PETITIONER:
PT. RAM CHANDRA SHUKLA

Vs.

RESPONDENT:
SHREE MAHADEOJI, MAHABIRJI AND HAZRAT ALIKANPUR & ORS.

DATE OF JUDGMENT:
15/10/1969

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
VAIDYIALINGAM, C.A.
DUA, I.D.

CITATION:
1970 AIR 458 1970 SCR (2) 809
1969 SCC (3) 700

ACT:
Hindu Law-Property dedicated for promotion of the sport of wrestling whether constitutes a valid trust under Hindu Law-Such property along with other property acquired under Land Acquisition Act, 1894-Compromise during reference proceedings-Endowed property purchased by manager and price adjusted against total compensation-Whether on such purchase property loses its character as trust property.

HEADNOTE:
One Mani Ram, a wrestler, owned certain properties including a groveland. In the groveland he maintained an Akhara or wrestling ground. He spent the income from the groveland as well as his other income for the promotion of wrestling. On the archgate of the Akhara was installed an idol of mahabirji and over a small room nearby a Shiv Lingam was installed. In order to attract Muslim wrestlers a tasweer of Hazrat Ali was also placed in the Akhara. In 1830 Mani Ram partitioned his properties. He took a one eighth share including the said groveland for himself and wife. In the partition deed the said groveland was described as a wakf. After Mani Ram's death his wife entered into possession of his property and continued to maintain the A khara out of the income of the groveland. In 1862 she made a will wherein she described the groveland having the Asthan of Mahabirji and Mahadeoji as having been dedicated by her husband. She enjoined her son Mangli Prasad to continue to maintain the Akhara 'as heretofore,' and empowered him to appoint his successors in management from among the descendants of Mani Ram. Mangli Prasad was succeeded in management by his widow. After the later's death there was litigation between her legate and Mangli Prasad's daughter Sheodei Kaur. The Court declared the said groveland and Akhara to be endowed property and held that Sheodei Kaur was entitled to the possession thereof as manager. The property came into the possession of Ishwar Narain, the son of Sheodei Kaur, in 1906. He built a cinema house on a part of the said groveland in 1914-15. In 1937 the Improvement Trust of Kanpur acquired the groveland, the structures on it, as well as the surrounding property. In reference

proceedings regarding compensation a compromise was arrived at whereby the Improvement Trust agreed to sell to ishwar Narain the portion of the acquired property corresponding to the endowed property along with the structures thereon for Rs. 25,000 which amount was adjusted against the total compensation payable to him for the acquired property. On Ishwar Narain's death in 1948 the property which was described in his will as his personal property passed to his sister's sons who were enjoined to maintain the Akhara and the Asthan. The respondents through their next friend instituted a suit in which they challenged the bequest on the ground that the Akhara and the groveland constituted trust property. The trial court held that the possession of the property in question by Mani Ram and his successors was that of managers or trustees, it further held that the dedication was in favour of the Manager or trustee for the maintenance of the Akhara. The High Court held that the dedication was in favour of the idols of Mahabir and Mahadeoji. In appeal to this Court by certificate the main question for consideration was whether there was
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a valid trust under Hindu law in favour of the respondents. The appellant also urged that what was dedicated was not the groveland but the grove, and that after the purchase by Ishwarlal of the groveland and the structures thereon from the Improvement Trust that property could no longer be treated as a trust.

HELD : (i) (a) The documents on record as also the evidence as to the conduct of Mani Ram and those who held the property after him clearly showed that Mani Ram dedicated the groveland and not merely the trees standing thereon. [816 C]

(b) The purchase of part of the said property after its acquisition was from out of the compensation received by Ishwar Narain and not out of his personal funds so that if the trust was in law a valid one, the property purchased by him out of the trust funds would he stamped with the trust and he would in that event be holding that property as a trustee or manager and no as an owner. [816 D]

(ii) However the trust could not in the present case be held to a valid one under Hindu law. [822 B-C]

A dedication of property for a religious, or a charitable purpose can, according to Hindu law, be validly made orally and no Writing is necessary to create an endowment extent when it is created by a will. An appropriation of property for specific religious or charitable purposes is all that is necessary for a valid dedication. Hindu piety found expression in gifts to idols to religious institutions and for all purposes considered meritorious in the Hindu social and religious system. There is no line of demarcation in the Hindu system between religion and chairity : gifts both (or religious and charitable purposes are impaled by the desire to acquire religious merit. They may take the form of Istha (sacrifices and sacrificial gifts) or Purta (charities such as maintenance of temples, tanks, wells etc.). But the terms Istha and Purta themselves are elastic and admit of no rigid definition. As times advanced more and more categories of acts considered to be beneficial to the public would be recognize depending on the needs and beliefs of the time. [819 C-G, 820 B-C]

But there is nothing- to show that the promotion of a particular game either for entertainment of the public or as encouragement to those who take part in it has ever been reconised as a charitable trust according It) Hindu law. Neither Pandit Prannath Saraswati, nor mukherjea, nor Maynt suggests in his treatise that a dedication for the promotion of particular game or sport is a charitable trust under Hindu law. [820 F-G]

The English law of trusts as found in the Statute of Elizabeth or the law relating to Superstitious Uses is not applicable to India. But even in English cases dedication for promotion of games, except as a part of education, his not been treated as a charitable trust. [820 H; 821 E]

As held by this Court in Saraswathi Ammal's case, in determining the validity of a trust under Hindu law it is the dominant purpose of the turst which is relevant. In the present case the purpose of installing the two idols and the tasweer clearly was to enable the wrestlers to pay their homage and salutations to the patron deities of the game before entering into the wrestling arena. On the facts it must be held that the dominant object of the dedication was the Akhara and the said idols and the tasweer were installed only to attract persons of both the communities to the Akhara and to provide for them there the facility for invoking the divine benediction before they participated in wrestling [818 E-G]

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That being the position it was impossible, in the absence of any authority textual or by way of a president, to hold that the dedication in question was for either a religious or charitable purpose recognised by, Hindu law. [822 B-C]

The appeal must accordingly be allowed.

Saraswathi Ammal & Apr. v. Rajagopal Ammal, [1954] S.C.R. 277, Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao, [1957] S.C.R. 1122 at 1128 and " Vidyavaruthi v. Balusami Ayyar, ( 1921 ) 48 I.A. 302 at 311, relied on.

Commissioners for special Purposes of the Income-tax v Pemsel, [1891] A.C. 581 at 583 In Notage, Jones v. Palmer, [1895] Ch. 649, In re Hadden Public Trustee v., More, [1931] 1 Ch. 133, In re Marietta, Marietta v. Governing Body of Aldenham School, [1915] 2 Ch. 284, In re Daley v. Lloys Bank Ltd. [1945] 114 L.J Ch 1, Trustees of the Tribune press v. Commissioner of income-tax I.L.R. [1945] Bom. 153 and cricket Association , Bengal v. Commissioner of Income tax, Calcutta, A.I.R. 1959 Cal. 296. referred to.).

Mayne's Hindu Law 11th Ed. p. 192, mukherjea's Hindu law and Religious and Charitable Trust 2nd Ed.p. 11, and Pandit Prannath Sarasvati's Hindu Law of Endowments 1897, pp. 26-27. relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION :Civil Appeal No. 1393 of 1967.

Appeal from the judgment and decree dated August 5, 1965 of the Allahabad High Court in First Appeal No. 187 of 1957.

C. B. Agarwala, Ravinder Bana. and O. P. Rana, for the appellant.

J. P. Goyal and P. N. Tiwari, for respondent No. 1 (1).

Yogeshwar Prasad and M, Veeraappa, for respondent No. 1 (11)

The Judgement of the Court was delivered by

Shelat, J. This appeal, by certificate, is directed against the judgment and decree of the High Court of Allahabad dated August 5, 1965 and related to a piece of land together with buildings thereupon including an Akhara (Wrestling ground). The property is situate in Kanpur and bears at present Municipal No. 26/72, its original No. being 26/30.

Sometime prior to 1830, one Mani Ram, well-known during his life-time as a wrestler, purchased a groveland with trees standing thereon. Whether he pruchased one such groveland

and divided it into two, or pruchased tow such grovelands and amalgamated them into one is not quite certain. Along with this land he was possessed of other properties adjacent to the said groveland. It appears that being himself a wrestler and fond of that sport Mani Ram pruchased the said groveland for setting up and main-
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taining an Akhara where wrestlers of both Hindu and Muslim communities could come for wrestling. Besides the income from the said groveland, Mani Ram spent large amounts for promoting wrestling and to that end made a number of disciples.

He had by his first wife six sons and a seventh son, Mangali Prasad, a wrestler of repute, from his second wife, Rahas Kaur. By a deed of partition dated June 23, 1830 he divided all his properties into eight shares giving one share to each of his seven sons and retained the 8th share for himself and the said Rahas Kaur. This 8th share included the said groveland on which stood the said Akhara as also certain other structures. The Akhara ground was bounded by a compound wall with an archgate to enter into. It appears that with the object of attracting wrestlers he installed on the archgate an idol of Mahabirji, a Shiv Lingam over a small room which stood next to the said gate, and a tasweer of Hazrat Ali. The two idols and the Tasweer were obviously intended to give a religious bias to the Akhara, the first two to attract Hindu wrestlers and the third to attract Muslim wrestlers. The said deed of partition stated with regard to the said 1/8th share and the said groveland that none of his seven sons would have any interest or right in them as the "one eight (1/8th) share and the grove, which is a waqf property and which 1, the executant, have taken for myself the executant and my second wedded- wife shall remain owner thereof till our life time." It would thus appear that even before 1830 Mani Ram had already dedicated the said groveland for the purposes of the said Akhara and that was why he referred to it as waqf property. Mani Ram managed the said groveland in the aforesaid manner using the income thereof for the said Akhara. On his death the property came under the management of his widow, the said Rahas Kaur. On May 12, 1862 Rahas Kaur made a will in which after reciting the partition deed of 1830 she stated as follows :

> "He (Mani Ram) dedicated two grooves-situate in Philkhana Bazar, which has Asthan of Mahadeoji and Mahabir and Akhara and Taswir of Hazrat Ali-The Akhara and Asthan-up to this day are continuing as theretofore, and Mangli Prasad, my son, is unparalleled in wrestling. In order that it may continue I execute a will that (paper torn) shall be spent over it as mentioned in the will of my husband. The Akhara and Asthan shall continue as heretofore."

The will then provided that the management of the Akhara and the Asthan should remain with Mangli Prasad and authorised Mangli Prasad to appoint managers after him from the issues of Mani Ram and thus the management should go on from generation to generation.
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From a deed of lease dated June 28, 1862, executed by one Mst. Tejia, it appears that the said groveland was given on lease to her at the annual rent of Rs. 23 by Mangli Prasad. The deed of lease also described the said groveland as having "Asthan of Mahadeoji and Mahabir and Akhara and Taswir of Hazrat Ali" and as having been dedicated to them.

In 1862, one Bansgopal filed suit No. 490 of 1862 against Mangli Prasad and others for partition and for 1/3rd share in the said groveland. Mangli Prasad filed a written statement therein explaining how the groveland was purchased by Mani Ram from out of his own funds and how he had dedicated it and referred to (be said partition between Mani Ram and his sons. He also described how after Mani Ram's death in 1849, the property was administered first by Rahas Kaur and after her death under the directions of her said will by him. Mangli Prasad in this written statement denied that the plaintiff in that suit had any right or interest in the said groveland, the same having been dedicated by Mani Ram for the purposes aforesaid.

It appears that after Mangli Prasad's death his widow, Janki Kaur, entered into possession of the said property. From the judgment in First Appeal No. 279 of 1901 of the High Court of Allahabad dated December 23, 1903 it would appear that Janki Kaur left a will in favour of one Kishan Sarup and on the latter claiming the property Mangli Prasad's daughter. Sheodai Kaur, filed a suit for a declaration of her right of possession to the said property. That judgment has some bearing on the question as to the nature of the property in this appeal as it clearly stated that the groveland in question was an endowed property, and that herefore, Sbeodei Kaur could not claim that property by inheritance, but was entitled to the possession thereof as the manager since Mangli Prasad had not appointed any one as such manager. By this judgment the High Court declared that "as regards the two, grovelands and Akhara-we declare that the plaintiff is entitled to be the manager of the said property". From the description in the decree of the property declared by the High Court as the endowed property there can remain no room for doubt that the endowed property consisted of the two grovelands and the enclosure known as Buag-Akhara.

The property came into possession of Ishwar Narain, the son of the said Sheodei Kaur, in 1906. In 1914 he applied to the Kanpur Municipality for permission to build a theatre in a part of the Buag-Akhara and in September 1915 he executed a mortgage to secure repayment of a loan of Rs. 6,000/- he had borrowed to, complete the said theatre. Though the Akhara and the Asthan continued to be maintained by him, it appears that he treated the

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endowed property as belonging to him. In or about 1937 the Improvement Trust of Kanpur acquired the whole of the property which consisted of the said two grovelands, Buag-Akhara and the structures standing thereon and the property lying outside and around them. The award of the Collector dated February 19, 1937 shows that for the entire property compensation was calculated at Rs. 94,934/-. Ishwar Narain, thereafter, filed a reference under S. 18 of the Land Acquisition Act. Pending the reference, a compromise was entered into between the Improvement Trust ,and Ishwar Narain under which in consideration of the latter not pressina the reference the Improvement Trust agreed to sell to In the portion corresponding to the said endowed property for Rs. 25,000/-. In accordance with this compromise, the said land together with the Akhara, the Asthan, the said theatre and certain other structures were conveyed to Ishwar Narain who was paid Rs. 94,934/- less Rs. 25,000/- as compensation for the rest of the acquired property. Ishwar Narain died in 1948 having prior thereto made his will dated November 11, 1947 claiming therein that on the death of his mother. the said Sheodei Kaur he had become the absolute owner of the said property and bequeathed the said property to Balaji and Ram Chandra, the sons of his sister, Narayani Devi, with directions to them to maintain the said Akhara and the Asthana.

The principal question which was agitated before the Trial Court was as to the existence of a valid trust and the nature of possession of Mani Ram during his life time and his successors thereafter. To the latter part of the questions the answer of the Trial Court was that possession of the property In question by Mani Ram and those who came into possession after him was that of managers or trustees. As to the first part of the question, the Trial Court held

> "The next part of the issue is about the endowment being valid-It is true that Mani Ram Pande was not competent to make a dedication in favour of Hazrat Ali but he had not done so in this case. The various documents referred above do not prove that the dedication was made in favour of Hazrat Ali or even Mahadeoji and Mahabirji. Wherever there is an allegation of the dedication it is mentioned that the Ahata in question is a dedicated property and there are "Asthana" of Mahaclevji and Taswir of Hazrat Ali and also an Akhara. It means that the dedication was not made in favour of any juristic person such as Mahadev Ji or Mahabir Ji or even to the Akhara or Hazrat Ali. No dedication evolve in favour of A khara could have been made as the A khara was also not a juristic person. The intention of Mani
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> Ram Pande, as appears from the partition deed, Ex. 6, was that the dedication was in favour of a trustee or manager, the objects of which was to maintain the Akhara and the worshipping of Mahabirji and Hazrat Ali by the wrestlers of the two communities, Hindus and Muslims. The main purpose of dedication was the maintenance of the Akhara which meant for the wrestlers of both the communities."

In this view the Trial Court decreed the suit and directed the appellants to hand over possession and pay Rs. 23,000/- as mesne profits in addition to Rs. 1100 a month as further mesne profits for the period pending the suit.

In appeal all against the judgment and decree of the Trial Court, the High Court took the view that though there was no deed of dedication available, the evidence on record was clear that Mani Ram had dedicated the said property, that he and those who succeeded him right upto Ishwar Narain held the properties as trustees or managers, that the said judgment of the High Court of Allahabad of 1903 also held that the said Sheodei Kuar was to hold the property in the capacity of a manager, and lastly, that the dedication was in favour of the two idols of Shri Mahadeoji and Mahabirji. In this connection the High Court expressed itself in the following terms :

> "It may be that establishing an A khara is not a religious or a charitable purpose. But this was not the only object of the trust now in question. There was an Asthan in addition to the Akhara. Dedication of property for the benefit of an idol is recognized in Hindu Law as a religious object. Mr. V. P. Misra further contended that Mani Ram was not

competent to create a trust for the benefit of Hazrat Ali. On this point, the learned Civil Judge observed that Mani Ram was not competent to make dedication in Hazrat Ali's favour. But Hazrat Ali is not the sole plaintiff in this case. Sri Mahabirji, Sri Mahadeoji and Hazrat Ali have come to Court as co-plaintiffs. If the dedication in Hazrat Ali's favour cannot be recognised, there should be no difficulty in treating the endowment as a trust for the benefit of Mahadeoji and Mahabirji. The decree passed by the Trial Court can well be treated as a decree in favour of Sri Mahadeoji and Sri Mahabirji only."

In disputing the correctness of the High Court's judgment and decree, Dr. Agarwala for the appellants raised the following contentions : (1) that the endowment was in respect of the grove and not the groveland, i.e., only of the income from the trees which
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existed during Mani Ram's life time; (2) that on acquisition of the entire property including the Akhara-buag by the Improvement Trust, the trust, in any event, was extinguished and the purchase by Ishwar Narain after the acquisition from the Improvement Trust did not and could not revive the trust; (3) that the trust was invalid by reason of one of its objects being the image or tasweer of Hazrat Ali; and (4) that the dominant object of the trust was to establish and maintain in perpetuity the said Akhara, which object in Hindu Law is neither religious nor charitable, and therefore, the trust was not a valid trust.

So far as the first and the second contentions are concerned, we have no difficulty in rejecting them. The documents on record as also the evidence as to the conduct of Mani Ram and those who held the property after him clearly show that Mani Ram dedicated the groveland and not merely the trees standing thereon. The purchase of part of the said property after its acquisition was from out of the compensation received by Ishwar Narain and not out of his personal funds, so that if the trust was in law a valid one, the property purchased by him out of the trust funds would be stamped with the trust and he would in that event be holding that property as a trustee or manager and not as an owner.

The question, therefore, on which the result of this appeal would turn is whether the trust created by Mani Ram and which he referred to in the said deed of partition was a valid trust recognised in Hindu law as religious and/or charitable. The principle of law applicable to trusts made by Hindus is succinctly stated by this Court in Saraswathi Ammal & Anr. v. Raiagopal Ammal-(1). A Hindu widow there settled certain properties for the following trusts, (1) expenses in connection with the daily pooja of the, samadhi where her husband's body was entombed in accordance with his last wishes and the salary of the person conducting the said pooja; (2) Gurupooja and annadhanam to be performed annually at the samadhi on the anniversary day of his death; and (3) any balance leftover after meeting the above expenses to be spent for matters connected with education. The contention was that though the first object was not a religious object, the performance of Gurupooja and the feeding at the annual shradha and the utilisation of the balance, if any, for educational purposes were the main destination of income, and therefore, the main object of the settlement and that accordingly the dedication was valid. This contention was negatived and it was held that notwithstanding that the major portion of the income may have to be spent for Gurupooja and annadhanam in connection with the annual shradha, the dominant purpose of the dedication was the samadhi kainkarivam,

(1) [1954] S.C.R. 277.

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i.e., the worship of and at the tomb. The validity or otherwise of the dedication, therefore, had to be determined on that footing and not as though it was dedication for the performance of the annual shradha on a substantial scale or for annadhanam as such. It was held that it did not make any difference that the surplus was to be utilised for educational purposes. That surplus was contingent, indefinite as well as dependent on the uncontrolled discretion of the manager as to the scale on which he chose to perform the services at the samadhi. The dominant purpose of the settlement thus being the pooja of and at the samadhi, the validity of the settlement had to be decided on that footing, namely, whether such trust was recognised in Hindu law. On that question the Court relied on a passage from Mayne's Hindu Law, ( 1th ed.) at p. 192, which states,that what are purely religious purposes and what religious purposes will be charitable must be entirely decided according to Hindu law and Hindu notions. The Court observed that in finding out such purposes, the insistence of English law on the element of actual or assumed public benefit would not be the determining factor, but the Hindu notions of what a religious or a charitable purpose is. The Court further held that to the extent that any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. To the argument that new religious practices and beliefs may have since then grown up and obtained recognition, the Court answered that if they are to be accepted as being sufficient for valid perpetual dedication they should have obtained wide recognition and constituted the religious practice of a substantially large class of persons and that the heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and the needs of modern society. In the result, the Court confirmed the High Court's view that the settlement was invalid.

There being no deed of endowment, the intention of Mapi Ram in settling the property in question has to be principally gathered from the said deed of partition and the said will of Rahas Kaur, the rest of the documents executed by Mangli Prasad and others being useful only in aid of the interpretation of that deed of partition and the said will. There can be no doubt whatsoever that Mani Ram, being an eminent wrestler and fond of that game, purchased out of his own money the said groveland for the purpose of setting up an Akhara thereon. The question then would be whether he settled that property upon trust, and if so, for what trust. As already seen, Mani Ram recorded in the said partition deed the fact of his having partitioned the property into eight shares,

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his having given one share to each of his seven sons and having retained the eighth share for himself and his second wife and the said groveland as waqf property. The deed, however, does not set out the purpose or purposes for which the said groveland was regarded 'by him as waqf property. But it does show that he regarded that property as already dedicated. The purposes for Which the groveland was so dedicated are to be found in the said will of Rahas Kaur, wherein she has in clear terms stated that Mani Ram had dedicated the groveland "which has Asin of Mahadeo Ji and Mahabir Ji and Aklhara and tasweer of Hazrat All", that the Akhara and the Asthan were upto that dale maintained and that they should continue as heretofore. The will thus provides a key to. the mind of Mani Ram who, as aforesaid, hall purchased the said property and set up thereon the said wrestling arena. Obviously, he was anxious that wrestlers of both Hindu and MUSlim Communities should take part in that Akhara. It is equally obvious that to attract wrestlers from both ,lie communities he installed in that Akhara the tasweer of Hazrat Ali an the idols of Shr Mahadeo and Mahabir, the two patron deities of wrestling. Once these idols were put up in the Akhara, their worship had to be provided for, it is well-known amongst Hindus that it is irreligious to let such idols remain unworshipped. It is not possible to know from the evidence as to where Hazrat Ali's taswreei, was installed, but it is clear from the evidence that the idol of Mahabir Ji was located at the top of the aggregate which led into the Akhara and the Shiva Lingam was installed over a small room built next to the gate. Clearly, the purpose of- installing the two idols and the tasweer was to enable the wrestlers to pay their homage and salutation to the patron deities of the game before entering into the wrestling arena. The dominant object of the dedication was thus the Akhara and the Asthan of God Shiva and Mahavir, spoken of in the will of Rahas Kaur, was only an adjunct to the Akhara. There is evidence, no doubt, to show that pooja and Shringar of the two idols were performed. But that apparently was because the idols once installed could not be left unworshippe On these facts we are inclined to take the view that the dominant object of the dedication was the Akhara and the said idols and the tasweer were installed only to attract persons of both the communities to the Akhara and to provide for them the facility for invoking the divine benediction before they participated in wresting. As laid down in Saraswathi Ammal's case(1), it is on this foot in that the validity or otherwise of the trust has to be considered.

It must be made clear at very outset that although the will of Rahas Kaur provided that persons who are to manage the trust were to be in the first instance her son, Mangli Prasad, and later

(1) [1954] S.C.R. 277.

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on those appointed by him from amongst the issues of Mani Ram, the trust was obviously not a private but a public trust in the sense that it was for the benefit of those, who are devoted to the sport of wrestling irrespective of whether they are Hindus or Muslims. But the contention was that in spite of the trust being a public trust, it was not one recognised by Hindu law as being a religious and / or a charitable one. As stated earlier, the fact that the Akhara idols installed in it makes no difference as the dedication was the Akhara and not the or the tasweer of Hazrat Ali.

A dedication of property for a religious or a charitable purpose can according Hindu law, be validly made orally and no to create an endowment except where it is (cf. Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao(1). It can be made by a gift inter vivo or by a bequest or by a ceremonial or relinquishment. An appropriation of property for specific religious or charitable purposes is all that is necessary for a valid dedication. As stated by the Privy Council in Vidyavaruthi v. Balusami Ayyar(2), a trust in the sense in which it is understood in English law is unknown in the Hindu system. Hindu piety found expression in gifts to idols, to religious institutions and for all purposes considered meritorious in the Hindu social and religious system. Therefore, although Courts in India have for a long time adopted the technical meaning of charitable trusts and charitable purposes which the Courts in England have placed upon the term 'charity' in the Statute of Elizabeth, and therefore, all purposes which according to English law are charitable will be charitable under Hindu law, the Hindu concept of charity is so comprehensive that there are other purposes in addition which are recognised as charitable purposes. Hence, what are purely religious purposes and what religious purposes will be charitable purposes must be decided according to Hindu notions and Hindu law.

As observed by Mukherjea in Hindu Law and Religious and Charitable Trust (2nd ed.), p. 11, there is no line of demarcation in the Hindu system between religion and charity. Indeed, charity is regarded as part of religion, for, gift both for religious and charitable purposes are impelled by the desire to acquire religious merit. According to Pandit Prannath Saraswati these fell under two heads, Istha and Purta. The former meant sacrifices and sacrificial gifts and the latter meant charities. Among the Istha acts are Vedic sacrifices, gifts to the priests at the time of such sacrifices, preservations of Vedas, religious austerity, rectitude, Vaisvadev sacrifices and hospitality. Among the, Purta acts are construction and maintenance of temples, tanks, wells, planting of ground had the two dominant object of worship of the idols A dedication of pose can, according writing is necessary created by a will.

(1) [1957] S.C.R. 1122 at 1128,

(2) (1921) (48) I.A. 302 at 311.

L5Sup.CI-7

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groves, gifts of food, dharamshalas, places for drinking water, relief of the sick, and promotion of education and learning. (cf. Pandit Prannath Saraswati's Hindu Law of Endowments, 1897, pp. 26-27) Istha and Purta are in fact regarded as the common duties of the twice born class. (cf. Pandit Saraswati, p. 27)

Though Pandit Saraswati sought to enumerate from different texts Various acts which would fall under either of the two Categories of Ishta and Purta, no exhaustive list of charitable purposes can be possible as the expressions 'Ishta' and 'Purta' themselves are elastic and admit no rigid definition. As times advance, more and more categories of acts considered to be beneficial to the public would be recognised depending on the needs and beliefs of the time. (cf. Mukherjea, p. 74). Neither the Statute of Elizabeth nor the Law relating to Superstitious Uses was applied at any time to India. Consequently, the English decisions based on one or the other of these statutes would not be applicable nor can they be commensurate with the conditions prevailing in India, though those decisions might undoubtedly be of some guidance.

Is then the trust for the maintenance and up-keep of a wrestling ground a valid charitable trust ? The evidence shows that Mani Ram, being personally fond of wrestling had a number of disciples and attracted several wrestlers to the Akhara. But that, according to Rahas Kaur's will, he did out of his own love for this particular sport and by spending large amounts out of his own moneys. The only thing which seems to have been done by his successors was to hold wrestling tournaments and award prizes to the successfuloges out of the income of the property and to maintain the Akhara. It may be that people might have come to these tournaments and even practised wrestling but there is no evidence whatsoever that wrestling was taught or its knowledge was imparted to those wishing to know it. At best, therefore, it can be said that by maintaining the Akhara and holding therein the tournaments wrestling was sought to be encouraged or fostered. But there is nothing to show that the promotion of a particular game either for entertainment of the public or as encouragement to those who take part in it has ever been recognised as a charitable trust according to Hindu law. Neither Pandit Prannath Saraswati, nor Mukherjea, nor Mayne suggests in his treatise that a dedication for the promotion of a particular game or sport is a charitable trust under the Hindu law.

In Englalnd it is held not to be so, of course within the scope of the statute of Elizabeth as interpreted in Commissioners for Special Purposes of the Income Tax v. Pemsel(l). Thus, In re Notage, Jones v. Palmer(2), a gift for encouraging the sport of

(1) [1891] A.C. (2) [1895] Ch. 649

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yatch-racing was not upheld as a charitable trust, though as Lindley, L.J., remarked every healthy sport is good for the nation. In re Hadden, Public Trustee v. More(1), while acknowledging the principle laid down in In re Notage(2), the court held that a trust providing for recreation grounds and parks for the benefit of working classes was valid on the ground, however, that such uses were intended for the health and welfare of the working classes. So too, in In re Marietta, Mariette v. Governing Body of Aldenham School(3), where bequests for building squash racket courts or some similar purpose within the school premises and for a prize to the winner in the school athletics were held valid on the ground of its being essential in a school of learning that there should be organised games as part of the daily routine. It is clear from the judgment of Eve, J., that he upheld the bequest on the ground not of promoting athletic games but on the ground that the object of the charity was education in the school and that training in such games would be part of the educational activities of the school. There is, however, one decision of a marginal nature. if we may say so, namely, in In re Daley v. Lloyds Bank Ltd.(1), where a gift for holding an annual chess tournament limited to boys and young men under the age of 21 years residing in a particular locality was upheld. But that was done after a good deal of hesitation and only by basing it on the ground that training of youth in a game of skill which also required concentration was part of their education.

Coming to the cases in India, the decisions in the Trustees of the Tribune Press v. Commissioner of Income-tax(5), All India Spinners Association v. Commissioner of Income-tax(6) and the Cricket Association, Bengal v. Commissioner of Income-tax, Calcutta(1) were all cases under s. 4(3) (i) of the Income-tax Act, 1922 and therefore would have no relevance to the present case arising, under the Hindu Law.

The decisions above referred to thus lay down a distinction between cases where the object of the dedication was the promotion of games as part of the education of those who participate in them and cases where the object was promotion of games simplicitor, the former only having been upheld on the ground that such promotion or encouragement is part of the educational training and the latter not having been upheld. In the case of Cricket Association, Bengal(7), though arrangements of cricket tournaments of both domestic and foreign teams were said to promote and foster love for a healthy game, s. 4(3) (i) was held not to be applicable.

(1) [1932] (1) Ch. 133. (2) [18951 Ch. 649.
(3) [1915] (2) Ch. 284. (4) (1945) 114 L.J. Ch. 1.
(5) 661.A. 241. (6) I.L.R. [1945] Bom. 153.
(7) A.I.R. 1959 Cal. 296.

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On a reading of the relevant documents on record and the oral testimony led by the parties we are not in a position to agree with the High Court that the trust created by Mani Ram was a religious trust in favour of the two idols of Lord Shiva and Mahabir Ji. As aforesaid, our conclusion is that the dominant intention of the settlor was to set up and maintain an Akhara, the said two idols as also the tasweer of Hazrat Ali having been installed there only to attract wrestlers of the two communities. That being the position, reluctant though we are, particularly in view of the fact that the said Akhara has been maintained for nearly a century, we find it extremely difficult, in the absence, of any authority, textual or by way of a precedent, to hold that the dedication in question was for either a religious or charitable purpose as recognised by Hindu Law. For the reasons aforesaid we are constrained to allow the appeal and set aside the judgment and decree passed by the High Court. In the circumstances of the case, however, we consider it just that there should be no order as to costs. Collector will be at liberty to recover the Court fees payable in the plaint from the next friend of the plaintiffs.

G.C. Appeal allowed.

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