

## **MYSORE HIGH COURT**

V. Mariyappa

Vs

B.K. Puttaramayya

Regular Appeal No. 51 of 1951-52, Bangalore, in O. S. No. 84 of 1948-49

(N. Sreenivasa Rau and K.S. Hegde, JJ.)

08.10.1957

### **JUDGMENT**

**N. Sreenivasa Rau, J.**

1. This appeal relates to an institution known as the Sahajananda Bharathi Mutt situated in Bangalore City. There is a temple of the deity Omkareswara in the Mutt. The plaintiffs claiming that they were the disciples of the Mutt which was a public institution, filed the suit out of which this appeal arises for the formulation of a scheme for the proper and efficient Management of the institution after removing defendants 1 to 11 who claimed to be in charge of the institution as members of the Managing Committee. Defendant 12, according to the plaintiffs, was the presiding Swami of the institution, having succeeded to that office according to tradition and usage which required that a Sanyasi should be the head of the Mutt, and had been in charge of its management with the help of an advisory Board. This Board did not function properly and later on two of the members i.e., defendant 1 and one Narayana Rao deceased, purported to appoint the others as members of the Managing Committee. This Committee had no legal or moral sanction behind it. They were seeking to oust defendant 12 from the Mutt. It was in these circumstances that they approached the Court for the removal of defendants 1 to 11 and for the

formulation of a scheme. Defendants 1 to 11 in resisting the suit took up the stand that the institution was not a public one, that it had been founded by Sahajananda Swami who, under his will, had provided for its management by a Board of Trustees, that Defendants 1 to 11 constituted the present Board of Trustees, that the institution was not a Mutt which, according to tradition and usage, had to be presided over by a Sanyasi, that defendant 12 was an appointee of the Board charged with certain duties relating to the institution, that he had acted against the interests of the institution in consequence of which the Trustees had filed a suit for his removal and that the present suit was a Counter measure instigated by Defendant 12. They also denied that the plaintiffs were disciples of the Mutt and contended that the Mutt had no disciples as such. Defendant 12 supported the case of the plaintiffs.

2. The learned Second Additional District Judge, Bangalore, found that the institution had to be presided over according to tradition and usage by a Sanyasi, that defendant 12 was the present holder of the office, that the plaintiffs were disciples of the Mutt, that the institution was in the nature of a public trust and that the circumstances called for the framing of a scheme. He accordingly formulated a scheme by the terms of which the management of the institution had to vest in a Committee of management consisting of seven persons including the Sub-Division Officer Bangalore Sub-division, who was to be its ex-officio President. The members had to be chosen at a general meeting of the devotees of the Mutt to be held for the purpose. The Committee was to hold office for three years and would have the right of filling up by co-option any vacancies that might occur in the interval. An interim Committee was also appointed to hold office for one year. The Swami occupying the seat by succession was to be the spiritual and religious head of the Mutt and was liable to be removed for misconduct or other sufficient cause by a majority of 75 per cent, of the disciples present at a meeting called for the purpose by the committee of Management. Defendants 1 to 5 and 7 to 11 have preferred this appeal challenging the decision on various grounds.

3. In the course of arguments the learned Advocate for the Appellants stated that he would not press that the institution was not a public institution and the parties were agreed that the question of the alleged mismanagement by defendants 1 to 11 need not be gone into and that an appropriate scheme may be framed vesting the management in a committee consisting of 11 persons chosen by common agreement from lists filed in this Court by the Advocates. It was also agreed that in addition to the above persons the Sub-division Officer, Bangalore Sub-division, should be a member and ex-officio President of the Committee, and in the event of its not being possible to secure him the Committee of Trustees will consist only of the eleven persons mentioned above and would elect their own President. ' The Committee would have the right of filling up vacancies whenever they occur. The Sub-division Officer, Bangalore, was notified and requested to intimate to the Court whether he would be agreeable to be on the Committee and to be its ex-officio President. He appeared in person before the Court on 26th of September 1957 and expressed his willingness.

4. The main question that remains for consideration is whether the institution is a Mutt presided

over by a Sanyasi succeeding to the office by tradition and usage, as it is in the light of a decision on this question that the scheme for the management of the institution has to be settled.

5. A large volume of oral evidence has been adduced by the plaintiffs and by defendant 12 in support of their case that the institution is a Matha Presided over by Sanyasi Swamis succeeding each other by tradition and usage. Defendant 12 has examined himself and his evidence will have to be dealt with later in some detail.

6. It might at once be mentioned that most of this evidence is not of much value as the witnesses are hardly in a position to speak from personal knowledge. It has been sought to be made out on behalf of the plaintiffs that the Mutt was founded by a Swami known as Venkatavadhuta who nominated Sahajananda Swami as his successor, that the latter in turn nominated one Veerananda Swami and that defendant 12 is the successor of Veerananda Swami having been nominated by him. P. W. 1 Munitareppa speaks to his father's uncle one Muniappa alias Gejjappa having gifted a new Mutt an old mutt and some vacant site to Sahajananda Swami.

He has produced an uncertified copy of the will by Gejjappa in which a reference is found to the above-mentioned gift. This witness is stated to have been about 50 years of age at the time of his examination i.e. in 1950. Gejjappa's will is of the year 1887. The witness obviously cannot speak from personal knowledge. P. W. 2 Narayana Gowda has given evidence to the effect that the founder of the mutt was Venkatavadhuta Swami who was succeeded by Sahajananda Swami, that Veerananda Swami succeeded the latter and was in turn succeeded by Defendant 12. He says that he is the daughter's son of one Irulappa. According to the plaintiffs, Irulappa gifted a piece of land on which the Omkareswara temple was got built by Venkatavadhuta Swami. This witness also speaks to defendant 12 having been ordained as a Swami by Veeni-nanda Swami. He says that Brahmins attended the function and poojas were performed, that defendant 12 was made to sit on a plank and a garland was put around his neck. The witness has given his age as 70 years, but the learned Judge has noted that he appears to be 50 or 55 years. The document relied on to establish Irulappa's connection with the land is Ex. 12 which is of the year 1872. The witness could have no personal knowledge of the matter. In cross-examination he first admitted that he had not seen Venkatavadhuta Swami but later stated not only that he had seen him but that he was present when Venkatavadhuta Swami ordained Sahajananda Swami. He says he was 18 years of age at the time. It has already been mentioned that there is a reference in Gejjappa's will which is of the year 1887 to a gift of mutts and land made to Sahajananda Swami. Therefore Sahajananda Swami must have been initiated much earlier. It is doubtful whether the witness had even been born on the date of the will. Hence no importance whatever can be attached to the statement that he was present at the time Sahajananda Swami was initiated by Venkatavadhuta Swami. The witness goes so far as to say that Sahajananda Swami did not acquire any property for the mutt and did nothing for its improvement. This is contradicted by other oral and documentary evidence of the plaintiffs themselves. He says that Sahajananda Swami entrusted the management to Veerananda Swami. P. W. 3 Doddegowda alias Kunte Gowda speaks to his presence at the time defendant 12 became a swami. He says that the latter was seated on a plank, that a Rudrakshimala was put around his neck, that he was given kavi cloth and that pooja was

performed and that it was Veerananda Swami who installed defendant 12. He denies the existence of a Committee of Management. The witness says that it was Sahajananda Swami that acquired property for the mutt while it was Venkatavadhuta Swami who acquired the mutt itself. But this is admittedly hearsay. P. W. 4 Manche Gowda also speaks to the initiation of defendant 12 by Veerananda Swami. He says that Venkatavadhuta administered Dharmaopadesha to his father but this can only be hearsay as the witness's age is given as 55 years. P. W. 5 Kadegowda is another witness who speaks to the, initiation of defendant 12 by Veerananda Swami. He says that defendant 12 was in the mutt even before he became a sanyasi and that he was helping Veerananda Swami by bringing flowers, etc. P. W. 6 Siddalinga Gowda says that there will always be a sanyasi in the mutt, that Veerananda Swami educated defendant 12 and initiated him into sanyasa. P. Ws. 8 and 9 speak to their being sishyas of the Mutt. P. W. 10 says that the Mutt is- a sanyasi mutt and that one sanyasi after another becomes the head of the mutt and that Mysore Linganna brought defendant 12 to the mutt, mantropadesha was administered to him and ceremonies were performed. In cross-examination he says he did not ask defendant 12 as to who appointed him Swami of the mutt.

This would seem to indicate that the initiation of defendant 12 into sanyasa did not necessarily mean his being made the Swami of the mutt. P. W. 11 says that Gejjappa founded the Mutt and so also did Venkatavadhuta but admits that he has no personal knowledge of these matters. P. W. 12 Venkatesha Sastri says he is a purohit of the mutt. He speaks to Veerananda Swami initiating defendant 12 into sanyasa asharama and japa and homa being performed on the occasion. He claims to have been one of the persons who officiated at the time under the principal purohit. He no doubt seems to suggest that the pattabisakha of defendant 12 also Took place at the time and this would seem to imply that defendant 12 became the head of the mutt. But it is difficult to believe the evidence of this witness as he says that Veerananda Swami was ill at the time and died a few days after the initiation ceremony. It is in evidence and there can be no doubt whatever that Veerananda Swami lived for many years after defendant 12 began to reside as a sanyasi in the mutt. P. W. 13 Gurappa also speaks to the initiation of defendant 12. He says that Veerananda Swami was looking after the mutt at Madivala as also the suit mutt after defendant 12 became the Swami. This is not even the case of defendant 12. P. W. 14 Muniswaminayakar resides opposite the mutt and says he goes there every Monday to offer puja. He says that defendant 12 is managing the affairs of the mutt, that there was no meeting of any committee and that defendant 12 does not maintain any account of income or expenditure. In cross-examination he says that Sahajananda Swami did not acquire any property for the temple or the mutt and that he does not know if he was writing any book.

It is in evidence that Sahajananda Swami wrote and published books and the sale of his philosophical works has been regarded as one of the important activities of the mutt. P. W. 15 Buttasame Gowda is the second plaintiff and claims to be one of the disciples of the mutt. He says that it is a sanyasi mutt, i.e. a mutt in which one sanyasi becomes a swami after another. P. W. 16 Venkategowda is plaintiff 4. He also claims to be a Bhaktha of the mutt. He was one of the persons who applied to the Deputy Commissioner for permission to file the suit. In the course of cross-examination he states, strangely enough, that their petition to the Deputy Commissioner was to the effect that defendant 12 was not properly managing the mutt and that therefore a scheme should be prepared.

7. Though eight persons have been examined as defence witnesses, the first three are witnesses examined for defendant 12, who supports the plaintiffs' case and D. W. 8 is defendant 12 himself. D. W. 4 is a formal witness who speaks to the entry of Gejjappa's will in the wills register of the Sub-Registrar's office. D. W. 1 Nanjundappa is an archak in the Omkareswara temple situated in the mutt. He says that he has been the archak there for 12 years and that his father was archak for nearly 20 years before him. He says that it was Veerananda Swami who appointed him as archak and that defendant 12 became the Swami of the mutt after Veerananda Swami. D. Ws. 2 and 3 are tenants of shops belonging to the mutt and speak to their paying rent to defendant 12.

8. D. Ws. 5, 6 and 7 are the three witnesses examined for the contesting defendants and all of them are members of the committee of management and have been arrayed as defendants 8, 1 and 11 respectively. D. W. 5 M. L. Naganna Nagappa says he was appointed a trustee or a member of the committee of management of the mutt in 1938 and speaks to the entry in Ext. III (the proceedings book of the committee) relating to his appointment and to subsequent entries. He speaks to the entry Ext. III (a) according to which defendant 12 had to maintain accounts under the direction of the President and one other member of the committee. He says that Exts. 4, 4 (a) and 5 are reports given by defendant 12 and that Ext. 5 (a) is the statement of account accompanying Ext. 5. He says that the members of the Committee not feeling satisfied with the accounts submitted by defendant 12 decided to take suitable action against him. D. W. 7 Singannachar and D. W. 6 Mariyappa are the only two surviving members of the committee appointed by Sahajananda Swami under his will. D. W. 6 Mariyappa says that he was a disciple of Sahajananda Swami in the sense that he along with some others was being taught Vedanta by the Swami. He says that the Swami had no other kind of disciples. He states that there was no guru-parampara i.e. succession of Swamis, presiding over the mutt either before or after Sahajananda Swami. He speaks to Ex. II which is a certified copy of the will or trust deed executed by Sahajananda Swami. He says that amongst the five sanyasis mentioned in Ex. II who were residing in the mutt, only Veerananda Swami stayed on in the mutt and the rest left it and that Veerananda Swami was sent out of the Mutt by the Committee of Management appointed under the above-mentioned document of Sahajananda Swami. He says that Veerananda Swami was so removed on the complaint made by defendant 12. He speaks to Ext. III, the proceedings book of the committee, and to the subsequent litigation between defendant 12 and the Committee members in respect of an item of property claimed by defendant 12 as his own as also in regard to other disputes. He says that he became a sishya of Sahajananda Swami in 1902 or 1903 and that he does not know who initiated Sahajananda Swami or Veerananda Swami into sanyasa. In the course of cross-examination he says that Sahajananda Swami founded the mutt and the temple about 50 years previously that he was about 17 or 18 years old then and that the mutt was built first and the temple was built two or three years later. Later in his deposition, however, he says he does not know if the temple was built in 1872 by Venkat-avadhuta or if the mutt was built by Gejjappa at about the same time. He admits that he does not know how Sahajananda Swami got the mutt and the temple. He also admits his previous statement Ex. E-2 to the effect that defendant 12 was managing the mutt property and that he is referred to as the swami of the mutt in the proceedings book Ex. III. D. W. 7 Singannachar speaks to Ex. II, Sahajananda Swami's will, under which he was appointed as one of the members of the committee to look after the management of the mutt. He admits that he does not know the previous history of the mutt or the temple in the mutt though he also says that he had come to the mutt when Sri

Omkareswara Swami's image was installed.

9. Defendant 12 has examined himself as D. W. 8 in support of his claim that he is the head of the mutt by virtue of succession. He says that the mutt was founded by Venkatavadhuta, that the latter also founded the Omkareswara temple, that Gejjappa built the mutt and entrusted it to Venkatavadhuta, that the site on which the temple was built originally belonged to Jrulappa and that it was gifted by the latter to the mutt. He has produced Exts. 12 to 15 in support of these statements. He says that after Venkatavadhuta his disciple Sahajananda Swami succeeded him and that the latter in his turn was succeeded by Veerananda Swami who later on installed defendant 12 as the Swami. It is clear, however, that he could have no personal knowledge of the origin of the mutt or the temple and that he could speak from first hand knowledge only in regard to matters that transpired subsequent to his entering the Mutt, which was admittedly long after the death of Sahajananda Swami.

10. It will be seen from the above evidence that it is D. W. 6 Mariyappa and D. W. 7 Singannachar who can speak with some firsthand knowledge of the institution. But it is clear that even by the time they came to know about the institution, which appear to be about 1901 or 1902, Sahajananda Swami had been there for many years.

11. The plaintiffs and defendant 12 rely also upon same documentary evidence in support of their case about the origin of the Mutt and the temple. The earliest document is Ext. 12, dated 11-1-1872, which is a letter addressed by the Bangalore Town Municipal Board to Erulappagowda and directs him to approach the Deputy Superintendent of Survey for further action in regard to his request for erecting a mantap, constructing a well and a compound wall in the land measuring 23 yards gifted by him to Venkatavadhuta Swami. There is no indication in it of the location of the plot. There is some oral evidence to the effect that Erulappa is buried in the Mutt premises. The next document is Ext. 15 which is of the year 1880 and is an endorsement issued by the Bangalore Town Municipal Board to Venkatavadhuta Swami informing him that orders have been issued for the grant of a licence to him to put up a structure as applied for by him and that the plan has been returned to him duly signed. That plan is Ext. 14. Venkatavadhuta Swami is described in Ext. 13 as being a resident of Kalasi Lines. Ext. 14 is another endorsement by the Bangalore Town Municipal Board to Venkatavadhuta Swami. It is dated 24-11-1880 and states that he has been granted an extension of three months' time for completing the work of his Mutt. The suit Mutt also is situated in Kalasi Lines or what is now called Kalasipalyam. But in the absence of any material to show the exact location of the plot it would be difficult to identify Venkatavadhuta Swami's Mutt as the suit Mutt. It may also be mentioned that Defendant 12 himself has stated that another mutt is situated opposite the suit Mutt. The next document is Ex. A-1, copy of the will of Muniyappa alias Gejjappa, entered in the Wills Register of the Sub-Registrar. It is dated 1-8-1887 and there is a recital in it to the effect that the testator had previously given to Sahajananda Swami a new Mutt and an old Mutt, cocoanut trees and land by the side of it, situated at Doddabailkhana, Bangalore. It is not seriously disputed that Kalasipalyam forms part of Doddabailkhana. But it Gejjappa made a gift of the structures and

land above referred to Sahajananda Swami it follows either that the Mutt occupied by Venkatavadhuta was different or that it had come to be owned by Gejjappa. Defendant 12 seeks to make out that Gejjappa gifted the property to Sahajananda Swami, even when Venkatavadhuta was alive and gives the latter's old age as the reason. Defendant 12 had not even seen Sahajananda Swami. Therefore, the above statement is an obvious effort to establish some sort of identity between Venkatavadhuta's Mutt and Sahajananda Swami's Mutt. There is no evidence as to when Venkatavadhuta died. Ex. A-1 Gejjappa's will does not indicate when the gift of land garden and the old and new mutts was made by Gejjappa to Sahajananda Swami though it must have been some time before 1887, the year of the will. The language employed in the will would seem to show that the old and new mutts gifted were buildings and not running institutions. Some reliance is also placed upon the statement in the preface to Ext. D, a book entitled "Karnataka Vritti Prabhakaram" written by Sahajananda Swami to the effect that the latter reached Bangalore with his mother with the help of Venkatavadhuta. An account of the life of Sahajananda Swami is given in the preface. Apart from the question of the admissibility of this statement it would seem to show that that was all the part played by Venkatavadhuta in Sahajananda Swami's career. For, it would be totally unlikely that if Sahajananda Swami was the disciple and successor of Venkatavadhuta those facts would fail to be mentioned. On the other hand the same account of Sahajananda Swami's life states that he was the direct disciple of Sri Gundabramhananda Swami. This is confirmed by the recitals in Ext. III, proceedings book of the Committee, in which Sahajananda Swami is described as the disciple initiated into the Ashrama by Gundabramhananda Swami. (Text in Kannada omitted.) Defendant 12 has stated in the course of his evidence that Gundabramhananda Swami had three disciples one of whom was Venkatavadhuta who founded the suit mutt and that Sahajananda Swami succeeded him. This account is obviously an attempt to reconcile the discrepancies and has admittedly no basis in personal knowledge. In the light of this state of evidence there is no basis for accepting the plaintiff's case that the Mutt was founded by Venkatavadhuta and that Sahajananda Swami was his successor and in that capacity was in charge of the Mutt and its property.

12. Ext. II is a copy of the Will dated 17-7-1912 executed by Sahajananda Swami. In this he describes himself as the Dharmakartha of Sri Omkareswara Deity. It is recited in the document that the Swami got the Mutt and temples built. It gives a schedule of six items of immovable property, amongst which item 5 is the premises of the Mutt and temple. It was contended by the plaintiffs that as Sahajananda Swami only succeeded to the headship of the Mutt, he had no right to dispose of by will the property belonging to the institution. This contention cannot be accepted since as found above, Sahajananda Swami did not succeed Venkatavadhuta. There is no reason to disbelieve the recital in the Will that Sahajananda Swami founded the Mutt and all the Schedule items of property were acquired by him. In so far as the case for the plaintiffs and Defendant 12 is based upon tradition and usage, it has no substance, since that question would arise for consideration only in the case of an institution of immemorial origin. We have therefore to look to the terms of Ext. II for ascertaining the rights and responsibilities in regard to the management of the institution and its property. Plaintiffs and Defendant 12 have come forward with the case that Sahajananda Swami was succeeded by Veerananda Swami as the head of the Mutt and that the latter appointed Defendant 12 as his successor. The oral evidence in the case has already been discussed above, and it has been indicated that it does not establish that Veerananda Swami was appointed by Sahajananda Swami as his successor. The terms of Ext. II seem to show not only

that Veeranandaswami was not appointed as his successor by Sahajananda Swami, but that the latter contemplated no such arrangement. The document recites that five disciples, viz. Nithyananda Swami, Yogananda Swami, Veerananda Swami, Byrappa Swami, and Akhandananda Swami were residing in the Mutt, that they had been initiated into Sanyasa by Sahajananda Swami and that they were studying under him and performing duties assigned to them by him. It provides for their residence in the Mutt, their continuing to carry on the worship of the deity, the celebration of Utsawas, etc. If it was in the mind of Sahajananda Swami that one of these five should be his successor as the head of the institution it would have been the most natural thing for him to make definite provision for it in the document and for future succession. No such provision is made. This cannot be regarded as an inadvertent omission. Nor is any sort of differentiation made amongst these five sanyasi disciples. On the other hand another provision in the document contemplates the contingency of their being sent out of the institution in the event of misconduct. The natural inference to be drawn from these circumstances is that Sahajananda Swami did not intend a succession of Sanyasi Swamis to preside over the institution. The learned District Judge seems to have been greatly influenced by the institution being described as a mutt. He says that a Mutt cannot exist without a swami and a temple without a deity and a country without a king. It is no doubt true that the Hindu Law recognises institutions known as Mutts whose "Primary purpose is the maintenance of a competent line of religious teachers for the advancement of religion and piety, for the promotion of religious knowledge, the imparting of spiritual instruction to the disciples and followers of the Mutt and the maintenance of the doctrines of particular schools of religion or philosophy". But the mere use of the word 'Mutt' to describe an institution does not make it a Mutt such as is contemplated by the Hindu Law, with its specific incidents as regards the rights and duties of a Mathadhipathi or Mahant. Mathas and temples are, no doubt the most common forms of Hindu religious institutions. But dedication for religious or charitable purposes need not necessarily take one of these forms. The maintenance of Sadavartas, tanks, seats of learning and homes for the disabled or the destitute and similar institutions is recognized by and well known to Hindu Law, and when maintained as public institutions, they must be taken to have a legal personal it, as a Matha or the deity in a temple has, and the persons in charge of the management would occupy a position of trust. In the case of institutions which have come down through antiquity their activities, their tradition and usage would indicate whether they are Mutts or not. In the case of institutions whose origin can be traced and particularly those which are governed by provision incorporated in a document, the real character of the institution has to be gathered from the circumstances of its origin and the provisions of the document. The evidence in the case makes it clear that Sahajananda Swami engaged himself in studies and in imparting spiritual instructions to those who came and sought it. He also appears to have founded a temple as an integral part of the institution and arranged for the daily worship of the deity, and for periodical celebrations, etc. Provision also appears to have been made for the maintenance of the inmates as also for the feeding of occasional visitors, particularly those regarded as holy men and for feeding during celebrations. Even though he founded and built the institution, he seems to have regarded himself as a trustee "Dharmakarta". The expenses seem to have been met from the income from the property attached to the institution and from gifts and offerings. The activities of the institution and his own life of piety and devotion to learning appear to have attracted visitors who, as is usual and natural amongst the people at large, made offerings to the Swami and to the temple. But it is clear that there was no particular class, group or community who could be described as the disciples of the Mutt. Those who studied under him were his actual disciples. Others who visited the Mutt and the temple either frequently or casually did not and could not acquire any

special status as Sishyas. Some witnesses for the plaintiffs have stated that they were the disciples of the Mutt and that such disciples are spread over various parts of the Mysore State. This description can only mean that such persons visited the mutt to make offerings to the deity or the swami as an act of piety. The provisions of the Will Ext. II, as already mentioned above, also make it clear that Sahajananda Swami did not contemplate a succession of swamies to be in charge of the institution. His intention was to provide for the continuance of religious study, worship of the deities in the premises, the feeding of the people who gathered during occasions and other similar activities. It is, therefore clear that the institution, though one dedicated to religious purposes, was not a 'Mutt' in the legal sense of the term.

13. Some reliance is placed upon the existence of a Gaddige or Gadi in the Mutt and referred to in Ext. 2 as indicating the recognition of a peetha or sacerdotal office. It is clear, however, from the evidence in the case that the word "Gaddige" is used in the same sense as a "Samadi" or a mound or monument over the grave of a revered person. The course of events after the death of Sahajananda Swami also makes it clear that the institution was not run as a Matha. It is seen from Ex. 17 that the Swami passed away on 29-1-1914. Ext. 18 is an appeal dated 7-1-1915 issued under the signatures of Nithyananda Swami and Veerananda Swami for the celebration of the first anniversary of Sahajananda Swami's death. The fact that it is signed by two of the five sanyasis, who as shown in Ext. II were resident disciples of the deceased Swami, shows that Veerananda Swami did not become the head of the institution. Under Ex. II, Sahajananda Swami appointed a Committee of 17 persons to be in charge of the institution and its property. The day to day activities of the institution were to be carried on by the five disciples. It may incidentally be remarked that no exclusive responsibility or right is given to any one of these five. They were enjoined to carry on these duties subject to the rules to be framed by the Committee. It is the members of the Gommittee that were authorised to meet the expenditure for the worship of the deity, for the Deeparadhana, puja, feeding of pious guests, etc. It is also specifically stated that the members have full liberty and authority to realise the dues and to regulate the income and expenditure. Ext. III the proceedings book, maintained by the Committee shows that the members began to function in accordance with the terms of Ext. II soon after the death of Sahajananda Swami. The first entry is dated 19-4-1914 and appoints the various office bearers and directs the Secretary and the Assistant Secretary to prepare an inventory of the property belonging to the Mutt. Some of the resolutions deal with the printing and sale of the works of Sahajananda Swami. It is also seen that at a meeting held on 23-7-1926 Veerananda Swami who as the man on the spot had been in charge of the affairs of the mutt was called upon to render an account of his management, and that Veerananda Swami has signed the proceedings of that date. The proceedings of the Committee held on 29-12-1927 show that Defendant 12 reported to the Committee that Veerananda Swami had left the mutt and gone away to Madivala, that nevertheless he was making secret visits to the Mutt and removing articles. It was resolved on that day that Veerananda Swami should not be allowed to enter the mutt and that defendant 12 should prevent him if he should try to do so. The proceedings held on 22-7-1928 show that as in the view of the Committee defendant 12 had satisfactorily looked after the duties entrusted to him his appointment was continued subject to his good conduct. These entries are enough to show that Veerananda Swami did not function as the head of the Mutt. It is the case of the Plaintiffs and Defendant 12 that the latter was initiated by Veerananda Swami into Sanyasa and appointed by him to be his successor as head of the mutt. The proceedings of the Committee

above referred to totally contradict this version. For, it states that Defendant 12 had his Bramopodesha from Chikkalingannaswami, the principal disciple of Sahajananda Swami.

It may be added that Defendant 12 has signed the proceedings of the above meeting. It is interesting to note that Defendant 12 himself has got exhibited Ext. 46 a letter dated 28-7-1926 addressed to him by Chikkalinganna. It is written from Bangalore to Defendant 12, who is described as Siddiah, care of Tirupathi Sri Nagavadhootha Swami's mutt. It asks Defendant 12 to go to the suit mutt to relieve Veerananda Swami. The mode of addressing Defendant 12 in the letter would indicate that Defendant 12 had not yet become a Sanyasi by that time. Ext. 9 is 'Sri Vedanthapanchadesi' with a Kannada commentary of Sahajananda Swami published in 1930. Defendant 12 has got incorporated in that book a note on the publication of the second edition. That note is interesting for more reasons than one. It states that Veerananda Swami had not rendered proper accounts to the Trustees. It refers to his (defendant 12) having been asked by the Trustees to look after the affairs of the institution. It further states that in taking up the task he had obeyed the commands of his Guru Sri Chikkalingaswami, the dear disciple of Sahajananda Bharathi Swami. These statements are in the nature of categorical admissions in regard to the status of the Committee, his own status and his initiation by Chikkalingaswami and not by Veerananda Swami. That is the reason why Defendant 12 was later on at pains to delete this note from the copies of the book. It may be mentioned that, as late as 9-6-1947, Defendant 12 in the notice got issued by him through his Advocates to the Committee members had stated that he was nominated as Swami of the Mutt by Swami Linganna about the year 1926. The effort of Defendant 12 to disclaim responsibility for the note Ext. 9 (a) in the book Ext. 9 is on a par with his statement that he was not aware of the existence of the will Ext. II till litigation started between him and the Committee and that he signed the entries in the proceedings book Ex. III at the dictation of the Committee Members. It is interesting to note that one of such members was Chikkalinganna or Chikkalingaswamy himself, the guru of defendant 12. Not only the entries in the proceedings book but the report Ext. IV and account patti Ext. IVA indicate that Defendant 12 was fully aware of the nature and details of the proceedings and of the fact that the Committee was functioning under the terms of Sahajananda Swami's will. It also shows that he was appointed by the Committee acted under the directions of the Committee and submitted reports in respect of matters entrusted to him. There are also entries to show that he himself took the initiative in drawing the attention of the Committee to several matters. It is, therefore, idle for defendant 12 to contend that he is the head of the institution and that he can function independently of the control and directions of the members of the Committee. Apparently the persons who constituted the members of the Committee from time to time, having regard to the fact that they were themselves men engaged in various trades and occupations and to the trust reposed by them in Veerananda Swami and later on in Defendant 12, allowed them not only to carry on the day to day activities of the mutt but to deal with the property belonging to the mutt also. Many documents have been exhibited by Defendant 12 to show that various public bodies and functionaries such as the Municipality, the Land Acquisition Officer, the Electrical Department and the Revenue Department have addressed letters to Veerananda Swami and later on the Defendant 12 himself as persons in charge of the mutt. Veerananda Swami and Defendant 12 have even drawn the compensation amounts granted for the acquisition of some items of property belonging to the mutt.

It is also seen that Veerananda Swami obtained letters of administration in regard to a small amount standing in the name of Sahajannda Swami in the Post Office Savings Bank Account. It

is also in evidence that Defendant 12 had leased out shops belonging to the Mutt. These facts, however do not indicate any recognition of the right either of Veerananda Swami or of Defendant 12 to the unfettered Management of the institution. As already mentioned above the Committee Members took steps to remove Veerananda Swami when they found that he was abusing his position of trust. It is ironical that Defendant 12 who brought the misdeeds of Veerananda Swami to the notice of the Committee Members, should later on have tried to arrogate to himself the status of the head of the mutt when in his turn he was called upon to render an account of his dealings in regard to the matters relating to the mutt. It is significant that the plaintiffs who support the stand of defendant 12, nevertheless, have prayed that the property and assets of the institution may be vested in the Board of Trustees to be appointed, though they add, that his rights need not be curtailed. Defendant 12 also in his written statement says that he has no objection for a scheme being prepared, provided his rights are not interfered with. Neither the plaintiffs nor Defendant 12 specify the rights. If they are those of the head of a mutt, a Committee or a Board would have no locus standi at all. Defendant 12 came out with the version that he appointed a board of advisers to assist him in the management of the Mutt. This has been found rightly by the learned District Judge to be totally unfounded.

The matter, however, does not need any further consideration in view of our finding that Defendant 12 has no right at all other than that of residing in the mutt carrying on the day to day duties of worship, study, Dasoha, etc., under the directions and control of the Committee of Management and subject to his good conduct. Whether he has conducted himself in such a way as to render himself liable to be sent out of the mutt does not arise for consideration in this appeal.

14. In the light of the above finding and the agreed statement by the Advocates for the parties to this appeal we think that a scheme should be framed for the management of the institution. It has been urged before us that any scheme to be formulated must be strictly in conformity with the terms of Sahajananda Swami's will. We do not think that that is the correct legal position. The Court has discretion under Section 92 of the Code of Civil Procedure to frame a scheme in such a manner as commends itself to the Court so long as the scheme fulfils the objects sought to be achieved by the institution. It is seen from the material on record that Swami Sahajananda founded and built up the institution and acquired substantial property for it and was in charge of it for three decades. One of the witnesses has stated that he was a Brahmin. But it would appear from the account of his life given in Ext. D the book "Karnataka Vritti Prabhakaram" that he was a Saiva Kshatriya by birth. But the matter does not appear to be one of any material importance since it is clear that he was a man of catholic outlook and made no distinction of caste or community in extending the benefit of his teachings or in regard to the access to the mutt or temple. The only classes of persons who were not visiting the institution are stated to be Mohamadans and "untouchables". Those who came to him for instruction in Hindu Philosophy seem to have belonged to various castes and persuasions by birth. Amongst the 17 persons who are appointed by him under his will as members of the Committee of management not only were there his own disciples but other men of standing and even a Swami who owed allegiance to another guru. His idea seems to have been to see that men of substance and commanding esteem should be in charge of the management of the institution. We have also mentioned above that the institution has no definite class of disciples or bhakthas, though it is not unnatural that persons of

the neighborhood and others constantly coming to the institution for the worship of the deity or offering their respect to the Swami there might have regarded themselves as disciples. It is seen from the evidence on record that many of the witnesses examined on behalf of the plaintiffs come from the area from which defendant 12 originally hailed. That may account for a number of persons from that area quite honestly regarding themselves as disciples of the mutt. But that circumstance in itself would not place them in a different category from others who might go to the institution to offer worship to the deity and respect to men of religion whom they found there. Quite clearly Sahajananda Swamy did not have it in mind to confine the membership to his disciples. In any event that would not have been possible after all his direct disciples had passed away. It is seen that Sahajananda Swami also provided for vacancies as and when they arose being filled up by the surviving members of the Committee. It is natural that he should have expected the five sanyasis whom he had initiated into sanyasa and who were residing in the mutt to carry on the day to day duties in the mutt under the supervision of the Committee. The evidence shows that only two of them were in the mutt when the appeal, Ext. 18, for the first anniversary was issued and that the others had left. Later on it was only Veerananda Swami that remained in the mutt. It was, therefore, natural not only that he should be looking after the day to day work of the institution but that the persons who came to the mutt should think of him as the Swami of the mutt, and that they should think in the same terms of Defendant 12 also when he began to reside in the mutt and look after the work there. But it is seen, however, from Ex. III and other documents exhibited in the case that the Committee continued to function till litigation started between them and Defendant 12, though it did not concern itself with the day to day affairs of the institution. It is also seen from Ex. III that vacancies arising from the death of the original members were periodically filled up and that even a lady figured as a member of the committee.

15. We have held that the institution is not a mutt in the sense in which it is used in the Hindu Law, and that it has no specific or definite class of disciples. Hence, no question of some one being the head of the mutt arises and no provision is necessary for election by the disciples or bhakthas, as no such definable class exists. It appears to us that a body like that suggested by agreement amongst the parties with authority to fill up vacancies and with the Sub-divisional Officer, Bangalore, as a member and Ex-officio President would be the most appropriate body for the management of the institution, and for a substantial fulfilment of the objects indicated in the Will of Sahajananda Swami. All the parties are agreed that the inclusion of the Sub-divisional Officer, Bangalore, will conduce to the stability of the Committee, to its functioning in a regular and methodical way and as a deterrent to the development of factious spirit and it is but appropriate that the only two surviving members of the original Committee should find a place on the new Committee. We accordingly set aside the scheme formulated by the learned District Judge and in its place substitute the following Scheme : A Committee of Trustees consisting of 12 members shall be vested with the management of the institution. The first members of the Committee shall be :

1. The Sub-divisional Officer, Bangalore (Ex-officio President).

2. Sri Y. Mariyappa, son of Venkataramappa, residing in Manavarthapet, Bangalore City, (member of the original committee, Defendant 1).
3. Sri Singannacharya, residing in Kalammana Temple Street, Mysore City, (member of the original committee, Defendant 11).
4. Sri Sreenivasa Rao Mane, son of Narayana Rao Mane, Visveswarapuram, Bangalore City.
5. Sri A. T. Thimmarayappa, son of Anekal Thimmiah, Mandi Merchant, New Tharagupet, Bangalore City (Defendant 8).
6. Sri Durgada Krishnappa, son of D. Venkatappa, Mandi Merchant, New Tharagupet, Bangalore.
7. Sri H. K. Munivenkataswamappa, Mandi Merchant and President, Grain Merchants' Cooperative Bank, Bangalore City.
8. Sri G. Ananthasagaraiah, B. A., Retd. Asst. to the Director of Industries, Dodda-mavalli, Bangalore City (Plaintiff 2).
9. Sri Narayan Gowdaru, Dharmadarsi of Sri Dharmaraja Temple, Thigalarpet, Bangalore City.
10. Sri G. C. Basappa, son of Chennaveerappa, Cloth Merchant, and Dharmadarsi of Sri Kailaseswara Temple, Basavangudi.
11. Sri G. Gurubasappa, son of G. Chikkaveerappa Banker, Visweswarapuram, Bangalore City.
12. Sri Mari Nanjundappa son of Mariyappa, Jail and Hospital Contractor, Jayachamarajendra Road, Bangalore City.

The Sub-Divisional Officer, Bangalore, shall be a member and Ex-Officio President of the Committee. The management of the institution including the temple and the deities in the institution shall be vested in the Committee and it shall have the power to elect office bearers other than the President. In the event of the death or resignation of any member other than the President, the remaining members of the Committee shall have the right to fill up the vacancy by appointing any suitable person. The Committee shall have the power to frame rules and bye-laws regulating its own proceedings and for the administration of the institution not inconsistent with this scheme. The institution shall be administered so as to promote the following objects :

1. The daily worship of the deities in the Math temple and the performance of Utsavas;
2. The performance of the daily pooja at the Samadhis and of the aradhana;
3. Feeding of guests and sadhus in particular;
4. The study and teaching of Hindu religion and Philosophy;

5. Publication of literature pertaining to Hindu religion and philosophy; and
6. Any other activity calculated to promote the above objects.

In taking steps to implement the above objects, the Committee shall have due regard to the resources of the Institution by way of income from its property, and such income as may be derived in the form of gifts and offerings.

The Committee will have power to employ such persons as are necessary for carrying out the above objects and to regulate the admission to and residence in the Math of suitable persons for the purpose of study and teaching. This is without prejudice to the generality of the powers which the Committee will necessarily have to discharge its duties. It will also have authority to delegate to its office bearers or Sub-Committee, generally or for specific purposes, such powers as may be deemed necessary by the Committee.

The Committee shall take over the management of the Institution from the existing Committee consisting of Defendants 1 to 11 and obtain from them and from Defendant 12 all particulars and accounts necessary to prepare an accurate statement of the assets and liabilities of the Institution.

The Committee may, when deemed necessary by it, seek the direction of the Court (District Court, Bangalore) on any matter relating to the administration of the Scheme.

16. The decision of the lower Court is modified as indicated above. There will be no order as to costs.

Order accordingly.