to distress or even to want; they are fed by the Brahmans, and the Gosains, another class of devotees. They sleep on the ground, and once or twice in the day go round to collect food and alms, for which they must not ask, but contentedly receive what is given. According to the stated rule, they must not approach a house to beg until the regular meal-time is passed; what remains over is the portion of the mendicant.

A Dandi should live alone, and near to, but not within a city; but this rule is rarely observed, and in general the Dandis are found in cities collected like other mendicants in maths. The Dandi has no particular time or mode of worship, but spends his time in meditation, or in practices corresponding to those of Yoga, and in the study of the Vedanta works, especially according to the precepts of the great Sankaracharya. As the preceptor was an incarnation of Lord Siva, the Dandis reverence that deity; and his incarnations, in preference to the other members of the Triad, whence they are included amongst his votaries.

Prof. Wilson in his 'Hindu Religions' observes:

"Any Hindu of the first three classes may become Sannyasi or Dandi, or in these degenerate days, a Hindu of any caste may adopt the life and emblems of this order." (Emphasis supplied) The Dasnami Dandis, who are regarded as the descendents of the original members of the fraternity, are said to refer their origin to Sankaracharya.

There are but three, and part of a fourth ascetic class, or those called Tiratha or Indra, Asrama, Saraswati and Bharati who are still regarded as really Sankara's Dandis. The rest, i.e. the remaining six and a half of the Dasnamis are considered as having fallen from the purity of practice necessary to the Dandis, are still, in general religious characters, and are usually denominated Atits. These are the Atits or A'Dandis viz., the Vanas, Aranyas, Puris, Giris, Parvatas, Sagaras and half the Bharatis, reputed to have fallen to some extent from orthodoxy, but are still looked upon as religious avatars. The main distinction between the Dandis and the Atits is that the latter does not carry the staff i.e. a trishul. They differ from the former also in their use of clothing, money, and ornaments, their methods of preparing food, and their admission of members from any order of Hindus. Some of them lead an ascetic life, while others mix freely in the world, carry on trade and acquire property. Most of them are celibate, but some of them marry and are often known as samyogi or gharbari Atits. They are often collected in maths or monasteries. They wear ochre-coloured garments and carry a rosary of rudraksa seeds sacred to Lord Siva. Their religious theories when they have any) are based on the advaita Vedants of their founder Sankaracharya(1).

There is also a sub-division of the Puri division of the Dasnarni sect. They have tenets much in common, based on the central idea that the Supreme Deity is incomprehensible or, as they say, 'unseeable'. They denounce idolatry. This more or less conforms to the tenets of the 'Sant Mat' sect. It is proved by the evidence on record that followers of this sect treat the Guru as the incarnation of God. They have no faith in inanimate idols installed in temples nor do they worship them in their cult. There are no caste restrictions and anyone can be admitted into the Sant Mat fraternity.

That takes us to the next question as to whether in the absence of proof of the performance of Atma Sradh and recitation of Pravesh Mantra neither the plaintiff nor his two predecessors Swami Sarupanand and Swami Atmavivekanand could be regarded as a Hindu sanyasi.

In order to prove that a person has adopted the life of a sanyasi, it must be shown that he has actually relinquished and abandoned all worldly possessions and relinquished all desire for them or that such ceremonies are performed which indicate the severance of his natural family and his secular life. It must also be proved, in case of orthodox sanyasis, that necessary ceremonies have been

performed, such as Pindadana or Birajahoma or Projapathiyesthi without which II the renunciation will not be complete.

Among Dasnamis, a ceremony called the Bijja Homa i.e., the Biraja Homa has been considered essential. The recitation of the Presha Mantram or the renunciation formula is of course indispensable and has been considered essential by the different High Courts. According to Manu giving up of all wordly property is essential.

In Sherring's 'Hindu Tribes and Castes', pp. 256-67, the ceremonies prescribed for the initiation of a Dasnami sanyasi are stated thus :

"The ceremony observed at the creation of a Gosain is as follows: The candidate is generally a boy, but may be an adult. At the Shiva-ratri festival (in honour of Shiva) water brought from a tank, in which an image of the god has been deposited, is applied to the head of the novitiate, which is thereupon shaved. The guru, or spiritual guide, whispers to the disciple a mantra or sacred text. In honour of the event all the Gosains in the neighborhood assemble together, and give their new member their blessing; and a sweetmeat called laddu, made very large is distributed amongst them. The novitiate is now regarded as a Gosain, but he does not become a perfect one until the Vijaya Hom has been performed, at which a Gosain, famous for religion and learning gives him the original mantra of Shiva. The ceremony generally occupies three days in Banaras. On the first day, the Gosain is again shaved, leaving a tuft on the top of the head call d in Hindi Chundi, but in Sanskrit, Shikha. For that day he is considered to be a Brahman, and is obliged to beg at a few houses. On the second day, he is held to be a Bramhachari, and wears coloured garments, and also the janeo or sacred cord. On the third day, the janeo is taken from him, and the Chundi is cut off. The Mantra of Shiva is made known to him, and also the Rudri Gayatri (not the usual one daily pronounced by Brahmans). He is now a full Gosain or Wan-parast, is removed from other persons, and abandons the secular world. Henceforth he is bound to observe all the tenets of the Gosains."

In Gossain Ramdhan Puri & Ors. v. Gossain Dalmir Puri(1) Mookerjee and Carnduff JJ., observed at p. 203:

"Every aspirant for entrance into the order of sanyasis has to pass through a period of probation. Upon his first arrival at the monastery his habits and character are closely watched for some days, and enquiries are made into his A caste, for the sanyasis admit into their order ordinarily members of the twice-born classes and very rarely take members of the fourth class. If the novice is approved, his head is shaved, his name is changed and upon the performance of this preliminary ceremony he is regarded as a probationer for entrance into the order. The final ceremony, however, which is called the Biraja Homa ceremony, is not performed for many months, and sometimes for many years. During this period of apprenticeship it is open to the chela to return to his natural family, but after the performance of the final ceremony his

connection with the world is deemed to have been finally severed."

In support of these observations, the learned Judges relied on the note of Warden on the customs of Gossains printed as an appendix to steel's 'Law and Custom of Hindu castes'.

As regards Swami Sarupanand, the learned Munsif rightly observes that 'it would be unjust to place an unreasonable burden on the plaintiff for leading direct evidence of his initiation, as Swami Sarupanand came to Varanasi from distant land and long ago. The truth has to be discerned out of circumstantial evidence and other material on record.' That evidence clearly shows that Swami Sarupanand was acknowledged by his numerous followers to be the head of the 'Sant Mat' fraternity. That Swami Sarupanand paid the debt of nature in 1936 at Meerut and that his Smadhi is situate there is not disputed. The oral evidence lead by the plaintiff in proof of the fact that after the death of Swami, his Bhandara took place at Meerut as well as at Gar- vaghat is irrebuttable. It is common knowledge that sanyasis are not cremated but are buried, or their bodies consigned to some river, and that after their demise a Bhandara takes place. Defendants Nos. 1 to 4 admitted in their written statement that Swami Sarupanand was a 'Paramhans' and that a Bhandara had taken place after his death. The prefixes 'Swami' and 'Paramhans' are used for sanyasis and not for men of the world.

In the case of Swami Atmavivekanand there is overwhelming evidence in proof of the fact that the requisite ceremonies of Birajahoma or Prajapathiyesthi were performed. Swami Vivekasukhanand, who was initiated as a chela along with Swami Atmavivekanand and others speaks of the performance of BriJahoma and Prajapathiyesthi at the time of their taking sanyas and states:

"I attend satsang. I know Swami Sarupa Nandji. He was a Sanyasi. I am in Sanyas Ashram. I became Sanyasi about 28-29 years ago. Four other persons had also taken Sanyas on one and the same day. I had taken Sanyas. Their names are Swami Atma Vivekanandji, Swami Aju niya Nandaji, Swami Abheda Nandji and Swami Purna Shabda Nandji. Swami Atma Viveka Nandji had also taken Sanyas on that very day. Praja Prashit.. and Virja Hom Ceremonies were performed at the time of my taking sanyas. Our heads were shaven from before that. our Gurudeo had taken the choote. The sacred threads were burnt in the fire. Our white clothes were removed, and in its place we were directed to put on the clothes of the ochre colour. Guru Maharaj had whispered the Guru Mantra into our ears. Hom (Samigri) were sent from the Mandleshwar of Benaras, and Birja Hom was got per formed with it. We were at that time relieved off, from all the bondages of Grahast Ashram. These very cere- monies were performed at the time, when Swami Atma Viveka Nandji took the Sanyas." (Emphasis supplied) It is necessary to mention that though this witness was examined at length, there is no question put as to the performance of Atma Sradh. This is somewhat significant because this question was put to only one of the plaintiff's witnesses, Mahesh Dutt Shukla, PW 13 and he replied that according to the tenets of the 'Sant Mat' it is not necessary to perform Atma Sradh for becoming a sanyasi.

The evidence of the plaintiff's witnesses show that the Biraja Homa ceremony is of great importance, and if the Biraja Homa was performed by Swami Atmavivekanand at the time of his initiation, it is not at all probable that Swami Sarupanand and Swami Atmavivekanand, who were men of great ability and circumspection, should have performed Biraja Homa ceremony and omitted the essential details, especially the performance of the Sradh of one's self, that is, Atma Sradh by Swami Atmavivekanand. If the Prajapathiyesthi or Biraja Homa ceremonies were performed, then it must necessarily give rise to the irresistible inference that Swami Atmavivekanand must have performed his Atma Sradh before he was initiated as a chela.

We are clearly of the opinion that the appellant Sri Krishna Singh, impleaded as defendant No. 5, was precluded from contending that his father Baikunth Singh, who on his initiation by Swami Sarupanand was baptised as Swami Atmavivekanand, was not a Hindu sanyasi. On May 29, 1949 he along with his brother brought a suit for partition, being suit No. 389 of 1949 in the Court of Judicial officer, Chandauli, against the other members of their family. It was alleged in the plaint:

"That the father of the plaintiffs has been a man of religious bent of mind. For that reason he having left the property of his share in the spurdgi and possession of his sons, plaintiffs Nos. 2 and 3, more than twenty years ago, left residing here and went away. Thereafter he became a sanyasi." Since then, plaintiffs Nos. 1, 2 and 3 have been in possession and occupation of the same as of right and also by way of inheritance.

"That on account of the renunciation made by the father of the plaintiffs, the plaintiffs have become the principal tenant according to law and they have been in possession and occupation of their share up to this day."

(Emphasis supplied) In the aforesaid suit, the appellant Sri Krishna Singh appeared as D, PW 1 and in his deposition, Ext. 101, he stated on oath .

"The land in dispute is under my tenancy. The name of my father stands entered in our share. My father died two months ago. After his becoming a Sadhu he adopted the name of Atmavivekanand. He has taken sanyas. He used to live at Gadwadhar Bangla Kutti."

(Emphasis supplied) In para 6 of his written statement, the appellant while denying that Swami Sarupanand founded any math at Garwaghat averred:

"Sri Swami Swarupa Nandji was the Guru of Sri Baikunth Singh, alias Sri Swami Atma Viveka Nandji, hence having regard to his old age and also with a view of honouring him, his name has been entered in gift deed, dated 8-3-1935. In fact on the basis of the aforesaid deed of gift, Sri Baikunth Singh alias Sri Swami Atma Viveka

Nandji acquired the property and has been in exclusive possession thereof."

In para 7 he states:

"Sri Baikunth Singh, alias Sri Swami Atma Viveka Nandji was a Grahast. He was Chhatttri Hindu by caste. He never took Sanyas nor did he denounce the world. The real fact is that when Sri Swarupa Nandji, who was the resident of Punjab, arrived at the house of Sri Baikunth Singh, aforesaid, situate in Mauza Khuruhja Pargana Majhuwar, District Banaras, Sri Baikunth Singh was impressed by him, and under his influence became religious minded. He called himself as Swami Atma Viveka Nandji. He believed only in the worship and Bhakte of his Guru. He considered his Guru as God. He used to impart this very teaching to his disciples, and devotees. He never renounced the Grahast Ashram. No body ever gave him Chadar Mahanthi. He never became the Mahanth of any Math. Sri Sarupa Nandji was also not the Dasnami. He never took Sanyas."

That appears to be a case set up to defeat the plaintiff's claim. When he was confronted with his admission in the plaint filed in the suit for partition, he disavowed knowledge of the fact of his father Baikunth Singh having become a sanyasi. This was nothing but a time serving statement.

In Chandra Kunwar v. Chaudhri Narpat Singh,(1) the Judicial Committee of the Privy Council observed:

"The proof of this admission shifts the burden, because, as against the party making it, as Baron Parke says in Slatterie v. Pooley: "What a party himself admits to be true may reasonably be presumed to be so."

No doubt, in case such as this, where the defendant is not party to the deeds and there is therefore no estoppel, the party making the admission may give evidence to rebut this presumption but unless and until that is satisfactorily done, the fact admitted must be taken to be established."

It follows that admission of the fact that his father Baikunth Singh had become a sanyasi, shifted the burden on the appellant to disprove that he was Hindu sanyasi.

There is direct oral evidence of the plaintiff Harsewanand and of his witnesses PWs 2 to 5, 7 to 10, 14 and particularly that of Swami Viveksukhanand taken on commission, about the plaintiff's initiation into the ascetic order. All these witnesses have amply proved that the particular ceremonies including Prajapathiyesthi and Biraja Homa required in the 'Sant Mat' fraternity were performed when the plain tiff was made a sanyasi. It is amply proved by PWs 1 to 10 and 13 to 15 that Swami Atmavivekanand had not only initiated him as his chela but also nominated him to be the mahant and that after his death and in accordance with his wishes, he was given Chader Mahanti on the occasion of the Bhandara of Swami Atmavivekanand.

The document Ext. 100, prepared by the 'Sant Mat' fraternity on this A occasion and the photograph Ext. 121, taken lends assurance to the testimony of these witnesses that the plaintiff Harsewanand was installed as the mahant of the math in accordance with the express desire of Swami Atmavivekanand.

The learned Civil Judge in his judgment observes: 'The fact of Harsewanand being a sanyasi remains undoubted'. His finding that he was not a Hindu sanyasi was based upon the view that under Hindu law mere 'renunciation' of the world is not sufficient. Hence, he holds that a Sudra who renounced the world and became sanyasi cannot be said to be a Hindu sanyasi, as according to the Hindu Sastras no Sudra can become a sanyasi. The underlying fallacy lies in his over-looking that the question had to be determined not according to the orthodox view, but according to the usage or custom of the particular sect or fraternity. It is needless to stress that a religious denomination or institution enjoys complete autonomy in the matter of laying down the rites and ceremonies which are essential. We must accordingly hold that the plaintiff was the validly initiated 1) chela of Swami Atmavivekanand and upon his demise was duly installed as the mahant of Garwaghat Math according to the tenets of his 'Sant Mat' Sampradaya.

There remains the question whether due to the death of the 15 plaintiff Harsewanand during the pendency of the appeal the suit brought by him abates in its entirety.

It is argued that the original plaintiff, Mathura Ahir, having filed the suit primarily to establish his personal right to the office of mahant which entitled him to possession of the property in suit, the suit abated on his death. The cause of action on which the suit was instituted, it is urged, was personal to the plaintiff, and in order to establish that he had been duly and properly initiated as a sanyasi and installed as a mahant, he had to plead and establish all the necessary facts regarding his capacity to become a sanyasi, his nomination by his Guru. and his ultimate election or nomination by the 'Sant Mat' Sampradaya. The submission is that these were facts special to the original plaintiff, and he having died, respondent No. 1, Harshankaranand cannot claim any relief unless and until he also establishes all these facts in regard to his claim to mahantship. The original cause of action, it is said, has vanished with the death of the plaintiff and the respondent No. 1, Harshankaranand had necessarily to plead and establish a new set of facts. In substance, he could not prosecute the cause of action as originally framed and he could not succeed without materially altering the pleadings and substituting another cause of action, which could very well form the subject matter of a separate suit.

It is argued that the nomination of a person as a mahant invests him with a 'status' and, therefore, capacity to succeed to the office of mahant is an incident of that status. It is said that the claim to mahantship is, therefore, a personal right which does not survive the plaintiff; any suit claiming such a status must abate on the death of the plaintiff. Alternatively, the submission is that if the Court came to the conclusion that the plaintiff had sued in his capacity as a de facto mahant, it is obvious that the cause of action would be personal to him and would certainly not survive the plaintiff. In that event, the suit must of necessity abate as a right claimed on the basis of de facto ownership cannot survive the plaintiff.

x x x x x The question whether a suit abates in its entirety or not upon the death of the plaintiff must necessarily depend on the nature of the suit. This is not a class of case to which the maxim, *actio personalis moritur cum persona* applies. The suit that the plaintiff Harsewanand brought was for possession of the suit house which belonged to Garwaghat Math, in his capacity as the mahant. On denial of his title, he pleaded that he was initiated as a chela by his Guru Swami Atmavivekanand, the then mahant, in 1937 and nominated to be his successor and accordingly upon his demise on August 23, 1949, had been duly installed as Mahant of the Math by the 'Sant Mat' Sampradaya, i.e., by the Mahants and Sanyasis of the Bhesh and given Chader Mahanti according to the tenets of fraternity. It was alleged that according to the tenets of this particular sect, anyone, including a Sudra, could be a sanyasi, and further that succession to the office of mahant was from guru to chela according to the custom or usage prevailing in the sect. One of the issues on which the parties went on trial was whether there was in existence a math at Garwaghat, and if so, whether the house in suit was an accretion thereto.

The High Court agreeing with the learned Munsif has upheld the plaintiff's claim. It was held that the house in suit was acquired by Swami Atmavivekanand from out of the offerings (Bhent) made by his disciples and, therefore, was not his secular property, but was an accretion to the Garwaghat Math. It has further been held that the plaintiff Harsewanand was the validly initiated chela of Swami Atmavivekanand and was duly installed as mahant of the math after his death, by the 'Sant Mat' fraternity according to his wishes. The defendants have been held to be rank trespassers. The decree under appeal crystallizes the rights of the parties. The cause of action did not die with the plaintiff. In the circumstances, the respondent No. 1, Harshankaranand, who now claims to be the mahant, has the right to contest the appeal as representing the math, being the de facto mahant, for preservation of its properties.

x x x x x According to the Hindu jurisprudence, a religious institution such as a math is treated as a juristic entity with a legal personality capable of holding and acquiring property. It therefore, follows that the suit instituted by the mahant for the time being, on its behalf, is properly constituted and cannot abate under the provisions of order 22 of the Code of Civil Procedure, on the death of the mahant pending the decision of the suit or appeal, as the real party to the suit is the institution. The ownership is in the institution or the idol. From its very nature a math or an idol can act and assert its rights only through human agency known as a mahant, shebait or dharmakarta or sometimes known as trustee.

Jenkins C.J. in *Babajirao v. Laxmandas*(1) defines the true notion of a 'math' in the following terms:

"A math, like an idol, is in Hindu Law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency."

It follows that merely because the mahant for the time being dies and is succeeded by another mahant, the suit does not abate.

The correctness of the decision in Ramswarup Das v. Rameshwal Das(2) is thus open to question. It does not stand to reason that when a suit is brought for possession by a mahant of an asthal or Math. Or by a shebait of a debottar property, and the defendant is adjudged to be a trespasser, such a suit should abate with the death of the mahant or shebait. This would imply that after a long drawn litigation, as he-re, the new mahant or shebait has to be relegated to a separate suit. The definition of legal representative as contained in s.2(11) of the Code reads:

"(11) . "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued."

The general rule is that all rights of action and all demands whatsoever, existing in favour of or against a person at the time of his death survive to or against his legal representative. In Muhammad Hussain v. Khushalo(1) Edge C.J., while delivering the judgment of the Full Bench, observed:

"I have always understood the law to be that in those cases. in which an action would abate upon the death of the plaintiff before judgment, the action would not abate if final judgment had been obtained before the death of the plaintiff, in which case the benefit of the judgment would go to his legal representative."

That, in our opinion, lays down the correct test.

In the instant case, the appellant himself has, of course, without prejudice to his right to challenge the right of the original plaintiff, Harsewanand, to bring the suit, substituted the respondent No. 1, Harshankaranand, as his heir and legal representative, while disputing his claim that he had been appointed as the mahant, as he felt that the appeal could not proceed without substitution of his name. In his reply, the respondent No. 1, Harshankaranand alleges that after the demise of mahant Harsewanand he was duly installed as the mahant of Garwaghat Math by the 'Sant Mat' fraternity. He further asserts that he was in possession and enjoyment of the math and its properties. The fact that he is in management and control of the math properties is not in dispute. The issue as to whether he was so installed or not or whether he has any right to the office of a mahant, cannot evidently be decided in the appeal, but nevertheless, he has a right to be substituted in place of the deceased Mahant Harsewanand as he is a legal representative within the meaning of s. 2(11), as he indubitably is intermeddling with the estate. He has, therefore, the right to come in and prosecute the appeal on behalf of the math.

In the result, the appeal must fail and is dismissed with costs.

S . R .

Appeal dismissed