Bombay High Court
Manohar Ganesh Tambekar And Ors. vs Lakhmiram Govindram And Ors. on 3 May, 1887
Equivalent citations: (1888) ILR 12 Bom 247
Author: West
Bench: West, Birdwood
JUDGMENT West, J.

1. At an early stage of the hearing of the present case we ruled that the defendants, the shevaks of the temple at Dakor, could not be allowed now to put in as evidence the account books which they had in the Court of first instance refused to produce. After succeeding in his resistance to the production of documents, a party cannot be allowed, when the hearing has been finished and when his adversary has perhaps been driven to establishing his case on a quite different footing, to turn round and request that the document may be admitted. The precedents cited do not warrant such an indulgence, and it would certainly tend to the encouragement of chicanery and the defeat of justice.

2. The plaintiffs come forward in the present case in the character of relators as persons interested in the religious foundation of the temple of Dakor dedicated to the deity called Shri Ranchhod Raiji. As persons interested in the maintenance of the institution and the due celebration of the worship, they pray that the Court will make the defendants, as recipients of the offerings at the idol's shrine, accountable, as trustees, for the right disposal of the property thus acquired. The income of the temple having, as they say, largely increased, and being wrongly or unduly appropriated by the defendants, called generally the shevaks (or ministers), to their personal purposes, they pray for the appointment of a receiver for the exaction from the defendants of accounts of their management, for the delivery up by them of all property appertaining to the temple, for an inquiry into their conduct as ministers of the idol, and for the construction of a scheme of future management.

3. The defendants take the position that they, as a body, are the owners, for all secular purposes, of the idol, whom, in the spiritual sense, they serve. The offerings made at the shrine, the cattle, and even the land presented by devotees are, they assert, their property free from any secular obligation, as none has ever in practice or in the intention of the donors been annexed to the gifts by which religious merit was sought and gained. They hold the property thus acquired, and have for centuries held it, as a sort of sacred guild, with hereditary succession to the several members. It is not held on any trust for the support of ceremonies or with any obligation annexed to it that can be enforced in a secular Court. The duty of providing a regular worship for the deity is of a purely moral kind, which they discharge merely to satisfy their consciences, one the nature and limits of which have never been settled otherwise than by their own will and judgment.

4. The District Judge rejected the suit, on the ground that the plaintiffs, other than Manohar Ganesh Tambekar, had not the position which they claimed of joint trustees of the temple. They were not, he found, even directly interested in the institution. The plaintiff Manohar was interested, but then he sued merely out of spite at a decree having been passed against him in favour of the shevaks, the present defendants.

5. It has not been contended before us that, if the property in question is a trust at all, the plaintiffs have not such an interest in its right administration as enables them to fill the part of relators, As to Manohar, the District Judge recognized his capacity, and the motives that actuated him do not affect his capacity, The other plaintiffs are priests who take part in the ceremonies in so far that they take charge of votaries, conduct them through the solemnities, and receive certain offerings with which to a larger or smaller amount the pilgrims must requite their services. Taking part in the worship they are directly interested in its due performance and its maintenance. They may not be trustees, but they clearly are amongst those who in practice benefit by the execution of the trust, supposing there is a trust. They have thus an undeniable locus standi as relators, and the suit, if maintainable, may proceed at their instance.

6. There is no difficulty in conceiving the existence of a society having property and receiving gifts from its own members or from strangers, which it then disposes of simply for its own benefit or at its own discretion. The guilds and companies in manufacturing and trading cities held and still hold estates without the attendant obligations of a charitable trust. The property is their own, distributable amongst the members or at the pleasure of the governing body of the society, not held for the benefit of any class outside the society or for the promotion of any purpose of recognized public utility. The latter characteristic is essential to a public charity, but in its absence there may be a corporation existing by royal grant, prescription or legal allowance, holding property for other than charitable purposes. Whether the association exists for charitable purposes or not, it cannot, according to the English law, without incorporation in some shape, become vested with property as a mere fluctuating and undefined aggregate-Goodman v. Mayor of Saltash L.R., 7 Ap. Cas. 633 at p. 648. If its purposes are such as are contemplated by Section 26 of the Indian Joint Stock Companies' Act, VI of 1882, the society may get itself constituted accordingly under the Act. Otherwise, though the individual members may have certain rights and privileges as members of a class or answering to a certain designation, these advantages must be realized, as against the world at large, through the proprietary or quasi' proprietary right of some other person or corporation,

7. The defendants in the present case put themselves forward, not merely as entitled to the enjoyment of particular benefits to be taken by them individually as members of a class, but as a body of proprietors holding a small estate in the shape of immoveable property, but a much larger one in the form of the accumulated offerings of articles of value laid at the feet of the idol and of the revenue arising from this source. The questions are whether they can and do take this property and this revenue absolutely as their own without any trust or annexed duty, and whether, if they enjoy by a kind of agency or representation of the idol conceived as a personality, they fulfil the duty they owe to this ideal person in merely revelling on the growing revenues, or are bound to widen the range of the deity's beneficence in proportion to the expansion of his mundane means.

8. As to the jurisdiction of the Civil Courts in matters of this kind, it is too late now to raise any contention. Under the native system of government though it was looked on as a heinous offence to appropriate to secular purposes the estate that had once been dedicated to pious uses, (W. & B., H, L., 202, 817), yet the State in its secular executive and judicial capacity habitually intervened to prevent fraud and waste in dealing with religious endowments. It was quite in accordance with the legal consciousness of the people that the Bombay Regulation XVII of 1827 gave to the Collector a

visitatorial power enabling him to enforce an honest and proper administration of religious endowments. The connexion of the Government in its executive capacity with Hindu and Mahomedan foundations was brought to an end for Bombay by Bombay Act VII of 1863 and for Bengal and Madras by Act XX of 1863. But the existence of sacred property and of the rights and obligations connected with it as objects of the jurisdiction of the Civil Courts is recognized by the laws just referred to. In the southern part of the Bombay Presidency, dedicated estates are expressly made inalienable by Bombay Act II of 1863, Section 8. Questions arising under these laws between individuals with reference to proprietary and pecuniary rights and as to alleged misappropriations and defalcations must necessarily be dealt with by the Civil Courts, which only can bring the requisite sanctions to bear on the enforcement of an honest discharge of their duty by the holders of dedicated estates. The mere incidental cognizance of a religious or caste question, the recognition of the settlement of such a question by the competent authority, is involved in the exercise of this jurisdiction, and does not stand in the way of it-Krishnasami Chetti v. Virasami Chetti I.L.R., 10 Mad., 133, 144; W. & B., H.L., 599 n. It is recognized by the indigenous customary law that an affair, in which the castes could not or would not give relief, is a proper subject of adjudication by the ordinary Civil Courts West and Buhler, H.L., p. 1007 n (c); Steele L.C., 185, 186 and 267. The cases in which Hindu foundations and charitable (including religious) trusts have been enforced and the persons connected with them made accountable by the Civil Courts are too numerous to mention. Reference may be made to Maharanee Shibessouree Debia v. Mothooranath Acharjo 13 Moore's I.A., 270; Mohunt Burm Suroop Dass v. Khashee Jha 20 Calc. W.R. Civ. Rul., 471; Juggodumba Dossee v. Puddomoney Dossee 15 Beng. L.R., 318; Dhurrum Singh v. Kissen Singh I.L.R. 7 Calc. 767. If, then, there is, in the present case, a public purpose, for the fulfillment of which, a class of persons, for whose benefit, in a way admitted by the State as deserving protection, the property of the Dakor temple is held and its revenues are received by the defendants, the defendants become by these mere circumstances amenable to the jurisdiction we are now called on to exercise. The religion of the Hindu population being jurally allowed, the duties and services connected with it must be deemed objects of public concern, and at least as to their physical and secular elements, enforceable like other obligations.

9. The evidence recorded in the case, including that of many donors to the idol Shri Ranchhod Raiji, shows that having discharged a religious duty or gained religious merit by a gift to the deity, the votary is but little interested in what afterwards becomes of the offering West and Buhler, H.L., pp. 197, 411; Vya May. Ch. IV, Section 1, pa. 8. Still he must needs be and is concerned in the maintenance of a decent and orderly worship. He is interested, too, in the honour and respect of the deity he reveres. He does not intend to pander to unrestricted licentiousness or mere ignorant sensuality which must bring his deity and its worship into contempt. He desires a regular and continuous or at least a periodical round of sacred ceremonies, which might fail if the offerings of past years were all squandered, while those of any given year fell short. The shevaks seem to have received the offerings, both of immoveables and of moveables, with a consciousness, though but a hazy consciousness, that they were bound, out of the funds thus coming to them, to provide for the worship of the idol and the convenience of the pilgrims who resort to the temple. In the document No. 4, dated in 1772, the shevaks admit their responsibility to the then manager of the villages with which the temple had been endowed. The document No. 4 is a copy agreeing with an earlier copy of the original which has been taken from our records for comparison. It was filed nearly half a century

ago in the course of execution proceedings against the temple property by the judgment-creditor; and though the original has disappeared, there seem to be reasonable, though not perhaps conclusive, grounds in favour of the genuineness of the copy filed in 1831, and then admitted as evidence. As the admission of the copy was not, so far as appears, resisted, we may properly act on it as evidence. The shevaks of to-day, who claim by a continuity of rights as the representatives of the shevaks for several centuries back, must submit to a like succession of responsibility, and thus the document, exhibit 4, is evidence against them, as though it were of but recent date.

10. The document, (exhibit 210), dated in 1793, shows the native governor of the fort of Pavghar exercising a visitatorial power to prevent waste of the temple property by either the Tambekar managing the dedicated villages, or the skevaks holding the accumulated offerings at the shrine. In 1818, exhibits 243, 256 are orders of the English Collector exercising an authority like that formerly exercised, by the native governor. The shevaks are allowed to take the offerings in cash; but articles of value, such as clothes and jewels', are to be consigned to the charge of the bhandari or store-keeper. Again in 1829 (exhibit 322) and in 1831 (exhibit 244) the Collector intervened to preserve order and to prevent mismanagement, with a threat that neglect would be followed by an adoption of the measures authorized by Regulation XVII of 1827. Coming clown to a more recent time, we find the shevaks in 1861 (exhibit 264) petitioning the Government of Bombay for a remission of income-tax, on the ground that the revenue derived from the offerings was primarily the property of the idol. An idol, the shevaks contend, is not subject to taxation. The necessities of the ceremonial worship had first to be provided for, and only the surplus was distributed amongst the shevaks. Again, in 1878, the pleader of the shevaks, instructed to answer for them in the previous suit, stated distinctly that the claims of the idol,-that is, debts incurred on behalf of the idol,-must be satisfied before claims of the shevaks. Clothes and valuables presented by votaries were, he said, presented for the idol; but small coins were distributed amongst the shevaks, about one hundred and fifty in number. Some months afterwards, it is true, the shevaks sought to withdraw these admissions and set up an absolute proprietary right to all that had been offered or dedicated to the idol, but the motive of this contradiction is evident, while the prior deliberate statement derives force from its conformity with the previous history of the institution and with the religious system of the Hindus.

11. The Hindu law, like the Roman law and those derived from it, recognizes, not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the juridical persons or subjects called foundations West and Buhler, H.L., 201, 185, 553, 555. A Hindu, who wishes to establish a religious or charitable institution, may, according to his law, express his purpose and endow it West and Buhler, H.L., 99, 197, 216, and the ruler will give effect to the bounty, or at least protect it so far, at any rate, as it is consistent with his own dharma or conceptions of morality West and Buhler, H.L., .33; Mann VIII, 41; Coleb. Dig., B. III, Ch. II, T. 28. A trust is not required for this purpose: the necessity of a trust in such a case is indeed a peculiarity and a modern peculiarity of the English law Spence Eq. Juris., 440; Sav. Syst., Section 88. In early times a gift placed; as it was expressed, "on the altar of God" sufficed to convey to the church the lands thus dedicated See Elton's Ten. of Kent, 17, 18. Under the Roman law of pre-Christian ages such dedications were allowed only to specified national deities W. & B., H.L., 185 (b) Ulpian Fr. XXII, Section 6. They were thus placed extra commercium. Sav, Syst., Section 88(c c). After

Christianity had become the religion of the empire, dedications to particular churches or for the foundation of churches and of religious and charitable institutions were much encouraged Sav. Syst., Section 88; comp. V. & B., 197. The officials of the church were empowered specially to watch over the administration of the funds and estates thus dedicated to pious uses Sav. Syst., Section 88, but the immediate beneficiary was conceived as a personified realization of the church hospital or fund for ransoming prisoners from captivity Sav. Syst., Section 88. Such a practical realism is not confined to the sphere of law; it is made use of even by merchants in their accounts, and by furnishing an ideal centre for an institution to which the necessary human attributes are ascribed-Dhadphale v. Gurav I.L.R., 6 Bom., 122-it makes the application of the ordinary rules of law easy as in the case of an infant or a lunatic Sav. Syst., Section 90; comp. Kinlock v. Secretary of State for India in Council, L.R., 15 Ch. Div., at p. 8. Property dedicated to a pious purpose is, by the Hindu as by the Roman law, placed extra commercium W. & B., H.L., 185, 197, with similar practical savings as to sales of superfluous articles for the payment of debts and plainly necessary purposes Sec Cod. Lib. I, Tit. 2, Fr. 21; W. & B., H, L., 555, 557. See also Rupa Jagset v. Krishnaji Govind, I.L.R., 9 Bom., p. 169. Mr. Macpherson admitted for the defendants in this case that they could not sell the lands bestowed on the idol Shri Ranchhod Raiji. This restriction is like the one by which the Emperor forbade the alienation of dedicated lands under any circumstances Vyav. May., Chap. IV, S. VII, p. 23; Nov. 120, cap., 10. It is consistent with the grants having been made to the juridical person symbolized or personified in the idol at Dakor. It is not consistent with this juridical person's being conceived as a mere slave or property of the shevaks whose very title implies not ownership, but service of the god. It is indeed a strange, if not wilful, confusion of thought by which the defendants set up the Shri Ranchhod Raiji as a deity for the purpose of inviting gifts and vouchsafing blessings, but, as a mere block of stone, their property for the purpose of their appropriating every gift laid at its feet.. But if there is a juridical person, the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind 6f property incur there by a responsibility for its due application to the purposes of the foundation-compare Griffin v. Griffin 1 Schedule & Lef., 352; Mulhallen v. Marum 3 Dr. & War;, 317 Aberdeen Town Council v. Aberdeen University L.R., 2 Ap. Cas., 544. They are answerable as trustees even though they have not consciously accepted a trust, and a remedy may be sought against them for maladministration Comp. Ind. Trusts Act II of 1882, Sections 88, 95 by a suit open to any one interested, as under the Roman system in a like case by means of a popularise action.

12. The evidence of the witnesses in the case, even of the defendants who were examined, supports the view of the Dakor temple and of the shevaks connection with it which has just been stated. The gift, (exhibit 238), is of land to the deity for daily food. The grant (exhibit 237) for feeding sacred cows is of a like kind. It is generally admitted that rich offerings, such as the silver throne presented by the Gaekwar, have been stored in the temple treasury. Defendant Kalidas (exhibit 133) says that for seven hundred years the shevaks have appropriated what could no longer be applied to the use of the deity. Their proprietorship, he says, subsists only through Shri Ranchhod Raiji. The defendant Bechar Madhavram (exhibit 137) insists strongly on the shevaks right even to sell the temple lands, but he gives no instance of it; and Lakshman (exhibit 139) admits that offerings are dedicated to the deity, though still he says the shevaks take them as owners. "While the idol is present," this witness says, "the shrine is his. In his absence it is ours." This is another instance of the confusion of thought

or want of power of abstraction, which, more perhaps than any positively dishonest intention, has led the shevaks to commit themselves to a false and untenable position. The witness Shivial.(exhibit 157) says, the shevaks take all the offerings, but still "as representatives of the deity" Jamnadas (exhibit 197), a bountiful donor to the temple, says, the offerings are made to the god, though the shevaks divide them at their discretion. This is what the shevaks would naturally do, even as managers, unless called to account by some superior authority. It by no means necessitates the conclusion that they are and have always been owners of the idol as a juridical person-Juggodumba Dossee v. Puddomoney Dossee 15 Beng. L.R. 318. They are a numerous body, about one hundred and fifty in number, succeeding to their offices by hereditary descent. It is admitted that they are entitled to a fair provision for their needs and to maintain the service of the temple. For a period extending over several centuries the revenues of the temple seem to have but slightly, if at all, exceeded the outlay required to maintain its services, but recently these revenues have very largely increased. The law which protects the foundation against external violence guards it also internally against maladministration, and regulates, conformably to the central principle of the institution, the use of its augmented funds. It is only as subject to this control in the general interest of the community that the State through the law courts recognizes a merely artificial person See Sav. Syst., Section 89. It guards property and rights as devoted, and thus belonging, so to speak, to a particular allowed purpose only on a condition of varying the application when either the purpose has become impracticable, useless or pernicious, or the funds have augmented in an extraordinary measure. This principle is recognized in the law of England as it was in the Roman law, whence indeed it was derived by the modern codes of Europe. It is equally consistent with the Hindu law, which, as we have seen, undoubtedly recognizes artificial juridical persons See Rupa Jagset v. Krishnaji Govind, I.L.R., 9 Bom., p. 169 such as the institution at Dakor, and could not, any more than any other law, support a foundation merely as a means of squandering in waste or profligacy the funds dedicated by the devout to pious uses.

13. For the reasons we have given, We must reverse the decree of the District Court, and order that the coats of the suit and appeal be borne by the defendants. The District Judge will take steps, either by appointing a receiver, or otherwise, in his discretion, for guarding the property of the temple without disturbance of its services. He will take an account of the property and of the receipts and disbursements of the temple, such latter account being carried back to the year 1872, and beginning with such property as can be ascertained to have been then in existence. He will make the requisite orders for recovering property misappropriated and sums due to the foundation as well from others as from the shevaks or any of them. He will draw up a scheme for the future management of the temple and its funds, giving due consideration to the established practice of the institution and to the position of the shevaks and of other persons connected with it. Lastly, should there appear to be a surplus of revenue that may reasonably be counted on as durable, he will frame a scheme for the disposal of such surplus or a part thereof consistently with the general purpose of the foundation and complementary to the arrangements made under this Court's orders in Manohar v. keshavram (1) on the appeal in the suit brought by the shevaks against Ganesh Manohar as defendant.