Ramamohan Das Vs. Basudeb Dass

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Court : Orissa

Decided On : Apr-18-1949

Reported in : AIR1950Ori28

Judge : Jagannadhadas and ;Narasimham, JJ.

Acts : Hindu Law

Appeal No. : Second Appeal No. 65 of 1945

Appellant : Ramamohan Das

Respondent : Basudeb Dass

Advocate for Def. : B. Das and ;P. Misra, Advs.

Advocate for Pet/Ap. : S.K. Ray, Adv.

Disposition : Appeal allowed

Judgement :

Das, J.

1. The defendant is the appellant in this second appeal. The suit relates to an institution called Sri Biranshi Narayan Muth at Buguda, Ghumsur Taluk, Ganjam District. As appears from the connected civil Revisions Nos. 169/47 and 8/48 which have been heard with this appeal there appears to be some reasonable

doubt whether this institution is a Muth or a temple. But so far as this appeal is concerned, it has proceeded on the assumption put forward by the plaintiff in his plaint that it is a Muth. This has not been traversed by the defendant in his written statement. The plaintiff's case is that the defendant is the Mahant of the Muthand that he is his duly constituted Chela and that his residence in the Math has been made impossible by the wrong conduct of the defendant and that he is denied even food and raiment and that he has had to leave the Muth in 1930. He accordingly asserts a right to be maintained out of the Muth funds and brings the suit against the defendant as the head of the Muth for recovery of maintenance past and future. The suit is of 1934 and has bad a chequered career. It was decreed by the then Subordinate Judge of Berhampur in 1936 who held that the plaintiff was entitled to get a maintenance of Rs. 20 p.m. for the future from the date of the suit and arrears of maintenance at E8. 10 p.m., for three years prior to the suit. On appeal to the learned District; Judge, the then District Judge on 31st August 1937, recorded what he considered to be a compromise between the parties to the effect that the plaintiff should get maintenance at Rs. 7 8.0 P.M. from the date of the suit and Rs. 5 p.m. for past arrears. On second appeal, it was found that the advocates who purported to compromise were not duly empowered to do so. The District Judge's decree was accordingly set aside and the appeal was remanded to the District Court for fresh disposal. On remand the learned District Judge after rehearing the appeal, felt that it was necessary to frame an issue for ascertaining whether the essential formalities required for the valid initiation ceremony were gone through when the plaintiff was initiated. He accordingly set aside the decision of the Subordinate Judge in favour of the plaintiff given in 1936, and remanded the case on 3rd February 1942 to the trial Court for disposal, according to law. After remand the plaintiff has examined one additional witness P.W. 6. The defendant has re-examined himself and his original fifth witness and has also examined three additional witnesses, D. Ws. 6, 7 and 8. In addition, the plaintiff has elicited some answers from the defendant on interrogatories, the answers being on dates 27th October 1942 and 28th February 1943. At the original trial the following issues were framed:

(1) Whether the plaintiff was duly constituted and initiated as a Chela of the defendant (2) Whether the plaintiff has been initiated into Sanyasgrahan and has

adopted the ascetic order from that date (3) Even if he has been Initiated into Chelaship, whether the plaintiff is entitled to claim maintenance from the defendant (4) Whether the plaintiff is guilty of any conduct disentitling him to any maintenance? (5) What if any is the right of maintenance to be allowed to the plaintiff ?

2. After remand of the suit to the trial Court, the following additional issues were framed on 24th March 1942 presumably in pursuance of the District Judge's order of remand.

(1) To which sect of the Yaishnavites does the defendant belong (2) What are essential ceremonies that are according to the custom and practice prevailing in the Muth of the defendant, required for the valid initiation of a Chela in the said Muth (3) Whether the said ceremonies were performed in the case of the plaintiff

3. It is not disputed that the plaintiff was brought by the defendant to his Muth in the year 1914, when he was a boy of about 7 years and very shortly thereafter he executed a will Ex.2, dated 16th April 1915, whereby he announced his intention of - making him his Chela and nominating him successor to the Math in due course. It is also not disputed that since that date the plaintiff has been under the care of the defendant and that his Upanayan was performed in the Muth in February 1918. It has been found as a fact, that the Upanayan was performed by the defendant himself though the defendant denied this. The plaintiff claims that on the very day on which the Upanayan was performed, he was formally initiated by the defendant as his Chela and was treated as such ever since. The defendant denies this and says that he did nothing to make him a Chela, but that he kept him only on probation after Upanayan and that he later on found his character and behaviour to be bad and that accordingly on 22nd May 1923, he executed a registered will, Ex. 3, cancelling his previous will dated 16th April 1915. In the years 1929 and 1980, there were criminal proceedings between the parties including security proceedings No. MC 24/29 on the file of the Sub-Divisional Magistrate, Chatrapur, against the plaintiff wherein he was ordered on 25th July 1930, to execute a bond for keeping the peace for six months. Since 1930 the plaintiff has not been living in the Muth. The main question that the defendant has

raised is that the plaintiff had not been initiated by him as his Chela and that the various ceremonies requisito to constitute the defendant a duly adopted Chela of his were never gone through. This raises the questions :

(1) Whether in addition to performing the Upanayan of the plaintiff, the defendant did purport to go through any formal ceremonial with a view to constitute the plaintiff his Chela ;

(2) what are all the ceremonies necessary to constitute a person Chela of the defendant's Muth ;

(3) whether the ceremonies actually gone through were sufficient to constitute the plaintiff the defendant's Chela.

4. On the first question as already stated, the defendant's case is that beyond Upanayan, no other ceremony took place. It is the plaintiff's case that the Upanayan took place in the morning and after its close, an additional ceremony for the initiation of the plaintiff as a Chela was performed by the defendant. The trial Court both before and after remand, as well as the appellate Court after remand, have rejected the story of the defendant that he did not perform the Upanayan of the plaintiff and hence also held that an additional ceremony for initiation the plaintiff as a Chela was performed by the defendant. These facts have been found concurrently by the lower Courts and are no longer open to challenge. The only question therefore is whether the initiation of the plaintiff as a Chela of the defendant is invalid owing to the absence of any of the requisite formalities and ceremonies.

5. That this was the main, if not the only point in controversy after the remand appears also from the judgment of the Subordinate Judge who says:

'Whatever may be the nature of the defendant's contention in the early stage of this litigation, it was contended by him before the District Judge in appeal and also contended before me after remand that the rituals followed at the plaintiff's initiation are not sufficient to constitute him a valid Chela.'

6. On this part of the case, the defendant's contention is that to constitute a valid Chela of the suit Muth, the following ceremonies are essential : (1) Tapta Chakrankitam; (2) Biraja Homa; (3) Praisha Mantram. It is also contended that all these ceremonies should be performed only after the person attains the age of discretion. It is the case for the defendant that none of these ceremonies were performed for the plaintiff who, at the time of his Upanayan, was of age of about 12 and had not attained the age of discretion. The case for the plaintiff is that all the customary religioua ritea were performed and that he was validly made a Chela.

7. It is necessary to state at this stage that admittedly the defendant and his Muth belong to Sri Ramanuj Vaighnavite cult called Sri Sampradaya and that the Mahant and the Chela are of ascetic celibate order. The points of controversy centre round what all is necessary for making the parties concerned a devout Sri Vaishnavite and a regular Sanyashi. It is said that out of the three formalities mentioned above, the first is necessary to render the respondent a devoute Vaishnavite and the second and third are necessary to initiate the person into the true order of orthodox Sanyasis. There has been considerable discussion before us on these matters with reference to the textual authorities and the text books of reputed authors and with reference to the actual evidence in the case. The learned Subordinate Judge after remand has, on a consideration of all the relevant material, arrived at a definite finding that the plain, tiff's Panchasamskar has been validly gone through, though there was lack of hot impress (Tapta-Chakrankitam) in his case, that Biraja Homa was performed at the plaintiff's initiation and even if it be assumed that it was not, its non-performance does not invalidate his Sanyasgraban. He also held that though the plaintiff was made a Chela at the young age of 12, it did not invalidate his affiliation to the Mahant as his Chela. He accordingly passed a decree in favour of the plaintiff in the same terms as that originally passed. On appeal, the learned appellate Judge held that if the plaintiff has to prove that he has been initiated into the ascetic order as founded by Shankar and Ramanuja, it is to be concluded that the plaintiff has failed to prove that he has been so initiated into the Sanyas order. But he held that there was no proof that, the defendant's Muth was of the orthodox Sanyashi order of Sri Ramanuja. His categorical findings are (1) that the defendant belongs to Sri

Sampradaya (of Ramanuja); (2) that he does not belong to the (orthodox) Sanyas order of Sri Ramanuja; (3) that there is absence of tangible evidence leading to the growth of usage or custom obtaining in defendant's Muth for the valid initiation of Chelaship; (4) that some ceremonies were performed on the day on which the plaintiff's Upanayan was performed and the ceremonies which were so performed were the essential ceremonies for the affiliation of the plaintiff in the Muth and his initiation as the Chela of the defendant. On these findings the learned Subordinate Judge concurred with the trial Court in maintaining the original decree for maintenance passed in favour of the plaintiff by the Subordinate Judge before remand.

8. The learned counsel for the appellant argues that on the findings of the appellate Judge the suit should have been dismissed. He points out that the plaintiff in his plaint has stated that he wag initiated into Sanyas and adopted the ascetic order from his boyhood and that is also his evidence in Court. Therefore, it is said that once it is found, as the learned appellate Judge did that the plaintiff failed to prove the performance of essential ceremonies requisite for the orthodox Sanyashi order he was bound to fail. He also contends that the Courts below have failed to find clearly on evidence, what are all the essential ceremonies requisite to constitute the plaintiff a valid Chela which was the main purpose of the remand to the trial Court. He further contends that in view of the interrogatories served by the plaintiff on the defendant on 5th October 1942 as to whether he belonged to the Achari sect of Sri Vaishnavite cult and the answer of the defendant that be belonged to the Visishta-adwaita creed of Sri Ramanuja sect of Sri Vaisbnava cult and the case of the plaintiff himself in the plaint that be was initiated into Sanyas, the learned appellate Judge was not competent to find that; the defendant's Muth did not belong to the orthodox Sanyasin orders of Sri Ramanuja.

9. Having regard to the history of the institution there can be no doubt that the finding of ' the learned appellate Judge that there is absence of tangible evidence leading to the growth of usage or custom in this Muth for valid initiation into Chelaship is perfectly correct. This Muth is one of very recent origin having been founded by Sri Srikar Bhanj, the then Raja of Ghumsur in the early part of 19th century. From the hands of Sri Srikar Bbanj it passed to one Sri Govind Das and

then to the hands of Sri Ram Mohan Das Babaji, the present defendant. Thus there have been only two successions and there have not been enough occasions for any clear and indisputable evidence of usage. The defendant in his evidence admits that his Muth is of the same category as that of Uttarparawo Muth and some other Sri Sampradaya Muths of Puri and Ganjam. The Mahant of Uttarparswo Muth has been examined as D. W. 8 after remand and he categorically says: 'We are not Sanyasis as we do not enter into Gruhasthasram. We are perpetual Brahmacharis.' Another witness, D. W. 6, the Mahant of Bisamgiri Muth in Sannakhimedi estate, Ganjam District, who also belongs to Sri Sampradaya of Bamanuja cult says as follows:

'I call myself a Sanyasi because I do not live a married life. I have not adopted that Sanyas Diksha which the heads of our order whom we call Swamis (i. e. in South India) have taken.'

If the plaintiff's averment in the plaint that he was initiated into the Sanyasi order is understood with reference to the consciousness of the persons of his class as appears from the evidence of D.Ws. 6 and 8, extracted above, there is no reason to pin him down by assuming that his case itself was that the suit Muth was of the orthodox Sanyasi order of Sri Sampradaya or that be must be taken to have asserted that he underwent all the ceremonies requisite for the orthodox Sanyasis of Sri Sampradaya. It cannot, therefore, be said that the Court below had found a case which was at variance with any case of the plaintiff or with his evidence. Further, though no doubt the defendant has asserted in answer to interrogatories and in his evidence that he belongs to the (orthodox) order or Sanyasis of Ramanuja cult, his witnesses, D. ws. 6 and 8, who are Mahants of the same order with him do not support him as pointed out above. Even with reference to the requirements or otherwise of Tapta Chakrankita (hot impress), the Counts below have discussed the evidence on the side of the defendant itself and have held from that evidence that in respect of the Muths of the class to which the defendant's Muth belongs, Tapta Chakrankitam did not appear to be essential or at any rate that the lack of Tapta Chakrankitam did not invalidate the initiation. The evidence of D. Ws. 6 and 8 itself amply supports it. As regards the objection arising with reference to the age of the defendant at the time of the alleged

initiation, it is amply clear from the evidence noticed by the Courts below that the defendant himself and other Mahants of his class have been initiated at an equally early age. The defendant himself has been initiated at the age of ten as he admits.

10. It is no doubt true that the Courts below have not specifically and categorically found what are all the exact ceremonies requisite for valid initiation as a Chela and we have been invited to do so and to judge on the merits of the plaintiff's case on the evidence with reference to the same. We are, however, not prepared to enter into any elaborate consideration of the mere Shastraic requirements, because the ultimate deciding factor is usage and there has been yet no sufficient scope for any usage in this institution to have developed in this behalf as already pointed out. Besides, as pointed out at the outset, in view of the concurrent findings of both the Courts below that there has been a distinct ceremony of initiation of the Chela performed, apart from Upanayan, the only question is whether all the requisite ceremonies have been performed whatever they may have been. In the first place, the defendant who himself has been found to have performed the initiation and who for a period of ten years thereafter treated him as his Chela cannot now be permitted to come forward and say that the requisite ceremonies for which he was responsible have not been performed. On the performance of Upanayan, there has been a change of the gotra of the plaintiff to Achyut gotra of the defendant and the plaintiff has been given the name of Basudev Das Babaji in substitution for his original name, Banamali, as has been found by the Courts below on the evidence. The assumption of the name Babaji indicating an ascetic order is significant. He was admitted into a school by the defendant and got educated by him. Exhibit A, an order of the Schools Inspector and Ex. B, a licence issued by the licensing authority clearly show that be was treated by the public authorities as the Chela of the defendant under the care of the defendant, presumably with the knowledge and consent of the defendant, if not on his initiative. There is thus ample evidence of the defendant having treated the plaintiff as his Chela until he chose to repudiate him in 1921. His statement that though he performed his Upanayan, he only kept him on probation without making him a Chela has been rejected by both the Courts below and is obviously false. He admits that he himself was made a Chela when he was ten years old soon after his Upanayan. There is therefore no reason to think that any period of probation after Upanayan would have been

contemplated by him in respect of his own Chela. In a case of this kind therefore where initiation as a Chela by the defendant is found as a fact, and the treatment as a Chela for a period of nearly 10 years has been satisfactorily established, in the absence of any clear evidence of usage, every presumption arises in law that all the requisite ceremonies whatever they might be, have been duly performed. The plaintiff's rights, if any, are not to be defeated by a meticulous examination of the oral evidence about what exactly happened 90 long ago as in 1918 and by an elaborate consideration of what are the ceremonies strictly requisite according to the Sastras, without any reliable evidence, how far the requisites of the Sastras have been adopted into the usage of the institution. It is well settled that under similar circumstances, a like presumption in favour of the performance of requisite ceremonies is permissible in cases of adoption and marriage. (See Rajindra Nath v. Jagendra Nath, 14 M. I. A. 67: (7 Beng. L. R. 2162 P. C.): Chiman Lal v. Ramchandra; 24 Bom 473: (Bom. l. r. 163); Achal Ram v. Kazim Hussain, 27 ALL 271: (32 I. A. 113 P. C.), Jagannath Marwari v. Mt. Chandni Bibi, A. I. R. (8) 1921 Cal. 647 : (67 I. C. 31); Andrahennedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy, A. I. R. (14) 1927 P. C. 185 1 (104 I. C. 327).

11. In this view of the matter, I have no hesitation in finding in agreement with the Courts below that the plaintiff must be taken to be the validly adopted Chela of the defendant.

12. It has been argued that the affiliation of a Chela to a Mahant in a religious institution is different from the adoption of a son where secular property is involved as pointed out by the Privy Council in Kartar Singh v. Dayal Das, A. I. R. (26) 1939 P. C. 201 : (I. L. R. (1939) Kar. P. C. 350). That is no doubt so, but there is no difference on principle with reference to the presumption as to the performance of ceremonies. The presumption arises on account of similar facts raising similar considerations applicable to both. In bosh, the boy concerned is legally cut off from the natural family and all blood relationship as such ceases, and great injustice might result if strict proof of ceremonies is required after, considerable lapse of time when there is clear and cogent evidence of treatment. I am, however, far from saying that such a presumption necessarily arises in every case or that it is irrebuttable. It has also been pressed on my attention that the performance of

Biraja Homa and the imparting of Mula Mantra by the Guru to the disciple is of the essence of the affiliation of a Chela according to the Sastras and that the Sastaric requirements are not to be whittled down by lack of evidence or by presumptive proof since a question of status is involved, Caaes in Baldeo Prasad v. Arya, Pritinidhi Sabha, A.I.R. (17) 1930 ALL. 643: (52 ALL. 789), Jaganath Gir v. Sher Bahadur Singh, A.I.R. (22) 1935 ALL. 329 at p. 833: (57 ALL. 85), Brahmdeo v. Rama Nand, A. I. R. (20) 1933 Pat. 70 : (141 I. C. 776), Ramdhan v. Dalmir, 14 0. w. n. 191 : (2 I. o. 385) and Gauri Shankar v. Niadar Singh, 18 G. W. N. 59: (A.i.r. (1) 1914 Cal. 228), have been cited. But it will be found on an examination of these cases that they proceed on the consideration of the evidence of usage available in those cases. It has alao been urged, relying ufiou Bamdhan v. Dalmir, 14 Cal. W. N. 191: (2 I. C. 885), that mere initiation as a Chela is not the same thing as the final affiliation of a person as a Chela and that there is ordinarily a period of probation between the two. It is, therefore, contended that from the finding of initiation in this case, the final affiliation as a Chela cannot be inferred. That, however, is a case where the usage of the institution showed that a period of probation was required and where initiation was admitted on both sides and the necessity for a period of probation was pleaded and found. The defendant in this case denies altogether that there was any initiation and does not plead that there was to be a period of probation after initiation. He only pleads, in paragraph ,4 of his written statement, that he kept the plaintiff in the Muth on probation before making him a Chela to see his behaviour and character and to consider whether he would be fit to be made a Chela, of the defendant. Admittedly, the plaintiff who was a close relation of the defendant was brought into the Muth in 1914 and it must be assumed on the defendant's pleading that he was on probation from then. The Upanayan and the alleged initiation took place in 1918, aS already pointed out, in view of the fact that in the defendant's case itself his affiliation as a Chela admittedly took place shortly after the Upanayan without any period of probation intervening, there is no reason to think that any further period of probation after Upanayan was necessary or contemplated by the defendant in the case of the plaintiff.

13. The next question for consideration is whether the plaintiff is entitled to be maintained out of the Muth properties and whether he can enforce the right by suit

against the Mahant. The Courts below have held, relying on the passages in certain reported cases and the observations in Mayne's Hindu Law (9th Edition), that the plaintiff is so entitled, The matter, however, requires closer examination. It is rather remarkable that there is no passage in Hindu Law texts which directly or inferentially indicates any right of a disciple or a Chela to maintenance against his Guru. There appears also to be no reported case directly in favour of the existence of such a right either with reference to the general law or on the ground of usage. At any rate, no Sastraic texts in this behalf and no direct reported cases have been brought to our notice and such investigation into the matter, as we have been able to make, has not disclosed any. The only textual authority dealing with the position of ascetics and disciples in relation to property appears to be a text of Yagnyavalkya.

'The heirs to the property of a hermit, of an ascetic, and of a student in Theology, are, in order (that is, in the inverse order), the preceptor, a virtuous pupil, and a spiritual brother belonging to the same hermitage.'

This text has been noticed and commented upon by all the important commentaries such as Mitakshara, Vita Mitrodaya, Saraswati Vilasa, Srimati Chandrika and Mayukha. In Mitakshara commenting on this text, there is a discussion as to how there could be any question of succession to an ascetic's property since acquisition or accumulation of property has been prohibited to him by the Sastras and since he is not entitled to any share in his natural family by virtue of his renunciation. He answers the same and points out that according to certain other texts. the hermit may make a hoard of things sufficient for a day, a month, six months or a year and in the month of Aswin, he should abandon the residue of what has been collected. He further explains that the ascetic too has clothes, books and other requisite articles, according to a text in Veda, and that it was therefore proper to explain the partition or inheritance of such property. These various commentators, while therefore, recognising the right of succession by the disciple to the property of an ascetic do not contemplate that the disciple has any right to be maintained out of such property during his life-time. Indeed, such an idea might well be inconceivable with reference to the rigour of the Sastras and the ideal of renunciation that both the Guru and the disciple were expected to

maintain. Holding of large and extensive property by Sanyasis and other religious heads such as Mahants of Muths is of much later origin and the application of the above texts to succession to such property must be taken to have been the result of the growth of usage, for the text, in terms, refers only to limited property, which the law vested in the ascetic as his personal property and which constitutes his personal belongings.

14. The right to maintenance of a Chela, if any, must, therefore, be founded either on evidence of usage relating to the right of maintenance specifically, or on inference from the concept as to the holding of the property of religious institutions by heads thereof which again is the growth of usage.

15. It is now well-settled that the rights and liabilities in relation to property endowed in religious institutions must either be gathered from the terms of the foundation of the endowment itself, if available, or by usage which is presumptive evidence of the terms of the foundation. This has been laid down in a series of Privy Council cases commencing from Greedharee v. Nando Kishore, 11 M. I. a. 405 at p. 428 : (8 W. R. 25 P. C.); Mutturamalinga Sethu Pathi v. Peria Nayagam Pillai, 1 I. A. 209 : (3 sar. 341 P. C.); Rajah Vurmah Valia v. Bavi Vurmah Kunshi Kutti, 4 I. A. 76 : (1 Mad. 285 P. C.); Janoki Debi v. Gopalacharjia Goswami, 10 L. A. 32 : (9 Cal. 766 P. C.); Genda Puri v. Chatar Puri, 13 I. A. 100 : (9 ALL. 1 P. C.); Ram Parkash Das v. Anand Das, 43 I. a. 73 : (A. I. r. (3) 1916 P. C. 256) and the other cases. In Bam Parkash Das v. Anand Das, 43 I. A. 73 at p. 76 : (A. I. R. (3) 1916 P. C. 256), their Lordships say, dealing with a question of succession to the office of a Mahant, as follows:

'The question as to who has the right and office of mahant is one, in their Lordships' opinion, which according to the well-known rule in India, must depend upon the custom and usage of the particular math or asthal. Such questions in India are not settled by an appeal to general customary law; the usage of the particular math stands as the law therefor.'

In Janoki Debi v. Gopalacharjia Goswami, 10 I. A. 32 at p. 37 : (9 Cal 766 P. C.). Their Lordships in answer to a contention that in the absence of prescribed rules or usage, the ordinary law of inheritance applies, held 'that when, owing to the

absence of documentary or other direct evidence, it does not appear what rule of succession has been laid down by the endower of a religious institution, it must be proved by evidence what is the usage.'

16. The first question therefore that has to be considered on this part of the case is whether the plaintiff has proved any usage of this institution or of this class of institutions which enables him to plead that he has a right to be maintained from the properties of the Muth and that it can be enforced against the Mahant. The defendant in his written statement denies that the plaintiff has any claim for maintenance. There is no evidence at all on the side of the plaintiff that there is any usage in this institution or in this class of institutions that the Chelas have any enforceable right of maintenance. Hone of his six witnesses speak to it. On the other hand, D. W. 8, the Mahant of Uttarparswa Muth at Puri, examined for the defendant says categorically in chief examination: 'In our Sampradaya a Chela has no right of maintenance' and in cross-examination says :

'The sishyas have no right as such to be maintained from Muth property. As long as the Chelas reside in the Muth, they take meals in the Muth. Without any fault a Chela cannot be driven out or be denied food. A Chela who is intended to be the successor is given food and clothing and educated at the Muth expenses.'

This is not enough to constitute any sufficient proof of usage. It has been, however, pointed out that in answer to interrogatories served on the defendant, namely, 'Is it not a fact that the High Court passed a decree foe maintenance at Rs. 10 per month in favour of Chela Narayan Das ?', the defendant stated on 28th February 1943.

'I consented to a decree by the High Court if the Chela Narayan Das resides in the Math and behaves properly, he may be maintained by the Math.'

This is relied upon as proof of the requisite usage. This, however, refers only to a second Chela who has been taken by the same defendant after the trouble with the present plaintiff arose. This is quite recent and purports to have been based upon the consent of parties and cannot therefore be taken as any evidence of 'established usage. It is obvious, therefore, that the plaintiff's claim to maintenance

cannot be supported on the ground of specific proof of usage relating thereto.

17. It is then necessary to consider whether such a claim can be supported with reference to the incidents of holding of endowed property by heads of Muths. The respondent's advocate relies upon certain passages in reported cases. In Gnana Sambanda Pandara Sannadhi v. Kandasami Tambiran, 10 Mad. 375 at p. 388, it is stated as follows :

'Thus, the ascetic who originally owned little or no property, came to own the Matam under his charge and its endowments, in trust for the maintenance of the Mutt, for his own support, for that of his disciples, and for the performance of religious and other charities in connection with it, according to usage.'

In Kailasam Pillai v. Nataraja Tambiran, 33 Mad. 265 : (5 I. C. 4 F. B.), one of the learned Judges, Sankatan Nair J. at p. 286 deals with the relations subsisting between the Pandara Sannadhis and Tambiran (corresponding to Mahant and Chela). He points out that a Chela at initiation formally makes himself a slave of the Mahant (in some Maths) and says that so far as the corpus of the property is concerned each head of the Muth must pass on to his successor the immovable property which he received from his predecessor unencumbered and unallocated. As regards the income the learned Judge says at p. 286 :

'It seems clear, therefore, that treating them as a spiritual family all the members are entitled to be maintained one of the income; and as such membership is sought for and obtained to attain religious merit, the members are also entitled to receive religious education.'

The learned counsel for appellant relies on this passage to show that the maintenance of a chela is a matter of right and it is presum. ably relying on this passage that Mayne's Hindu Law in its 9th Edition at p. 627 stated that 'The Head of a Muth will almost invariably be under the legal obligation to support his disciples.' It has also been pointed out that the Privy Cauncil in Vidya Varuthi Tirthaswamigal v. Balusivami Ayyar, 48 I. a. 802 : (A.I.R. (9) 1922 F. G. 123) referred to another passage in the judgment of Sankaran Nair J. in the same case at P. 287 which is to the same effect and is as follows :

'It is also true in my opinion that he is under a legal obligation to maintain the mutt, to support the disciples and to perform certain ceremonies which ate indispensable. That will only be a charge on the income in his hands and does not show that the surplus is not at his disposal.'

18. It is noticeable that in the 10th Edition of Mayne's Hindu Law, the passage relating to the legal obligation of the head of the Muth to maintain the disciples appears to have been omitted. The passage above referred to in Kailasam Pillai v. Nataraja Tambiran, 33 Mad. 265: 16 I. C. 4 (FB) is itself based upon the observations in Gnana Sambanda Pandara Sannadhi v. Kandasami Tambiran, 10 Mad. 375 at P. 388, already noticed which does not speak either of the right of the disciple to be maintained or of the legal obligation of the head of the Muth to maintain the disciples, but refers only to the purposes for which the head of the Muth holds the property endowed for the Muth and mentions the maintenance of disciples of the Muth as one of such purposes 'according to usage.' The learned Judge in Kailasam Pillai v. Nataraja, 83 Mad. 265: (5 I. C. 4 (F. B.) was not considering any question of the legal right or the legal obligation relating to the maintenance of disciples from Muth properties and was only considering whether the head of the Muth can be said to be holding the property as a trustee. While mentioning the powers of the head of the Muth regarding the income of an endowed property the learned Judge states that the surplus of the income (after its utilisation for purposes according to usage) remains in the hands of the head of the Muth for being utilised for the spiritual advancement of himself and his disciples and his people and that his discretion in the matter is unfettered and that he is not accountable to any one. His Lordship only incidentally refers to the obligation to maintain disciples and in doing so he, with respect, goes beyond Gnana Sambanda Pandara Sannadhi v. Kandasami, 10 Mad. 375, from which he derives support. It is not clear from what the learned Judge has said taking his remarks as a whole, whether the learned Judge was inclined to hold that the Chela (Thambiran) had any enforceable right to be maintained. It would indeed, appear that the learned Judge was not thinking in terms of an enforceable right, because, he notices earlier that on initiation, the Chela makes a gift of his body, soul and wealth to the head of the Muth and styles himself a slave of the latter. Though as pointed out in Gnana Sambanda Pandara Sannadhi v. Kandasami, 10 Mad. 375,

at P. 475, this cannot have the effect of rendering a Chela a slave in law, because law has abolished slavery since 1843, the conception that in religious parlance, the disciple is in the position of a slave to his Guru, seems to indicate that he could not have been contemplated, by any usage, as having an enforceable legal right to maintenance against his Guru.

19. What then is the position of the Mahant in relation to the endowed property and can the right to maintenance be inferred therefrom. In Sammantha Pandara v. Sellappa Chetti, 2 Mad. 176, it is stated as follows:

'The property belonging to a Mattam is in fact attacked to the office, and passes by inheritance to no one who does not 311 the office. Though it is in a certain sense trust property, the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution.'

In Gnana Sambanda Pandara Sannadhi v. Kandasami, 10 Mad. 375 at p. 336, it was stated that the ascetic head of the Math owned the Math in his charge and its endowments in trust for certain purposes according to usage. In Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami, 87 Mad. 435: (14 M. L. J. 105), the learned Judges were inclined to hold that he was a life-tenant. In Kailasam Pillai v. Nataraja, 33 Mad. 265: (5 I. C. 4 (F.B.)) it was held that it cannot be predicated of the head of the Muth whether he is a life-tenant or a trustee and that the question in each case must be determined upon the conditions on which endowments were given or which may be inferred from the long established usage and custom of the institution. The Full Bench, however, recognised that the head of the Muth has a very large discretion as to the disposal of the surplus income of the Math after meeting expenses according to usage and that he is not ordinarily amenable to the correction of Courts in respect of such surplus, except where the trust in relation to the particular endowment is clear and specific. The Privy Council in Earn Parkash Das v. Anand Das. 43 I. A. 73 : (A. I. R. (3) 1916 P. C. 256) referred to the head of the Muth as having the assets of the institution vested in him as the owner thereof in trust for the institution, but recognised that large administrative powers are

undoubtedly vested in the reigning Mahant and clearly pointed out that such questions must be settled by the usage of the particular Muth, which is the law therefor. The whole question of the position of a Mahant of Muth in relation to its endowments has been fully and elaborately discussed by the Privy Council in Vidya Viruthi v. Balusami 48 I. A. 302: (A. I. R. (9) 1922 P. C. 123) where the entire case-law on the subject has been fully reviewed. It was therein held that the head of Math cannot be held to be a specific trustee in the legal sense. His position is stated as follows at p 311:

'Colleges and monasteries under the names of math were founded under spiritual teachers of recognised sanctity. These men had and have ample discretion in the application of the funds of the institution, but always subject to certain obligations and duties, equally governed by custom and usage..... Called by whatever name, he is only the manager and custodian of the idol or the institution. In almost every case be in given the right to a part of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a 'trustee' in the English sense of the teem, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for mal-administration.'

20. Such being the position of the head of the Muth in relation to the endowment of the Muth, it seems to me that no legal obligation to provide for the maintenance of a disciple or a Chela out of the property and no legally enforceable right in the Chela against the head of the Muth follows from the bare concept relating to the holding of the property of the Math by the Mahant apart from any clear evidence of usage.

21. This conclusion also appears to me to follow from a consideration of the basis of the right) to maintenance under the general Hindu law. It is well-settled that the right to main, tenance under general Hindu law arises from three sources. It arises on account of the personal relationship between the parties, such for instance, as the obligation of the husband to maintain his wife, or the father to maintain his minor children or the obligation of the son to maintain his aged parents. It arises also by virtue of relation to property, i. e., by virtue of some kind of inchoate right in

property : For instance, the widow of a person who dies possessed of separate property or of a share in undivided family property, has a right to maintenance in lieu of a share therein and similarly also disqualified heirs The obligation to maintain may also arise against a person by virtue of possession of assets of the deceased person in favour of a person whom the deceased wad morally bound to maintain out of the property during his life-time: see Rangammal v. Euhammal, 22 Mad. 805: (9 M. L J. 14). Apart from these three recognised sources for the right of maintenance under the general law, the right to maintenance out of the property must depend upon usage. That this is so, baa been laid down by the Privy Council even with reference to the maintenance of junior members in an impartible estate: Venkatamahipathi Gangadhara Rama Rao v. Raja of Pittapur, 41 Mad. 778 : (A. I. R. (5) 1918 P.C. 81) and Commr. of Income-tax, Punjab. N. W. F. and Delhi Province, Lahore v. Krishna Kishore, 63 I. A. 165 : (A. I. R. (28) 1941 P. C. 120). It is obvious that a Chela in relation to his Mahant cannot make out his right to maintenance on any of the three bases for maintenance which arise under the general law. It cannot possibly be said that the Mahant is under a personal obligation to maintain his disciples and no such claim has even been suggested. The only claim in the present case ia that it arises out of the property of the Muth. The right to maintenance cannot be based on any kind of present inchoate right of the Chela in the Muth property. This would be inconsistent with the view of the Mahant's position as laid down in the cases above noticed. Neither is there any scope in this case for any moral obligation of one Mahant ripening into legal obligation of another and succeeding Mahant. Considered there, fore from any point of view, it appears to be difficult in view of the general principles governing this class of institutions to derive an enforce, able right to maintenance as vesting in the Chela as against his Guru on any mere general theories, apart from proof of usage of the institution of which, as has already been pointed out, there is no evidence in this case.

22. The view, therefore, that I have come to is that while the head of a Muth is bound to maintain his disciples, and the proper maintenance of disciples is a legitimate expenditure of the Math property and its income, no specific right in favour of individual disciples or Chelas an be recognised apart from usage. The head of the Muth may be answerable for not maintaining any disciple or disciples

in the same way as he would be if he violates the observance of any of his other duties relating to the management of the properties in his charge. But the only remedy of a discarded Chela during the life time of a Mahant may be nothing more than the enforcement of the constructive trust, if any, on which the Mahant may be said to hold the property and not the enforcement of an individual right. It must be recognised that this view may involve some hardship to individual discarded Chelas, who give up all connections with their natural families in expectation of being maintained from the Muth. This might appear to be anomalous in the present state of administration of Muths where the old Shastraic idealism appears to be fast disappearing. These considerations, however, can have no bearing upon what we must find to be the law in this behalf to the best of our judgment.

23. The defendant has also contended that the plaintiff forfeited his rights, if any, on account of his misconduct and that his affiliation as a Chela has been validly terminated by him by the execution of the deed, Ex. 3 in May 1929, and the case in Ram Prasad Giri v. Krishna Nand Giri, A. I. r. (25) 1938 Bem. 23 : (173 I. C. 113), has been cited. In the view I have taken above, regarding the plaintiff's right to maintenanee, it is unnecessary to consider this aspect.

24. It therefore follows that the appeal must be allowed and the suit dismissed. The plaintiff must pay to the Government the court-fee pay. able by him on the plaint since he has been permitted to sue in forma pauperia. As regards the other costs each party will bear their own costs throughout in view of the fact that on the issue of fact the plaintiff bas succeeded.

Narasimham, J.

25. I agree. No written text recognising the right of a Chela to claim maintenance from his Guru has been cited before us. In the absence of any such text such right will be governed by the usage of each institution. In the present case, however, no such usage appears to have developed chiefly because the institution is hardly 100 years old and there was no previous instance in which such right was recognised. The respondent bas relied mainly on the conduct of the Mahant is agreeing to pay maintenance to another Chela, namely, Narayan Das in 1933. But

as pointed out by my learned brother that instance cannot be any evidence of usage because it was in the nature of a compromise.

26. The authorities in support of the Chela's right of maintenance relied on by the learned advocate for the respondent are Gnana Sambanda Pandara Sannadhi v. Kandasami, 10 Mad. 375 at p. 388 and Kailasam Pillai v. Nataraja, 33 Mad, 265 at p. 286: (5 I. C. 4 (F.B.)). I entirely agree with my learned brother's interpretation of those decisions.