It is true that the Transfer of Property Act did not apply to the Punjab. But as the full bench themselves pointed out

"although the Transfer of Property Act is not in force in the Punjab, the principle enunciated in s. 55 (6) (b) being a general rule of English law applies as being in accordance with justice, equity and good conscience."

This judgment supports our view that in cases of such oral sales, the purchaser has a charge on the property for the amount paid by him in advance as purchase money and this charge is not affected by the fact that he is in possession of the property. We think, therefore, that the learned District Judge came to a right conclusion in holding that the creditor had a charge on the property intended to be sold, and of which he was in possession. That being so, there is clearly a debt which the debtor was bound to pay. The charge created in favour of the creditor was in respect of that debt. That being the case, the transaction can properly fall within the purview of a Debt Adjustment Court, and the learned District Judge was, in our opinion, right in holding that the Debt Adjustment Court had jurisdiction over the matter in dispute.

The result, therefore, is that both these applications fail and are accordingly dismissed with costs.

Rule discharged.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Chainani.

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Civil Procedure Code (Act V of 1908), s. 92—When sanction necessary —Hindu temple—Whether public or private, indicia *to determine— Whether temple can be public among the Vaishnava devotees of the Vallabh sect.*

A suit for a declaration that the suit property belongs to a public trust of religious or charitable character does not fall within the mischief of s. 92 of the Civil Procedure Code, 1908, and is maintainable without the sanction of the Advocate General.

* First Appeal No. 385 of 1948.

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Abdur Rahim v. *Mahomed Barkat Ali*,[1] followed.

Where the plaintiff claims relief for possession of the suit properties on the ground that the title to the such properties vests in the defendant as a trustee and has not been validly divested, there is no question of obtaining a decree vesting any property in the trustee. The relief for possession merely amounts to a claim for restoring the property to where it still belongs and the relief for possession does not fall within s. 92 (*1*) (*c*) of the Civil Procedure Code, 1908.

Under Hindu Law the image of a deity is a juristic entity vested with the capacity of receiving gifts and holding property.

Vidya Varuthi Thirtha v. *Balusami Ayyar*,[2] relied upon.

Amongst the Vaishnava devotees of the Vallabh cult, there can *be* public temples for worship. Whether a temple and the idol which is worshipped by the devotees is a private or public temple would always be a question of fact.

The devotees of a temple, which was already in existence, invited a person to accept the Gadi of the Maharaj and put him in charge of the temple; the Maharaj and his successors managed the temple consistently with the traditions of the Vallabh cult; the devotees worshipped the idol in the temple as their idol and respected the Maharaj as their spiritual guide; gifts were made to the idol; where gifts were made to the Maharaj of the day he never treated the gifts as his own but mixed the gifts with the properties of the temple; and the Vaishnava public of the place used the temple as a matter of right;

Held, the course of conduct of the Maharajas and the devotees spreading over almost a century—all indicated that the temple was a Hindu public temple and not a private temple belonging to the family of the Maharaj.

Mohan Lalji v. *Gordhan Lalji Maharaj*,[3] *Girdharlal* v. *Naranlal*,[4] *Lakshmana* v. *Subramania*,[5] *Mundancheri Koman* v. *Achuthan Nair*,[6] *Chhotabhai* v. *Jnan Chandra*,[7] *Dhoribhai* v. *Pragdasji*,[8] *Bhagwan Din* v *Gir Har Saroon*,[9] *Amardas Mangaldas* v. *Harmanbhai Jethabhai*,[10] and *Gurunatharudhswami* v. *Bhimappa*,[11] referred to.

FIRST APPEAL from the decision of P. B. Patel, Civil Judge, S. D., at Nadiad.

The plaintiffs, who were the Vaishnava devotees of the temple of Shree Gokul Nathji at Nadiad, filed the present suit alleging that the temple is a public charitable temple and claiming a declaration that defendant No. 1 is the manager and trustee of the temple and that the alienation made by defendant No. 1 in favour of the rest of the defendents were

(1) (1927) L. R. 55 I. A. 96.
(2) (1921) L. R. 48 I. A. 302.
(3) (1913) 35 All. 283.
(4) (1912) 14 Bom. L. R. 1135.
(5) [1924] A. I. R. P. C. 44.
(6) (1934) L. R. 61 I. A. 405.
(7) (1935) 37 Bom. L. R. 567.
(8) (1938) 40 Bom. L. R. 1041.
(9) (1939) 42 Bom. L. R. 190.
(10) (1942) 44 Bom. L. R. 643.
(11) (1948) 51 Bom. L. R. 1.

not binding against the temple. They also asked for a mandatory injunction against the alienees directing them to restore the possession of the properties purchased by them to defendant No. 1 for and on behalf of the temple.

The principal defence of defendant No. 1 was that the temple is not a public religious temple, but that the idol and the temple where the idol is worshipped and all the properties in suit were the separate properties of defendant No. 1's predecessors, and as the successor of her deceased husband she is the absolute owner thereof.

The trial Court held that the deity Shree Gokul Nathji was the private property of defendant No. 1 and that the suit properties were not a public religious trust of the followers of the Vallabh cult. As a result the suit was dismissed.

The plaintiffs preferred an appeal to the High Court.

S. T. Desai with *N. C. Shah,* for appellants.

S. T. Desai with *K. T. Pathak,* for appellant No. 3.

Purshottam Tricumdas with *A. D. Desai* for respondent No. 1.

H. M. Choksi with *V. T. Gambhirwala,* for respondent No. 2.

GAJENDRAGADKAR J. The principal question which this appeal raises for decision is whether the temple of Shree Gokul Nathji at Nadiad is a public charitable temple of the followers of Vallabha cult at Nadiad or whether it is a private temple belonging to the present worshipper, Goswami Shree Mahalaxmi Vahuji.

In the suit from which this appeal arises, the Vaishnav devotees of this temple alleged that the temple is a public charitable temple and claimed certain declarations in regard to the properties belonging to this temple. According to the plaintiffs, the idol of Shree Gokul Nathji is a public idol worshipped by the Vaishnava devotees of the place, and the Maharaja or the Maharani, who may be in management of the temple for the time being, is the trustee of the said idol and the temple in which it is worshipped.

Public festivals are held in this temple, like any other Hindu public temple, and it is the right of every Vaishnava follower of the Vallabha cult to take part in such festivals and to visit Shree Gokul Nathji for *darshan.* For the upkeep and maintenance of this temple, *lagas* or contributions have been paid by

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the Vaishnava businessmen of the town for more than a hundred years past, and the amount thus collected is intended to be used, and has in fact been used, for the purposes of the temple. The plaint alleged that the Vaishnava devotees of Nadiad had invited Shree Mathuranathji, the direct descendant in the line of Shree Vallabha, to come to Nadiad, and on his arrival he had been put in charge of the worship and management of the temple of Shree Gokul Nathji. Thereafter voluntary contributions and gifts were made by the Vaishnava devotees, and Shree Mathuranathji managed the temple as a trustee during his lifetime. It appears that Mathuranathji was born in 1806 and he died somewhere in 1865 A.D. After his death, his son Vrajratnalalji took up the worship and management of the temple. During his regime, the Vaishnava devotees of Nadiad voluntarily levied a *laga* of Rs. 8 per house in 1881 and celebrated 56 *bhogs* on a grand scale. About this time extensive additions to the temple property were made with the help of voluntary public subscriptions and contributions. Later, whenever any improvement had to be made in the temple or to properties appertaining to it, public funds were similarly raised and the Vaishnava devotees generously responded to appeals for help. In course of time, the temple acquired a garden land with the principal object of supplying flowers for the worship of the deity (Lot No. 2). A *goshala* came to be added, and in this *goshala* were housed cows for the purpose of supplying milk, curds, and butter for the worship of the deity. In 1882 Shree Vrajratnalalji died, and the management of the temple devolved upon his widow Maharani Vahuji. Prior to his death, Vrajratnalalji had made a will leaving the management of all the properties to his wife. During Maharani Vahuji's time, the temple and its properties were managed by the Maharani in consultation with the devotees. This management continued until 1898, when the Maharani adopted Aniruddha. Within a month of this adoption the Maharani died and the management devolved upon the minor Aniruddha. Like her husband, the Maharani herself had made a will giving directions as to the manner in which the temple and the properties should be managed after her death. This management vested in the *panchas* of the Vaishnava devotees during the minority of Aniruddha. After Aniruddha became a major, he took charge of the management and continued it during his lifetime. Aniruddha was married, first, in 1908, and when his first wife died, he married again in 1932. Aniruddha died in 1936, and his widow, Shree Mahalaxmi

Vahuji, who is defendant No. 1 to the suit, came into management. The plaint alleged that during his management Aniruddha attempted to acquire the *gadi* of Jamnagar and in the process of acquiring this *gadi* he incurred heavy debts. After Aniruddha's death, defendant No. 1, claiming to be the absolute owner of the temple and its properties, created four mortgages over some of the properties of the temple, between 1939 and 1942, the mortgagees under these mortgages being defendants Nos. 3 to 6 respectively. She also sold the garden belonging to the temple, despite the protests from the Vaishnava devotees, for Rs. 82,000 on April 9, 1943. The purchaser of this garden is defendant No. 2. It would appear that defendant No. 2, in his turn, has sold portions of the property purchased by him to defendant Nos. 7 to 14. The Vaishnava devotees, therefore, claimed in the present suit that it should be declared that the movable and the immovable properties described in schedules A and B attached to the plaint are the properties of the temple of the deity Shree Gokul Nathji, and as such are public charitable trust properties of Shree Vallabha Sampradaya. They also claimed a declaration that the sale-deds executed by defendant No. 1 in favour of defendant No. 2, and by defendant No. 2 in his turn to defendants Nos. 7 to 14, are not binding against the temple, and a mandatory injunction against these purchasers directing them to restore the possession of the properties purchased by them to defendant No. 1 for and on behalf of the temple. A declaration with regard to the mortgages executed by defendant No. 1 in favour of defendants Nos. 3 to 6 was likewise claimed in the plaint. It would thus be seen that, broadly speaking, the plaintiffs' case was that the suit-temple is a public charitable temple of Vaishnava devotees of the Vallabha sect, that defendant No. 1 is the manager and trustee of this temple, and that the alienations made by her are not binding against the temple. Since the purchasers from defendant No. 1 had already acquired possession of the properties sold to them, a claim for possession of these properties was made and the possession was asked to be delivered to defendant No. 1 as the manager and trustee of the temple. To the plaint were attached two schedules; schedule A refers to 14 lots of immovable properties, whereas schedule B refers to 8 items of movable properties belonging to the temple. Lot No. 1 in schedule A is the temple of Shree Gokul Nathji itself; it is situated at Satpipli in Nadiad.

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As was to be expected, the principal defence of defendant No. 1 was that the temple is not a public religious temple belonging to the Vaishnava devotees of the Vallabha cult, but that the idol and the temple where the idol is worshipped and all the properties in suit were the separate properties of defendant No. 1's predecessors, and as the successor of her deceased husband she is the absolute owner thereof. It was not disputed in the written statement that, amongst the descendants of Shree Vallabha, Mathuranathji was the first Maharaja of the Vaishnava devotees of Nadiad. In fact, the written statement alleged that Mathuranathji was the owner of the idol of Shree Gokul Nathji, and that he had established a temple or *haveli* and founded a *gadi* at Nadiad. The defence was that, according to the tenets and usage of Shree Vallabha sect, every Goswami Maharaj keeps with himself a movable family idol which is his own property for worship; Mathuranathji had likewise in his possession the idol of Shree Gokul Nathji and it was this idol which Mathuranathji worshipped at the temple founded by him at Nadiad. According to the defence, therefore, the idol, the temple in which it is worshipped, and all the properties in suit belonged to the Maharajas from generation to generation, and they have come by succession in the hands of defendant No. 1. Defendant No. 1's case was that the *lagas* or *bhets* or subscriptions and contributions which were mentioned in the plaint were, in effect, made to the Goswami Maharaj of the time in consideration of the indulgences granted by the Maharaj in allowing *darshan* of the idol to the devotees; the idol itself is the property of the Maharaja, and according to the tenets of Vaishnavism the idol cannot own any property itself. Defendant No. 1 denied that any property had been granted to the temple itself. While making this claim of absolute ownership over the temple and the properties in suit, it was admitted in the written statement that defendant No. 1 and her predecessors had received voluntary presents and other emoluments from the devotees "*inter alia* for the purpose of maintaining the *haveli* and performing the worship of the idol and for making repairs of the property appertaining thereto." It was also admitted that the *lagas* which were regularly paid by the Vaishnava devotees of Nadiad were voluntary taxes imposed by the devotees themselves and paid to the Goswami Maharaj in consideration of the spiritual advice that they received from him. The defence also was that, though Mathuranathji brought with him the idol of Shree Gokul Nathji for worship in the temple at Nadiad, some other

idols were also installed in the temple in course of time; these idols are of Shree Shyamlalji, Madan Mohanji and Balkrishnalalji. The written statement specifically stated that these three idols had been added to the temple by Vrajratnalalji Maharaj. Defendant No. 1 denied all the allegations made by the plaintiffs that the Vaishnava devotees were the owners of the properties in suit and had exercised supervision over the management of the temple and its properties at any time. In other words, the defence was clear and categorical; defendant No. 1 claimed ownership over the idol, the temple and all the properties in suit.

Only one point was common ground between the parties at the stage of the pleadings, and that was that Mathuranathji was the first Maharaja who was recognised as their Maharaja by the Vaishnava devotees of Nadiad. The plaintiffs' case was that there was a temple of Shree Gokul Nathji at Nadiad even before Mathuranathji arrived at Nadiad, and according to them Mathuranathji had, in fact, been invited by the Vaishnava devotees of Nadiad to look after the temple which was already in existence. According to defendant No. 1, Mathuranathji brought the idol of Shree Gokul Nathji himself and started the temple in his own right.

After these pleadings were filed, certain interrogatories were addressed to the parties, and it would be material to refer to the replies given by the plaintiffs and by defendant No. 1 in regard to one or two of these interrogatories. In regard to these interrogatories the plaintiffs clarified their case by stating that Mathuranathji was called in the suit-temple in about 1831 when the management of the temple was entrusted to him. This was done at the instance of the Mahajan of the Vaishnava devotees of Nadiad. Defendant No. 1, while seeking to clarify her position (exh. 157), attempted to change her stand. She now alleged (exh. 158) that when Mathuranathji came to Nadiad he brought with him not only the idol of Shree Gokul Nathji, but also the idol of Balkrishnalalji. It would be noticed that in the written statement her case was that this latter idol had been brought by Vrajratnalalji when he took over the management of the temple after Mathuranathji's death. By this reply, defendant No. 1 also alleged that there is no question of any *gadi* belonging to the Maharaj; that according to the tenets of this cult no Vaishnava can bring any Goswami on a *gadi*, and there can therefore be no question of Mathuranathji having

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been invited by the devotees of Nadiad to take charge of the temple. On this point again, the written statement was clear, that Mathuranathji came to Nadiad and started the *gadi* of a Maharaj at this place. The pleas thus made by defendant No. 1 were adopted by all the alienees. The purchasers took two additional points in the alternative; they alleged that the sale by defendant No. 1 to defendant No. 2 was for legal necessity, and as such binding on the temple, and that they were *bona fide* transferees for value without notice and as such were entitled to be protected against the plaintiffs' claim. Defendants Nos. 3 to 6 are the mortgagees from defendant No. 1, but these mortgages have been redeemed and the mortgagees, therefore, had no interest in the proceedings of the suit. Defendants Nos. 7 to 14 are the subsequent purchasers from defendant No. 2. They have adopted the pleas made by defendant No. 2, but have taken no active part either in the trial Court or before us. It was on these pleadings that the trial Court had to consider the principal issue in dispute between the parties. He has answered this question in favour of defendant No. 1, with the result that the plaintiffs' suit has been dismissed. That is how in the present appeal we have to consider the same question again.

Before proceeding to deal with this question, however, it would be convenient to refer to some other points in dispute between the parties. In the trial Court, certain issues of law were raised by the defendants, and these were tried as preliminary issues by the learned Judge. These issues were whether the suit had been properly valued for court-fees and jurisdiction, whether the suit was bad for non-joinder of parties, and whether the suit was barred under s. 92 of the Civil Procedure Code. The learned Judge answered all these issues in favour of the plaintiffs. In the appeal before us, the respondents have challenged the finding of the learned Judge as to the bar under s. 92 of the Civil Procedure Code. The other findings recorded by him on the remaining preliminary issues have not been disputed before us.

We would, therefore, first proceed to deal with the contention that the suit is barred under s. 92 of the Code of Civil Procedure. Now, it is quite clear that before s. 92 can be invoked, three conditions have to be satisfied. There must be, in the first place, a trust created for public purposes of a charitable or religious nature; secondly, an allegation as to the breach of such trust must be made or the direction of the

Court must be deemed to be necessary for the administration of such trust; and, thirdly, the relief claimed in the suit must be one or other of the reliefs mentioned in cls. (*a*) to (*h*) of sub-s. (*1*) of the said section. Since the decision of the Privy Council in *Abdur Rahim* v. *Mohomed Barkat Ali*[1] it is now well settled that a suit for a declaration that the property in suit belongs to a public trust of a religious and charitable character does not fall within the mischief of s. 92, and such a suit, therefore, can be maintained without the sanction of the Advocate General. Indeed, this position is not disputed before us by Mr. Purshottam who argued this point for the respondents. His contention, however, is that the present suit cannot be treated as a mere suit for a declaration between the plaintiffs and defendant No. 1, because, he argues, the claim for possession made by the plaintiffs as against the alienees virtually amounts to a prayer for vesting in defendant No. 1 the properties conveyed to the alienees. It may be conceded that the first two conditions are satisfied by the plaint in the present suit. But unless Mr. Purshottam is right in his contention that the relief for possession of the properties made in the present suit falls within s. 92 (*1*) (*c*), the provisions of s. 92 would not apply to the suit. There can be no doubt that, in substance, this is a suit for possession of the trust properties and the claim for possession is made against the alienees. Such a suit is obviously outside the purview of s. 92. However, Mr. Purshottam is right when he contends that the bar created by s. 92 would apply to a suit if some of the reliefs claimed in the suit attract the provisions of s. 92 even though the other reliefs claimed in the suit may be wholly outside s. 92. It is, therefore, necessary to consider whether the claim for possession made by the plaintiffs falls within s. 92 (*1*) (*c*). Mr. Purshottam's argument is that, since the plaintiffs want the properties to be restored to defendant No. 1, they are virtually asking for an order for vesting the properties in defendant No. 1. We think that there is no substance in this argument. The plaintiffs do not seek for the removal of defendant No. 1 from trusteeship; and, indeed, they do not seem even to emphasize the wrongful alienations effected by her. They want defendant No. 1 to continue as trustee and manager of the temple and its properties, and according to them the title with regard to these properties which vests in defendant No. 1 as a trustee has not been validly and effectively divested. There is thus no question of obtaining a decree

[1] (1927) L. R. 55 I. A. 96.

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vesting any property in defendant No. 1. The relief of possession in the present suit merely amounts to a claim for restoring the property to where it still belongs. If that be the true position, there can be no doubt that the suit does not fall under s. 92 and that the absence of sanction would not make it incompetent. In our opinion, therefore, the learned Judge was right in holding that the suit was not barred under s. 92 of the Code of Civil Procedure.

Mr. Purshottam has also mentioned another point as a preliminary point as against this appeal. He says that pending the suit defendant No. 1 filed a purshis on June 1, 1945, in which she stated to the Court that she had adopted Swami Shree Vrajbhushanlalji Maharaj as a son to her deceased husband Aniruddhalalji by performing religious ceremonies in that behalf. Mr. Purshottam's grievance is that, notwithstanding this purshis, no steps were taken by the plaintiffs to bring the adopted son on the record, and that in law, if the adoption has been properly made by defendant No. 1, the right, title and interest which vests in defendant No. 1 now vests in the adopted son. That, no doubt, is true. But we do not think it is necessary to call upon the plaintiffs to add the adopted son to the proceedings before us, because defendant No. 1 herself did not suggest this course in the trial Court, nor did the adopted son make any attempt to join the suit. Defendant No. 1 has clearly admitted in her evidence that her adopted son is assisting her in prosecuting this litigation, and that in fact it is he who gives instructions to her lawyers. The fact that Ramkrishna Nathumal, who is the legal adviser of the adopted son, has himself given evidence in this case in support of the defence clearly shows the extent of the interest which the adopted son has been taking in this litigation. If knowing full well that the litigation with regard to the temple and its properties is at present proceeding between the Vaishnava devotees on the one hand and his adoptive mother on the other, the adopted son is content with instructing the lawyers and taking all possible steps to assist his adoptive mother in fighting this litigation, we do not see why the hearing of the appeal should be postponed by asking the appellants to bring the adopted son on the record. In fact, Mr. Desai, who appears for the appellants, wanted to proceed with the appeal without taking any steps to bring the adopted son on the record.

Before proceeding any further, we would like to point out that the judgment under appeal has unfortunately not been of much assistance in dealing with the principal point of controversy between the parties. Voluminous evidence has been led in this case. 51 witnesses were examined in Court and 2 on commission, and a very large number of documents has been produced. Besides, account-books of several years have been tendered. The oral evidence mainly concerns itself with the tenets and beliefs of the devotees of the Vallabha cult and the usage that prevails in the temples of this cult. The documentary evidence bears on the question of the acquisition of the properties in suit and has been relied upon by both the parties in support of their respective claims and the account-books evidence the course of conduct spreading over more than 75 years. In fact, it may be stated at this place that the plaintiffs have made a serious grievance before us against defendant No. 1 on the ground that she has suppressed material books of account and documents which she had been called upon to produce. The learned Judge has not made any serious attempt to appreciate properly the mass of this evidence. He has attempted to summarise the effect of the oral evidence given by the witnesses without expressing any opinion as to the reliability of the said witnesses and as to his own conclusions based on the said evidence. He has then set out *seriatim* the arguments urged before him on behalf of both the parties, and in the end he has summed up the position by observing that in this case much can be said on both the sides. In fact, the first impression which one gathers from his judgment is that the learned Judge has found more facts in favour of the plaintiffs than against them. But, in the end, he decided against the plaintiffs principally on the ground that according to the tenets and usage prevailing amongst the Vaishnava devotees of Shree Vallabh cult, there can be no public temples as such. In support of this view, the learned Judge has cited the opinion of Dr. Bhandarkar and a decision of this Court with regard to another temple of the Vaishnava cult which was cited before him (exh. 649). We would, therefore, begin by examining very briefly the tenets of this cult and the usage on which the learned Judge laid such great emphasis.

Let us begin with the thesis of Dr. Bhandarkar himself. In his book called "Vaishnavism, Saivism and Minor Religious Systems," Dr. Bhandarkar has discussed the philosophy of

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Vallabha in some detail. As he points out, Vallabh was the son of a Tailanga Brahmana, who was a student of the Black Yajurveda and lived in a village called Kankarava in the Telugu country. He was born in 1479 A. D. Vallabh's Vedantic theory is the same as that of an earlier author of the name of Vishnusvamin; it is known as Suddhadvaita or "Pure Non-Dualism". According to Vallabha, Shri Krishna is the highest Brahman and all souls attain beatitude through the grace of this highest Brahman, otherwise known as Krishna. Vallabha laid so much emphasis on the grace of God that his cult came to be known as Pushti Marg. Devotion is the means of attaining the grace of God and it is on devotion that the Vallabha cult always lays stress. Vallabha had a son named Vitthalesha, and Vallabha and his son are spoken of respectively as Acharya or Mahaprabhuji and Gosaim or Gosvamin. Vitthalesha in his turn had seven sons. The Gurus of this sect, otherwise called Maharajas, are descendants of these seven sons. According to Dr. Bhandarkar, "Each Guru has a temple of his own, and there are no public places of worship. The devotee should visit the temple of his Guru at stated intervals, which are eight in number during the day...". The influence of Vallabha and his descendants over their followers is very great. This influence is sustained by the fact that "the God cannot be worshipped independently in a public place of worship, but in the house and temple of the Guru or the Maharaja, which therefore has to be regularly visited by the devotees with offerings." It is these statements of Dr. Bhandarkar which were relied upon by the defendants and which have substantially influenced the judgment of the learned Judge. As Sir S. Radhakrishnan has observed in his "Indian Philosophy", Vol. II, page 756, Vallabh.

> "offers a theistic interpretation of the Vedanta, which differs from those of Samkara and Ramanuja. His view is called Suddhadvaita, or pure non-dualism, and declares that the whole world is real and is subtly Brahman. The individual souls and the inanimate world are in essence one with Brahman." "Vallabha looks upon God as the whole and the individual as part; but, as the individual is of identical essence with God, there is no real difference between the two."

According to Vallabh, says Sir. S. Radhakrishnan, "Bhakti is the chief means of salvation, though jnana is also useful." During his lifetime, Vallabha did not build many temples, which are otherwise known as *havelis* in this cult, but he initiated the worship of idols and emphasised the importance of such worship. The devotees of this cult believe that seven

or nine idols were worshipped either by Vallabh or his son, and as such they were specially sanctified. These idols are known as Nidhiswarups. Besides these Nidhiswarups, there are several other idols which are worshipped by the Vaishnava devotees after they are sanctified by the Guru. Amongst the Vaishnavas of the Vallabha cult, two rites are generally performed: one is Sharana Mantropadesh, and the other is Atma Nivedan. The performance of the first rite confers upon the devotee the status of a Vaishnava, and that of the second gives him the status of an *adhikari* entitled to pursue the path of service or devotion. At the first of these initiations, the *mantra* "Shree Krishna Sharanam Mamah" is repeated in the ears of the devotee by the Guru and *tulsi kanthi* is put around his neck. At the second initiation, which is also known as Brahma Sambandha, a religious formula is repeated and it appears that the effect of this formula is that the devotee treats himself and all his properties as belonging to Lord Krishna. In fact, the formula ends in these words, "I am Thy Slave, O Krishna; I dedicate to you all that belong to me." The initiation of both the rites is generally performed by one of the descendants of Vallabha. At the time of this initiation, the prescribed formula is to be repeated by the devotee before the deity by holding *tulsi* leaves in his hands. Afterwards the said leaves have to be placed at the feet of the deity through the *acharya*. After the two initiations, the devotee is expected to render service to Lord Krishna in three different ways. He can render service physically by doing such acts as cleaning the temple or fetching water for the worship of the deity (*tanuja*); he can render service mentally by prayer and mediation (*manasa*); or he may render service by making gifts to the idol (*Vittaja*): these gifts are made either on occasions when celebrations are held in the temple or on ceremonial occasions in the family of the devotee himself. It will be noticed that the spirit of dedication underlying the formula repeated by the Vaishnav devotees at the time of his initiation known as *Brahma Sambandhi* is common to all Hindu schools of philosophy that believe in the spiritual efficacy of devotion and prayer. Says the Bhagwad Gita:

> "Whatever you do, whatever you eat, whatever sacrifice you perform, whatever gifts you offer and whatever austerity you practise,—dedicate all these to me Oh! son of Kunti."

Thus, the dedication in Vallabha's philosophy is to Lord Krishna whose divine grace (*pushti*) is the spiritual goal of all devotees of his cult.

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Enlightened and progressive writers like Telivala, who has edited Shri Vallabh's work known as "Shri Siddhanth Rahasya", propound the view that in this cult Vallabha alone is the Acharya or preceptor and "all his descendants, however illustrious, have never claimed anything further than being recognised as Gurudwars." Thus the initiation is believed to be done by Vallabha Acharya himself through the instrumentality of his agnate descendants. It is significant that none of the writings of Vallabha insists upon initiation at the hands of his descendants alone. It is, of course, true that initiation at the hands of Vallabha's descendants would be valued more by the devotee; but in the absence of such a descendant, the devotee can approach a Guru as described by Vallabha in his Nibandh. In fact, in the absence of a proper teacher, Vallabha has advised his devotee to make an idol for himself and worship it with full devotion. According to Mr. Telivala, Vallabha's descendants even to this date initiate their pupils, not in their own names and responsibility, but in the name and responsibility of Shree Vallabha. According to the usage, the worship of the deity in the *havelis* is performed eight times every day. This worship takes the form of dividing the daily life of Balkrishna into eight significant acts, and Balkrishna is worshipped in eight different forms appropriate to those acts. The morning begins with the Mangal Darshan, which consists in the act of awakening the deity. Then Krishna is dressed for the day and his *darshan* is known as *Shrangar*. As a cowherd Krishna then goes out with the cows for grazing them, and so he gives *darshan* as a *Gowala* which means a cowherd. While taking lunch he gives *darshan* as a *Raj Bhog*. When he is awakened from the midday nap, the *darshan* is called *Uthapana* or awakening. In the afternoon, he has a midday meal, which is *bhog*. Towards sunset, he brings the cows back and the *darshan* is *sandhya*. At night he goes to bed, and the *darshan* is called *shayana*. Usually the idol of Balkrishna is thus worshipped on eight occasions, though in some places, as in the temple with which we are concerned, the worship is performed only seven times every day. As we have seen, the most important characteristic of Vallabha's philosophy is its emphasis on devotion. This devotion, which must be absolute and unqualified heads to the grace of God, which is known as *pushti*. The devotee who practices devotion concentrates himself so much on devotion alone that he naturally discards all ritualistic performances. Disregard of these ritualistic performances can be regarded as another important feature of the

cult of Vallabha. This cult does not believe in *Sadhus* or *Swamis*. Once the devotee gets initiation from his Guru, he has to follow the path of devotion, and it is in the firm belief that this path would lead to the grace of God. It is true that the descendants of Vallabha are held in the highest esteem by the devotees. But, as I have already indicated, a rational interpretation of the tenets of this cult does not justify the claim which is sometimes made on behalf of these descendants that the cult does, and should, treat them as incarnations of divinity. The works of Vallabha would suggest that even he would not have made such a claim, though, naturally enough, his devotees place him on that high pedestal of spiritual pre-eminence. It is unnecessary for us to consider these tenets because they can have no material or direct bearing on the point with which we are concerned. Mr. Purshottam, for the respondents, has conceded before us that there is nothing in these tenets, or even in the usage of the cult of Vallabha, which directly or indirectly prohibits worship of the Sevya Swarups or Nidhi Swarups at a public temple. As Dr. Bhandarkar has pointed out, the history of the growth of this cult shows that the descendants of Vallabha took their own images of worship to several places where they settled down and were respected by the devotees. In the ordinary course, when the devotees gathered round these descendants and worshipped the idols brought by them, the places of residence of these descendants were treated as holy places, which were known as *havelis* or temples, and the private idols brought by them were worshipped by the devotees congregationally. That no doubt is the feature of some of the temples of this cult. The observations made by Dr. Bhandarkar are undoubtedly entitled to the respect which is due to the writings of that great oriental scholar on a subject like this. But it must be remembered that, in his thesis on Vallabha, Dr. Bhandarkar was not interested in the legalistic aspect of these temples; he was not addressing himself to the question as to whether these temples and the properties acquired by them or by their worshippers could never be treated as public temples and properties belonging to a public charitable trust. He was relying upon evidence of repute, and, with respect, his conclusion that the majority of these temples may be private temples, having regard to the historical genesis of the spread and growth of this cult, may be right. But we do not think it would be possible to treat these statements of Dr. Bhandarkar as laying down the inexorable and unexceptionable proposition that, amongst the Vaishnava

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devotees of the Vallabha cult, there can be no public temples for worship. Whether a temple and the idol which is worshipped by the Vaishnava devotees of this cult was a private or public temple would always, in our opinion, be a question of fact. At best, it may be said that, if nothing else is known about a temple, it may prima facie be assumed that the idol worshipped by the Vaishnava devotees of this cult was brought by the descendant of Vallabha, and that the temple which has grown around this idol may be the private temple of such descendant. But even this prima facie view will have to be examined in every case in the light of the other evidence available on the record. In this connection, it is pertinent to remember that, though the line of Vallabha's descendants has produced numerous Acharyas, this cannot possibly meet the spiritual needs of all the followers of the cult scattered over many places. It is, therefore, natural that in some places the worshippers of this cult should build a public temple for their congregational worship and should put some worthy teacher or Guru in charge of the management of the temple. Indeed, the evidence in this case shows that there are temples in this cult which are managed by Mahanths who are not connected with the line of Vallabha's successors. In fact, Dhirajlal (exh. 737) has sworn that he is himself one of the trustees of the temple of Lada Bataji and that the said temple is managed by trustees without any Maharaja. These temples were prima facie public temples, and their Mahanths would be no better than Shebaits or managers. The character of a temple would thus be always a question of fact in each case. Therefore, in our opinion, too much emphasis cannot legitimately be laid on the view expressed by Dr. Bhandarkar.

Now, the legal position on this question is not in doubt. Amongst Hindus, idols and temples can be either private or public. Ordinarily, family idols and places of worship are not divisible, for says Manu:—

> "A dress, a vehicle, ornaments, cooked food, water, and female (slaves), property destined for pious uses or sacrifices, and a pasture-ground, they declare to be indivisible." (Chap. IX, verse 219).

It may be that the coparceners constituting the family may hold these idols and places of worship by turn, or some other appropriate arrangement can be made for the worship of these idols. Idols under Hindu law are juridical persons and can own properties, though, of course, the dealings of the idols with regard to the properties have necessarily to be conducted

by human agents acting on their behalf. A temple and the idol in it can also be public, and public temples are quite common with the Hindus. The decision of the question as to whether a temple is public or private would depend upon several considerations. There may be a clear case of a temple which has been built by devotees as a public temple, and properties dedicated by them to such a temple would clearly constitute a public charitable trust. A private temple may be dedicated to the public, but such a change must be established by clear evidence in that behalf. At a public temple, the devotees at large have a right of entry and a right of *darshan* of the deity. The devotees in such a temple offer gifts to the idol and these gifts, by their very nature, are gifts to the temple itself. Public festivals are held in which all the devotees have a right to participate. With regard to such public temples and idols, property, both movable and immovable, can be dedicated; no writing is necessary to evidence such dedication. It may be done even verbally. Dedication is often done by a gift *viva voce*, by a bequest, or by ceremonial relinquishment. Such a dedication can be absolute or partial. Where it is absolute, the property is given completely to the idol by the donor who has divested himself of all his rights in it. Where the dedication is partial, the donor has not divested himself completely of his title in the property, but a charge is created over the property for a specified portion of the income of the property to go towards the expenses of the idol and the temple. It is quite true that for dedication there must be clear, cogent and satisfactory evidence, if there is no writing executed for that purpose. The mere fact that a part of the income of the property is appropriated towards the expenses of the temple, may be for several years would not necessarily prove even a partial dedication of the property to the charity. The historical origin of the temple, the manner in which the affairs of the temple have been managed, the nature and extent of the gifts received by the temple, the rights exercised by the devotees in regard to the worship in the temple, the consciousness of the manager and the consciousness of the devotees themselves—these and similar other considerations have to be weighed in deciding the question as to whether a temple is public or private. As we have already indicated, in dealing with the temple in the present case, we would have to bear in mind the fact that in some cases temples of the Vallabha sect are started by the descendants of Vallabha and the idols in them, and presum-

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ably the properties appertaining to the idols, are the separate properties of such descendants. In this connection, it would be relevant to remember that a trust in the sense in which the word is used in English law is unknown to the original Hindu system. As observed by the Privy Council in *Vidya Varuthi Thirtha* v. *Balusami Ayyar*[1] (p. 311):—

" . . . Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system; to brahmans, goswamis, sanyasis, etc. . . . Under the Hindu law the image of a deity of the Hindu pantheon is, as has been aptly called, 'a juristic entity', vested with the capacity of receiving gifts and holding property. Religious institutions, known under different names, are regarded as possessing the same 'juristic' capacity, and gifts are made to them *eo nomine*."

These institutions were either founded or managed by spiritual teachers of recognised sanctity (p. 311):—

"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. When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency."

In our opinion, therefore, there can be no doubt that this question cannot be decided merely on *a priori* considerations. It would always be a question of fact which must be decided on the evidence adduced before the Court in each case. However, we think it is necessary to refer to the decisions which have been cited before us at the Bar on this point.

Mr. Desai, for the appellants, has relied upon a decision of the Privy Council in *Mohan Lalji* v. *Godhan Lalji Maharaj*.[2] Their Lordships of the Privy Council were dealing with a temple of the Vallabha cult in this case. Mr. Desai has himself fairly invited our attention to the fact that it had been conceded in this case before the High Court as well as the Privy Council that the property appertaining to the temple was debutter property. Even so, Mr. Desai has relied upon the observation of the Privy Council that (p. 288):—

" . . . in their Lordships' judgment, the evidence left no room for the opposite contention, for, apart from positive testimony directly bearing on the point, the performance of the worship in accordance with the rites of the sect for whose benefit it was held may be treated as good evidence of dedication."

Mr. Desai says that this observation shows that in deciding whether there is dedication to public charity or not, the im-

[1] (1921) L. R. 48 I. A. 302. [2] (1913) 35 All. 283.

portant test would be whether the performance of the worship at the temple is in accordance with the rites of the sect for whose benefit it is held. Mr. Desai has further invited our attention to a decision of this Court in *Girdharlal* v. *Naranlal*[1] where a Vaishnava temple was held to be a public temple. The decision of this case turned substantially upon the construction of the will which described the temple as a public temple; and Mr. Desai's contention is that the wills executed by Vrajratnalalji and his widow would similarly support his contention that the present temple is a public temple. It does not appear that the temple with which the Court was concerned in *Girdharlal* v. *Naranlal*,[1] though Vaishnava, was of the Vallabha sect. In *Lakshmana* v. *Subramania*,[2] the Privy Council was dealing with a temple which was initially a private temple. The Mahant of this temple opened the temple on certain days in each week to the Hindu public free of charge to worship in the greater part of the temple, and on payment of fees to one part only. The income thus received by the Mahant was utilised by him for the expenses in regard to the temple, while the balance went to support the Mahant and his family. The Privy Council held that the conduct of the Mahant showed that he had held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship, and the inference was, therefore, that he had dedicated it to the public. Mr. Desai says that he would be in a position to show that the continuous course of conduct of the Mahants of the temple in suit clearly amounts to a representation by them that the temple was a public temple, and that the principle underlying this decision would apply to the case before us even if we were to hold that the present temple was originally a private temple. This contention is made without prejudice to the main point which Mr. Desai has argued that initially the present temple was a public temple.

In *Mudancheri Koman* v. *Achuthan Nair*[3] their Lordships of the Privy Council had to deal with one of the old Nair temples in Malabar, whose guardian or manager was described as "Uralan" and his office as "Uraima". In dealing with the evidence adduced before them, their Lordships observed that the decision of the case would depend on the inferences to be derived from the evidence as to the way in which the

[1] (1912) 14 Bom. L. R. 1135. [2] [1924] A. I. R. P. C. 44.
[3] (1934) L. R. 61 I. A. 405.

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temple endowments had been dealt with and from the evidence as to the public user of the temples. Their Lordships were satisfied that the documentary evidence in the case conclusively showed that the properties standing in the name of the temples belonged to the temples and that the position of the manager of the temples was that of a trustee. Their Lordships, however, added that, if it had been shown that the temples had originally been private temples, they would have been slow to hold that the admission of the public in later times, possibly owing to altered conditions, would affect the private character of the trusts. Reliance has been placed upon this observation on behalf of the respondents; but clearly this observation must be confined to a case where it would appear in evidence that the public were admitted into the temple only in later times and that too owing to altered conditions. If, on the other hand, it appears that the public have always been admitted into the temple and have always as a matter of right taken part in the worship and celebrations at the temple, this observation cannot apply.

The next case which was cited before us was *Chhotabhai* v. *Jnan Chandra*[1]. In the judgment delivered by Sir Lancelot Sanderson for the Privy Council, the learned Judge referred to the essential requisites of a valid trust and proceeded to examine the evidence to find out whether those requisites were satisfied in regard to the temple in suit. The temple with which the Privy Council was dealing was a temple of the cult known as "Sat Sang". On the evidence, it appeared in this case that the gifts made by the devotees were made to Radha Swami Dayal personally, that they were not burdened with any trust, and that the whole course of conduct in regard to the temple showed that there was no intention to create any trust at any time. No doubt, a council of management was created in 1902, but the members of the council had to act according to the directions issued by the Mahant and the arrangement about this council was itself revocable. This case, therefore, is not of much assistance.

Then we have a decision of this Court in *Dhoribhai* v. *Pragdasji*.[2] In this case, this Court had to deal with a temple of the cult known as *Kaivalya Panth* or *Gnyan Marga* started by one Kuberdas. The temple was built by Kuberdas, and as such was originally a private temple. But, on

[1] (1935) 37 Bom. L. R. 567, P. C. [2] (1938) 40 Bom. L. R. 1041.

evidence, it appeared that the properties which were acquired by the temple belonged to the Mahant of the institution for the time being, subject to the restriction that the Mahant had to maintain the institution for purposes which could only be regarded as public charitable purposes. Mr. Justice Broomfield, who delivered the judgment of the Bench, held that, on this evidence, though the legal title must be regarded as being in the Mahant, his ownership of these properties was so restricted by the obligation to maintain the institution for purposes which could only be regarded as public charitable purposes that it might fairly be said that a trust had been created for such purposes within the meaning of s. 92 of the Civil Procedure Code. In coming to this conclusion, the learned Judge referred to the acts and declarations of the parties with reference to the temple and its properties, and relied upon the public user of the temple for a long period without objection. It must be added that the properties and the temple in this case had descended from *chela* to *chela*, and the Court was considerably impressed by this feature of the case. This case was decided in 1938. Next year, the Privy Council had to deal with a similar question in *Bhagwan Din* v. *Gir Har Saroop*.[1] The temple with which the Privy Council were concerned in this case was found to be a private temple built on property acquired by a grant to an individual or a family. Subsequently the temple attained fame and reputation amongst the devotees in surrounding localities. These devotees came for *darshan* in large numbers and brought in many gifts and contributions, with the result that the property of the temple increased considerably. While dealing with the question as to whether the property thus acquired could be deemed to be dedicated to public charity, their Lordships observed that

> "The dedication of a temple for the benefit of the public requires to be proved. Facts and circumstances, in order to be accepted as sufficient proof of dedication of the temple as a public temple, must be considered in their historical setting and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference cannot be made from the fact of user by the public. The value of public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right."

As a result of this pronouncement, Mr. Justice Broomfield modified the views which he had expressed in *Dhoribhai* v.

[1] (1939) 42 Bom. L. R. 190, P. C.

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Pragdasji, when he had occasion to consider the same question in 1942 in *Amardas Mangaldas* v. *Harmanbhai Jethabhai*,[1] where this Court had to consider the question as to whether a particular idol and the property belonging to it constituted public charity or not. On the evidence, the Court was not satisfied that the temple was a public temple; and in delivering the judgment of the Bench, Mr. Justice Broomfield has commented upon the unsatisfactory nature of the evidence adduced in support of the plea that the temple was public. In doing so, however, Mr. Justice Broomfield observed that the fact that worshippers are allowed to visit a temple does not necessarily warrant the inference that the temple is a public religious trust; and he added that the presumption that the temple is dedicated to religious uses, which arises from the descent of the property from *chela* to *chela*, is limited to cases where the religious persons concerned are *grihasthas* and not celibates, so that there may be a conflict between the *chela* and the natural heirs of the *guru*.

Lastly, reference may be made to the judgment of the Privy Council in *Gurunatharudhaswami* v. *Bhimappa*[2] Mr. Desai for the appellants, has relied upon the observations made by Sir John Beaumont, who delivered the judgment of the Board, in regard to one property in dispute before them. This property was a land which was situated 40 miles from Hubli and in coming to the conclusion that this was not dedicated property Sir John Beaumont observed that there was no evidence that this land, which was situated some 40 miles from Hubli, was ever used or that its rents or profits were applied for the benefit of the Math. Mr. Desai says that these observations suggest that, if the rents and profits of the property were utilised for the benefit of the Math, the Privy Council would have held that this property also was dedicated to the Math. It is hardly necessary to press into service these observations for the proposition which Mr. Desai seeks to advance. In our opinion, if it is shown that the rents and profits of any property are exclusively utilised for the purpose of public charity for a fairly long period, it may be possible to infer the dedication of such property to public charity.

While we are dealing with the judicial decisions cited before us, we may also refer to an unreported judgment of this Court on which reliance has been placed by the respondents. In 1927, the Dharangaon temple of the Vallabha cult had

[1] (1942) 44 Bom. L. R. 643. [2] (1948) 51 Bom. L. R. 1, P. C.

become the subject-matter of litigation, in which some of the devotees had alleged that the temple was public while other devotees supported the Maharaja's contention that it was the private property of the Maharaja. In Civil Suit No. 2 of 1927, the District Judge (exh. 650), and in *Chimanlal Maneklal* v. *Sonaji Narayan Mandal*[1] this Court (exh. 629) upheld the contention made by the Maharaja. But it is necessary to point out that, though the judgment of the District Judge refers to the opinion of Dr. Bhandarkar which we have already examined, the final conclusion was based—as indeed it was bound to be based—on the facts proved in that particular case. The evidence showed that the temple had been built by the Maharaja substantially with his own funds on a site presented to him personally by the devotees. In this temple the Maharaja installed his own personal and private idol. The documentary evidence and the accounts unequivocally established the Maharaja's title to the temple, and a majority of the devotees insisted on treating the temple as the Maharaja's private property. The judgment of the High Court expressly says that the opinion of Dr. Bhandarkar was not conclusive, and proceeds to emphasize that for the construction of the temple the bulk of the moneys was not contributed by the Dharangaon devotees, and that the Maharaja received substantial contributions from outside devotees whose respectable evidence clearly supported the Maharaja's case. Therefore, in our opinion, these judgments do not assist the defendants' case since they do not lay down any general proposition of law. On the contrary, these judgments bear out the point that the nature of the temple must in each case be determined on the evidence adduced before the Court.

We must, therefore, now proceed to consider the evidence on which both the parties have relied in regard to the principal point of dispute between them. As we have already indicated, the evidence in this case is voluminous, and its extent may be appreciated if it is mentioned that a part of the record which has been included in the paper-books filed in this appeal extends over 1,900 typed pages. We propose to deal first with the documentary evidence. After all, oral evidence is likely to be interested; and in so far as it seeks to refer to the tenets and usage of the cult, it would not be of much assistance in deciding the point as to the nature of the temple in suit.

[1] (1933) F. A. No. 436 of 1927, decided by Baker and Barlee JJ., on March 20, 1933 (Unrep.).

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[After dealing with the evidence in the case the judgment proceeded:]

On the whole, therefore, we are satisfied that the plaintiffs have succeeded in showing that the public temple of Gokulnathji at Nadiad was originally at Nagar-wada, and that subsequently the present temple was built at Satpipli and the idol of Gokulnathji was removed from the original temple to the present temple. This may have happened in the early part of the 19th century. We are also satisfied that the Vaishnava devotees of Nadiad respectfully invited Mathuranathji to accept the *gadi* of the Maharaj at Nadiad and put him in charge of this public temple. It may be that either Mathuranathji himself or his son Vrajratnalalji brought Balkrishnalalji who was the *Nidhiswarup* of their family.

Mathuranathji and all his successors were true to the highest traditions of the cult and they managed the temple consistently with those traditions. The devotees worshipped the idol as their idol and respected the Maharaj as their spiritual guide. Gifts poured in from time to time and the idol acquired more and more properties. Gifts came in to the Maharaj, but the Maharaj of the day never thought of treating these gifts as his own. He consciously and deliberately mixed these gifts with the properties of the temple knowing full well that he would be entitled to meet all his reasonable needs from the income of the property that may remain after serving the temple. In our opinion, it would be doing injustice to these Maharajas to assume that they wanted to appropriate the temple properties to themselves, because there is no doubt whatever that a large number of gifts were made to the temple in terms. On the other hand, it seems to us that the Maharajas were imbued with the real spirit of dedication which they preached to their devotees, and true to that spirit of dedication, they never thought of treating any of the properties as their own. The Vaishnav public of the place used this temple as a matter of right and they dealt with this temple on that footing. The merchants recognised the existence of two entities as much as the Maharajas themselves did and this recognition is evidenced by contemporaneous documents consisting of books of account. The extent of the properties belonging to this temple, the course of conduct of the Maharajas and the devotees spreading over almost a century, the supervision exercised by the Mahajans and the enthusiasm shown by them in contributing for the repairs,

reconstruction or expansion of the temple properties, the extent of gifts of immovable properties and valuable ornaments—all indicate that both the devotees and their preceptors treated the temple as a public temple...

The result is that the appeal succeeds, the decree passed by the trial Court is set aside and the plaintiffs' suit is decreed. It is hereby declared that the temple of Shree Gokulnathji at Nadiad is a public temple and the movable and immovable properties described in the plaint belong to the said temple and as such constitute public charitable trust property of Shree Vallabha *Sampradaya* of Nadiad. It is further declared that the sale deed passed by defendant No. 1 in favour of defendant No. 2 and the subsequent sale deeds passed by defendant No. 2 in favour of defendants Nos. 7 to 14 are not binding on the temple; and we, therefore, direct that the said purchasers should deliver possession of the properties in their possession to defendant No. 1 as a trustee of the temple and its properties. Since the mortgages created by defendant No. 1 in favour of defendants Nos. 3, 4 and 6 have already been redeemed, it is unnecessary to make any order in regard to all these transactions.

As to the costs Mr. Purshottam has argued that his client should not be made liable to pay the costs of this litigation. We do not think that we can accept this argument. In our opinion defendant No. 1 should not have contested the suit in the manner she attempted to do in the present case. We have had occasion to criticise her conduct in withholding from the Court material documents, and on the whole we are satisfied that she was first persuaded by her advisers to sell substantial part of the temple property and then to support that sale in the present proceedings. In our opinion, therefore, the plaintiffs are entitled to their costs from the defendants both in this Court and in the trial Court.

Cross-objections fail and must be dismissed with costs.

Appeal allowed.

K. E. S.