

15 B. 612.

[612] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Nanabhai Haridas.

CHINTAMAN BAJAJI DEV (Original Defendant), Appellant v.  
DHONDO GANESH DEV AND OTHERS (Original Plaintiffs),  
Respondents.\* [2nd October, 1888.]

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*Charity—Civil Procedure Code (Act XIV of 1882), s. 539—Public charitable and religious trust—Property set apart for religious and charitable uses—Trustee—Repudiation of the trust renders trustee liable to removal from office—Persons having a direct interest in the trust—Right to sue.*

The plaintiffs sued as relators, under s. 539 of the Code of Civil Procedure (Act XIV of 1882), to have the defendants removed from the management of a religious endowment, called the "Chinchvad savasthan," on the ground that they had mismanaged and misappropriated the trust funds in their hands. The plaintiffs also prayed for the appointment of new trustees, and for the settlement of a new scheme of management under the direction of the Court.

The plaintiffs and defendants were the descendants of Shri Morya Gosavi, the original founder of the *savasthan*. Shri Morya Gosavi was a devotee of the deity Shri Mangal Murti. He dedicated a temple to the deity at the village of Chinchvad, and established an *annachhatra* and *sadavart* for feeding the poor and the destitute. He buried himself alive, and over his tomb, temple was built to perpetuate his memory. The Raja of Satara conferred on his descendants from time to time grants of lands, villages and *varshasans* for the maintenance of the shrine and of the charities connected with it. Votaries of the god Shri Mangal Murti visited the shrine in large numbers and took part in the annual festivals and celebrations held in honour of the founder of the *savasthan*. In course of time the Chinchvad *savasthan* became one of the most popular sacerdotal institutions of the Deccan.

In 1744 the Peshwa made a *tahanama* (or award) by which he set apart one-half of the *savasthan* property exclusively for religious and charitable purposes, and distributed the other half among the descendants of the founder, to provide for their temporal wants.

Subsequently to the date of this award, fresh grants were made to the manager of the *savasthan* by the ruling authorities of the day.

In 1774 and 1776 A.D. the new acquisitions were divided on the principle adopted in the Peshwa's award—one-half being reserved exclusively for the *savasthan*, the other half distributed among the heirs of the grantee.

In 1874 the defendant No. 1 succeeded to the office of manager and trustee of the *savasthan*. Within a few years after entering upon his office, the defendant No. 1, in conjunction with his son, defendant No. 2, incurred heavy debts, mortgaged several villages belonging to the *savasthan*, and dealt with the *savasthan* income as if it was his own absolute property.

[613] The plaintiffs filed the present suit with the consent of the Advocate General in 1883.

The defendants pleaded (*inter alia*) that the property in suit was not burdened with a public religious or charitable trust; that they were not trustees, but owners, of the *savasthan*; and that the plaintiffs had not such direct interest in the property as to entitle them to sue under s. 539 of the Code of Civil Procedure (Act XIV of 1882).

The District Judge, who tried the case, found that the *savasthan* was a public religious and charitable institution; that the defendants were trustees in charge of the *savasthan* property, and that they were guilty of such gross misconduct as to make them unfit to act as trustees in future. He, therefore, passed a decree, directing the defendants to be removed from their office as trustees, appointed a new trustee in their place and framed a scheme for the future management of the *savasthan*.

\* Appeal No. 71 of 1886.

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*Held*, on the evidence, that the management of the Chinchvad *savasthan*—consisting of the sacred shrines at the villages of Chinchvad, Moregav, Theur and Sidhatek, with their endowments—constituted a public religious and charitable trust within the contemplation of s. 539 of the Code of Civil Procedure.

*Held*, also, that the plaintiffs, being worshippers and devotees of the god Shri Mangal Murti, and being also descendants of the original founder of the endowment, had a direct interest in the trust, entitling them to sue under s. 539 of the Code of Civil Procedure.

*Held* further, that the defendants' assertion of their right to treat the trust property as their private estate, and to apply the trust funds to their private purposes, was sufficient to justify their removal from the trust.

*Held*, further, upon the construction of the Peshwa's *tahanama* (or award), that it was the intention of the governing power in 1744 A. D. that thenceforth the Chinchvad *savasthan*—consisting of the shrines at Chinchvad, Moregav, Theur and Sidhatek—should constitute a public *devasthan*, and that in setting apart a moiety of the property for the *savasthan*, the object was to provide a fund for the support of the four shrines and the expenses of the customary festivals, as well as of the *annachhatra* established at Chinchvad.

[R., 20 A. 46 (51); 15 B. 625; 20 B. 250 (283); 21 B. 48; 21 B. 556; 22 B. 475; 22 B. 493 (494); 24 C. 418; 28 M. 319 (324)=15 M.L.J. 133; 13 Bom. L.R. 49=9 Ind. Cas. 358; 14 Bom. L.R. 1135=17 Ind. Cas. 779; 2 C.L.J. 460 (477); 12 Ind. Cas. 449=21 M.L.J. 952=10 M.L.T. 356=(1911) 2 M.W.N. 387.]

THIS was a suit under s. 539 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiffs sued, as relators, to remove the defendant No. 1, Chintaman Bajaji Dev, and his son, defendant No. 2, from the management of a religious endowment called the "Chinchvad *savasthan*," to have new trustees appointed, and a new scheme of management settled by and under the direction of the Court, on the ground that the defendants had mismanaged and wasted the trust property and committed diverse acts constituting a breach of trust.

[614] The plaintiffs were fifteen in number. They were not only worshippers and devotees of the deity Shri Mangal Murti, to whom the property in suit was dedicated, but also the lineal descendants of the original founder of the *savasthan*, Shri Morya Gosavi.

Shri Morya Gosavi was a devotee of the god Shri Mangal Murti. He lived and died a saint. It is said that while he was one day rapt in meditation, a conical stone, representing an image of the god, suddenly dropped into his hands, which he accepted as a token of divine favour. This image he enshrined in a temple which he built at Chinchvad about the middle of the seventeenth century. In connection with this shrine he established an *annachhatra* and *sadavart* for giving food and alms to the poor and the destitute. His piety and charity placed him in the front rank of *sadhus* or saints. He buried himself alive, and over his *samathi*, or tomb, a temple was built to perpetuate his memory.

His son and grandson were equally distinguished for piety and charity. Their fame attracted the notice of the ruling authorities, who bestowed on them lands, villages and *varshasans*, or annual allowances, for the maintenance of the shrine and the charities connected with it.

The Chinchvad *savasthan* became in course of time the principal religious and charitable institution of the Deccan. It incorporated the *devasthans* of Moregav, Theur and Sidhatek. Its annual income exceeded Rs. 25,000, out of which nearly Rs. 5,000 consisted of offerings in cash, ornaments, clothes and other articles presented by pious visitors to the shrine. Devotees in large numbers came to Chinchvad, and took part in

the annual fairs, festiyals and celebrations held in honour of the deity Shri Mangal Murti, as well as of the saint Shri Morya Gosavi.

In 1744 A.D., the Peshwa made a *tahanama*, or award, by which he set apart one-half of the *savasthan* property exclusively for religious and charitable purposes, and distributed the other half between the manager and his *bhaubandās*, or kinsmen, as a provision for their temporal wants.

The *tahanama* stated as follows :—

[615] “ There having arisen between the Shri and the Shri’s *bhaubands* (kinsmen) a dispute in respect of *pitridhan* (ancestral property), all the Dev brothers came to Poona and represented as follows :

“ Shri Dharnidhar Dev went to Satara and during our absence got a *taha* (agreement) made and brought the same. (The original text having been torn, the letters are destroyed.) Thereupon, the Shri was informed of this matter, and he was asked to state his views as to how a reconciliation could be brought about between the *bhaubands* and the dispute settled. Thereupon the Shri sent an answer as follows :— ‘ It is true that the *bhaubands* do not still cease quarrelling. The dispute has descended to the third generation. I will agree to any measures towards bringing about a reconciliation between the *bhaubands* which you may take in keeping with the dignity of the *savasthan*.’ And he sent word on behalf of Kaka Vinayek \* \* \* \* \*

Thereupon we took into consideration at our camp at mauje Dongargon Mhase, taluka Karde, near Ghodnadi, all the income of the *savasthan* derived from the *inam* villages, the land customs, the *sardeshmukhi* (an exaction of ten per cent), the *hak desh mukhi*, the *hak chantra*, the *rozmare* (wages, hire, pay), the *nagdi inam chawar* and the *inam* lands in different villages, and in the presence of all made this *taha* (agreement) [as follows].”

The document then sets forth the property in detail and divides it. Certain portions are to be given to persons mentioned. Other portions to be applied “ for the maintenance of the *annachhatra*, ” and other portions “ for the *savasthan* ” or for the expenses of the *savasthan*.

Subsequently to this *tahanama* the ruling authorities made fresh grants to the manager of the *savasthan*. In 1774 and 1775 A.D. the new acquisitions were divided, on the principle adopted in the *tahanama*— one moiety being reserved for the *savasthan*, the other moiety distributed between the sons and heirs of the grantee.

In 1833 the Chief of Gwalior granted the villages of Tandali for the purpose of keeping *chowgada* at the temple of Shri Mangal Murti.

In 1836 the powers of Devas granted a *varshasan* for mace-bearers for the deity.

In 1852 Shri Dharnidhar Maharaj, the last representative of the eldest branch of the founder’s family, died without issue. On his death, disputes arose regarding the right of succession to the office of trustee of the *savasthan*, Chintaman Bajaji Dev (defendant No. 1), ultimately succeeded in establishing his right to the office in 1874 A. D.

[616] In 1878 he entrusted the management of the *savasthan* property to his son, defendant No. 2.

Between 1879 and 1883 both defendants contracted heavy debts, encumbered and alienated the greater part of the *savasthan* property and applied the *savasthan* funds to their own private and personal use.

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Thereupon the plaintiffs, who were the kinsmen of the defendants, filed the present suit, with the sanction of the Advocate-General, under s. 539 of the Code of Civil Procedure (Act XIV of 1882). The plaintiffs stated that they were *bhaubands* and had the same rights or interest in the property of the *devasthan* as the defendants had. They alleged that the defendants has assumed the management in 1874 and were wasting and misappropriating the property. They prayed that the defendants should be removed and should account ; that new trustees should be appointed, and that the property should be applied for the purposes of the *devasthan*.

The defendants pleaded (*inter alia*) that the plaintiffs had no right to sue under s. 539 of the Code of Civil Procedure (Act XIV of 1882) ; that the Chinchvad *savasthan* was not a public religious or charitable institution ; that they were not trustees, but owners of the property in suit ; that they had not committed any breach of trust, and that they were not liable to render any account of their management.

In his examination the defendant No. 1 made the following statements :—

" I am the proprietor of the *savasthan* and my son is the manager. I have been treating the *devasthan* as my private property. I and *dev* (*i.e.*, the deity) are one. So I understand that I am the owner. I cannot say if we are separate. The estate is for both private expenses and for charity \* \* \* \* \* There were suits between me and Ganpat Dev. He claimed to be the adopted son of Dharnidhar and I objected. The disputes began at the death of Dharnidar and ended two years ago. All the expenses of these suits were paid from the *savasthan* \* \* \*

" The ornaments on the idol are mine. We make no distinction between the god's property and mine. I understand that I [617] am Mangal Murti, the god of Chinchvad. We are not *pujaris*. It is not the case that Mangal Murti is owner and I am the manager. All the villages—Man, Chinchouli, Banera and Narang—I regard as my private *inams*."

The District Judge held that the Chinchvad *savasthan* was a public religious endowment, that the defendants were trustees of the endowment, and that their repudiation of the trust rendered them unfit to act as trustees. He, therefore, passed a decree, directing the defendants to be removed from the management of the *savasthan*, appointed a new trustee, and framed a new scheme for future management.

Against this decision the defendants appealed to the High Court.

*Shantaram Narayan* and *Shamrao Vithal*, for the appellants.

*Pandurang Balibhadra*, for the trustee respondents.

*Ganpat Sadashiv Rao*, for the other respondents.

#### JUDGMENT.

SARGENT, C. J.—This is a suit, under s. 539 of the Code of Civil Procedure (XIV of 1882), by persons claiming to be interested in certain property called the Chinchvad *savasthan* property, and which the alleged to be *devasthan*, the management of which is vested in defendant No. 1, alleging mismanagement on the part of the defendant No. 1 and his agent the defendant No. 2, and praying that the defendant No. 1 may be removed from the trusteeship of the religious and charitable trust, and new trustees appointed. The defendants say in their written statement that the property was originally given to support the dignity of the defendants'

ancestors, and not for religious and charitable purposes, and that they hold it free from any public, charitable or religious trust, within the meaning of s. 539, and, further, that the plaintiffs have no right or interest in it.

The history of the property in question, excepting the villages of Theur, Moregav and Sidhatek, is intimately connected with that of the shrine of Chinchvad near Poona, which dates back to the middle of the seventeenth century, when one Morya, a religious ascetic, erected a temple in the village of Chinchvad over a conical stone known as the famous "Mangal Murti," which owing [618] to the revelation made to him in a dream, was recognized by Morya as the deity, and is worshipped to this day as a type of the god Ganpati. At the same time, according to the legend, it was revealed to Morya that the deity would be incarnate in him and his descendants for seven generations, and hence the origin of the name "Devs" by which the family thenceforth became known. Morya buried himself alive and a tomb was erected over the spot. The locality in which these occurrences took place, as well as the family of the Devs, and more especially the eldest male member for the time being in whom, according to the legend, the deity was incarnate, thus came to be regarded with great veneration both by the Government powers and the people generally, the latter of whom have ever since flocked to the shrine for the purposes of worship and adoration of the god Ganpati, and to take part in the festivals observed in connection with the shrine. The successive governing powers have also on their part from time to time made grants of villages in *inam* and cash allowances to the Shri Dev residing at Chinchvad. The character of these grants, which were chiefly made before 1741, is in dispute between the parties—the defendants contending that they were merely personal grants—whilst the plaintiffs insist that they were saddled with a public charitable purpose.

The original *sanads* are not forthcoming, but the *takids* issued to the revenue authorities towards the close of the seventeenth century are in evidence, the earliest of which is Ex. 270 relating to the village of Chinchvad, dated 1680. This merely recites previous grants, and concludes with saying "that the Chinchvad Shri Dev grant was continued to last year; it is to be continued as before." The next *takid* is dated 1684 (Ex. 130) and was much relied on by the plaintiffs. After reciting that the village of Chinchvad is the place of residence of Shri Dev Swami, and that during the reigns of previous sovereigns it had been continued as *inam* village, in consequence whereof the Shri Swami, from generation to generation had been giving food and drink in charity to the poor and needy, to mendicants and beggars, and to whomsoever happens to come there, and on account of the same the village had been granted in *inam*, concludes, "therefore, you should continue the same as it has been continued from [619] year to year." There are no words of express trust to be found here, and the language, taken in its plain grammatical meaning, imports that the fact of the Shri Devs having always distributed food to the poor and needy and the expectation that he would continue to do so, were the inducements for the continuance of the grants. The same remark applies to the *takids*, such as Ex. 122 and others, relating to the other villages of Man, Chikli, Cheroli and Chinchouli, which were, in terms, grants to the Shri Swami residing at Chinchvad.

That such was the view taken of these grants both by the family and the sovereign power, is shown by the awards made in 1741 and 1744 by:

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the Satara Government and the Peshwa respectively. The former is, in terms, a division of "the property given to the *savasthan*," in order that all parties might receive some portion of it, the parties being the Shri Dev *savasthan* on the one hand and the *bhaubands* on the other, between whom it is recited that a quarrel had arisen calling for the intervention of the governing authority. The award appropriated one moiety of the income to the *savasthan* and *annachhatra* of the Shri, and distributed the other moiety amongst the *bhaubands*. At the same time it was directed that the Shri Dev should continue to carry on the business of managing the property granted to the deity Moreswar at the village of Moregav, to the deity Chintamani at the village of Theur, and the deity Sidhi Vinayak at the village of Sidhatek, as to which it is not in dispute that the grants, which date from the end of the seventeenth century, were, in terms, directly to the particular deities to whose worship the shrines at those places were especially dedicated, and the management of which as well as of the shrines, as appears from Exs. 116, 293, 306, 307, had already passed into the hands of the Shri Devs at Chinchvad.

This award, however, would appear not to have given satisfaction to the *bhaubands*, and in 1744 the peshwa, the then ruling power, was invited to intervene between the Shri Dev Dharnidhar, who was then managing at Chinchvad, and the *bhaubands*, and a fresh division was then made in equal shares between the expenses of the *savasthan* on the one hand and the sons and [620] son's sons of Shri Chintaman Dev and the son of Shri Narayan in whose time the endowment had been made on the other, Dharnidhar himself and his brothers sharing in the latter moiety. On this occasion the endowments of the villages of Moregav, Theur and Sidhatek were taken into account in calculating the entire income of the property to be distributed, but the income of those villages was included in the moiety appropriated to the expenses of the *savasthan*.

Subsequently to 1744 fresh grants were made to the Shri residing at *savasthan*. Chinchvad for the expenses of the Shri meaning the deity, as in Exs. 123, 124; for *savasthan* expenses, as in Exs. 144 and 147; and for *annachhatra*, as in Ex. 318, the grant of the village of Ambu; and in 1774, 1775 and 1786 partitions were made of the new acquisitions between the *savasthan* and the members of the elder branch other than the managing member.

Now the awards of 1741 and 1744 do not expressly define what is meant by "the expenses of the *savasthan*." The word "*savasthan*" itself implies "a place where a god is supposed to be actually present and incarnate"—see Molesworth's Dictionary and Elphinstone's Report on the Deccan, Appendix, p. xxv—and in the present case includes all the sacred shrines of Chinchvad, Theur, Moregav and Sidhatek; and looking at the object of the award, which was to effect a compromise between the material wants of the *bhaubands* and the religious and charitable exigencies of the incarnate Shri Dev residing at Chinchvad, it must be presumed that in allowing a moiety of income to the expenses of the *savasthan* the intention was to provide a fund for the support of the shrines at Chinchvad, Moregav, Theur and Sidhatek and the expenses of the customary festivals, as well as the *annachhatra* so frequently mentioned in the *sanads* and expressly referred to in the award of 1741. And that such has always been understood to be the intention of the award, is shown by the answer (Ex. 102) given to Venubai, widow of Shri Chintaman Maharaj,

in 1853 by "her kinsmen and the gentry and learned and respectable people of the Kshetra" in Chinchvad as to what arrangements should be made for continuing the [621] family descent owing to the death of Dhar-nidhar Maharaj without sons. In that answer they refer to the moiety of the income of the property having been assigned by the Peshwa towards the expenses of the deity, by which, as appears from a previous recital, they meant the expenses of the daily worship, food offerings, jubilees and fairs, *annachhatra* and *sadavarta*, &c., appurtenant to the deity. In other words, they held the property to be *devasthan*, and such is the character ascribed to it by the defendant's father in the course of his litigation with Lakshmibai, the widow of Narayan, the last representative of the eldest branch, and with the mortgagee who claimed under her, as appears from Exs. 68, 174 and 102, where he describes the property as belonging to the god and himself as being only the manager. It is true that the real character of the property was misunderstood by the Inam Commissioner owing to his not being aware of the existence of the Peshwa's award of 1744; but it is clear from the letter of Colonel Etheridge, as Alienation Settlement Officer, on the 27th October, 1868, to the Collector of Poona that as soon as the Government became aware of that transaction, the religious element involved in the appropriation of the property in question to the *savasthan* was regarded by Government as taking it out of the operation of the Summary Settlement Act as being permanent *devasthan*.

It has, however, been contended for the defendants that although the property allotted to the *savasthan* may have become *devasthan*, it was private *devasthan* of the Dev family and not a public *devasthan*. This, however, is inconsistent with the spirit and indeed the very terms of the award of 1744 by which the shrines of Chinchvad, Theur, Moregav and Sidhatek are regarded as forming one *savasthan*. The admitted fact that the three latter shrines were public shrines, and that the endowments annexed to them admittedly constituted a public *devasthan*, affords strong ground for inferring that the shrine at Chinchvad was similarly regarded in 1744 by the governing power of the day; nor does the fact of its being described as the Sbrî's *savasthan* and *annachhatra* in the Raja of Satara's letter to his revenue officers (Ex. 311) written in 1741, militate against this presumption.

[622] Whether by "Shri" in that letter was meant the deity or the managing member of the Dev family, is immaterial when it is remembered that the latter was then regarded as the incarnation of the deity. Again, the long-established practice, which has since obtained, of treating the entire income of the endowments as constituting one fund for the support of the several shrines, as spoken to by witnesses 460, 458 and 93—the use which the public generally have always made of the shrine for the purposes of worship and devotion, differing in no important particular from what obtains in other temples admittedly public—and, lastly, the active part which has always been taken by individuals outside the Dev family in the festivals of the deity and the numerous votive offerings from the same class of persons—are all irreconcilable with any other conclusion than that it was not only the intention of the governing power in 1744 that thenceforth the *savasthan* consisting of the above shrines should constitute a public *devasthan*, but that it has always, as a fact, been regarded as such by the managing members of the Dev family and the public generally for more than a century and a half. This conclusion derives further corroboration from the language of the modern grants of Scindia and other chiefs

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of Upper India in 1833 and 1836 (Exs. 145, 154 and 155), in which it is expressly stated that the Shri Dev of *savasthan* Chinchvad had recently visited the above chiefs, and asked for a *chowgada* and mace-bearers for the deity Shri Mangal Murti of the *savasthan*, urging that the same, if given, would conduce to the prosperity of the kingdom. This language, it is to be remarked, is precisely what is always found in the ordinary grants to public temples, and shows that it was exclusively the desire to promote the service of the deity Shri Mangal Murti, which was the motive for the grants. We cannot doubt, therefore, that the Judge of the Court below was right in his conclusion that the management of the shrines at the four villages of Chinchvad, Theur, Moregav and Sidhatek with their endowments constitutes a public, religious and charitable trust within the contemplation of s. 539 of the Code of Civil Procedure.

The plaintiffs allege that they reside in Chinchvad and are worshippers and devotees of the god Mangal Murti of this *savasthan* [623] and are also admittedly members of all the branches of the Dev family, and, as such, have a direct interest in the management. In *Radhaba v. Chimnaji* (1), Westropp, C. J., and Kembal, J., held that worshippers and devotees living in the village where the temple was situated, were entitled to file a suit complaining of a breach of trust. This decision was independent of s. 539 of the Code of Civil Procedure, the suit having been brought before the Code of 1882 was passed; but we see no reason to think, as would appear to have been held in *Jan Ali v. Ram Nath Mundul* (2), that the Legislature intended by the expression "direct interest" an interest of a different nature from that which the worshippers and the devotees of the deity naturally have in the proper management of the temple. In the present case such an interest would be enhanced by the circumstance that the worshippers are members of the several branches of the Dev family, the representatives of which took part in the reference to the arbitration of the Peshwa in 1744, and who were directed by the Peshwa to perform their religious duties and the worship of the god at the shrine with undivided devotion.

We proceed then to consider the breaches of trust of which the plaintiffs complain, and on account of which they ask for the removal of the defendants. The Judge of the Court below has not thought it necessary to decide upon them in detail, as he considered that defendant's assertion of his right to treat the trust property as his private estate, and to spend as much as he chooses of the *savasthan* property for his private purposes, is sufficient to justify his removal from the trust. In his deposition, Chintaman, defendant No. 1, claims to be the same as the Dev, and, as such, to be owner of the *savasthan* and to be entitled to apply the income to his own and his son's expenses in common with those of the several shrines; he also admits that ever since 1874, when he obtained possession of the property, they have been doing so as a matter of fact. He further added "that he made no distinction between the god's property and his own," and "kept no separate accounts." The deposition of his son, the second defendant, who has been actually managing, [624] is to the same effect. They both further admit that specific portions of the *devasthan* funds and ornaments of the god have been mortgaged for the private purposes of the family and the expenses of litigation as to the right of management in which the family had been engaged previous to 1874.

(1) 3 B. 27.

(2) 8 C. 32.

Such a view of the rights and duties of managers of the *savasthan* is, it is plain, quite inconsistent with the *devasthan* character of the property with which it is endowed, and it is hopeless, therefore, to expect that either the interests of the sacred shrines in question and of the Brahmins and others entitled to share in the *annachhatra* annexed to them can be properly safeguarded by persons who place their own interests on an equality with those of the sacred shrines entrusted to their charge; or that the endowments—which, it cannot be doubted, are at present charged with debts, some of which at least ought never to have been thrown on them—should be freed from such burdens and restored in their integrity to the sacred and charitable purposes for which they were intended, whilst the task of doing so rests with those who entertain such erroneous ideas as to the nature of their duties. We think, therefore, that the District Judge was right in his conclusion that the interests of these important sacred places, with their attendant charities, imperatively required that the first and second defendants should be removed from their management. This necessarily requires that the second defendant should also account in such manner as the Court may think proper under the circumstances for all sums received by him from the income of the *savasthan* property since he was put into possession, with all just allowances. It will, therefore, be necessary to send the case back to the District Judge to take the above accounts and also to report as to the best mode of providing, in the future, for the management, both secular and spiritual, of the several shrines and their endowments, after giving notices to the parties to the suit and also to the residents of the several villages where the shrines are situated in such manner as the Court may think advisable with the view to their offering suggestions to the Court in framing the necessary scheme. This Court also reserves to the defendants the [625] rights, in execution of this decree, to show that certain of the lands mentioned in the plaint as belonging to the *savasthan* were not included in the property appropriated to the *savasthan* by the Peshwa's award or in subsequent grants. The parties to have liberty to file objections in this Court to the said accounts and scheme when framed. The accounts to be taken, and scheme framed and transmitted to this Court, within six months.

*Decree confirmed and case remanded.*

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APPELLATE CIVIL.

Before S. Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

SHRI G. KESH DHARNIDHAR MAHARAJDEV (Original Defendant No. 1),  
Appell. v. KESHAVRAY GOVIND KULGAVKAR (Original Plaintiff),  
Respondent.\* [1st May, 1890.]

Sanad—Co. Trust—Religious and charitable trust—Mortgage of  
trust p. erty—Estoppel—Right of a trustee to impeach the acts of his predecessor  
in offic. mortgage—Interest—Rule of damdupat—Its application to mortgage tran-  
saction

A d, after reciting that certain villages had been held by C. as *inam* "on  
acco of the worship, jubilees, and feeding of Brahmins in honour of the Shri-

\* Cross Appeals, Nos. 41 and 42 of 1886.

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