SRI MAHALINGA THAMBIRAN SWAMIGAL

v.

HIS HOLINESS SRI LA SRI KASIVASI ARULNANDI THAMBIRAN SWAMIGAL

October 19, 1973

[K. K. MATHEW, M. H. BEG AND A. K. MUKHERJEA, JJ.]

Hindu Law of Religious and Charitable Trust—By a will, the head of the Mutt nominated the junior Elavarasu but later, by another will, terminated the appellant—If valid—Whether status was acquired by the junior after nomination—Meaning of 'Status'.

The appellant filed a suit for a declaration that he was entitled to continue as the junior head (Elavarasu) of the Tiruppandal or the Kasi Mutt and for a perpetual injunction against the defendant, the head of the Mutt, from interfering with his functioning as the junior head of the Mutt.

The defendant, now dead, contended that the appellant was not validly nominated as the junior head of the Mutt and that even if he was nominated as such, the appellant acquired no right by the nomination to continue as the junior head after the head of the Mutt cancelled the nomination by another document Ex. B-9 will.

The trial court found that by Ex. B-1 will, the defendant nominated the appellant as the Elavarasu of the Mutt but that he acquired no status nor did he become the holder of an office by virtue of the nomination. The court further found that the defendant was competent to cancel the nomination and that he had cancelled it by executing Ex. B-9 will. The trial court, therefore, dismissed the suit. The District Court also confirmed the findings of the trial court and dismissed the appeal.

In the second appeal, the learned single judge of the High Court granted a decree to the appellant on the ground that by the nomination of the appellant he acquired a status and he became a holder of an office and that the defendant could terminate the office or status only on good cause; but since the appellant was not guilty of any misconduct, the cancellation of the nomination by Ex. B-9 will was ineffective.

On appeal, the Division Bench of the High Court reversed the decree passed by the single judge on the basis of its finding that the appellant did not become a holder of an office by virtue of the nomination and so it was open to the defendant to cancel the nomination without notice and without assigning any reason.

The questions for consideration before this Court were :—

(1) Whether, by virtue of the nomination, the appellant obtained a status or a right in law or became the holder of an office, and

(2) whether the defendant was competent to cancel the nomination without good cause.

Allowing the appeal,

HELD : (i) During the first part of the 19th century, there were two managing Thambirans both at Banaras and at Tiruppanandal, a senior and a junior; and the peculiar feature of this period consisted in this double agency at each centre of control. [78F]

Succession to the office of Mahant or Head of a Mutt is to be regulated by the custom of the particular Mutt and one who claims the office by right of succession is bound to allege and prove what the custom of the particular institution is. [78G]

Giyana Sambandha Pandra Sannadhi v. *Kandasami Thambiran*, I.L.R. 10 Madras 375; *Greedharee Doss* v. *Nandokissore Doss Mohunt* [867] M.I.A. 405; *Ramalingam Pillai* v. *Vythialingam Pillai* [1893] 20 I.A. 150 etc., are referred to.

A (ii) The custom in the Kasi Mutt was for the head of the Mutt to nominate a successor to succeed him by will and was attended by certain religious ceremonies. The appellant, in the present case, was nominated by Exhibit B-1 will and whether the nomination was accompanied by performance of any religious ceremony was not essential—[79C]

B. K. Mukherjea's Hindu Law of Religious and Charitable Trusts" 3rd Ed. 1940 p. 257 and *M. B. Bhagat* v. *G. N. Bhagat* [1972] 2 S.C.R. 1005; B *Krishnagiri, Trikamgiri* v. *Sheriddar Kavlekar* A.I.R. 1922 Bombay 202 and *Raghunath* v. *Ganesh* A.I.R. 1932 Allahabad 603, referred to.

(iii) In the present case, although the power of nomination was exercised by a will, it is *pro-tanto* a non-testamentary instrument. The definition of "will" in Section 2(h) of the Indian Succession Act, 1925, would show that it is the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. By exercising the power of nomination, the head of a Mutt is not disposing any property belonging to him which is to take effect after his death. He is simply exercising a power to which he is entitled to under the usage of the institution. A nomination takes effect *in praesenti*. It is the declaration of the intention of the head of the Mutt for the time being as to who his successor would be; therefore, although it is said that the usage in the Mutt is that the power of nomination is exercisable by will, it is really a misnomer, because, a will in the genuine sense of the term, can have no effect *in praesenti* and it does not become revocable without good cause merely because the power is exercised by a will. [80B-F]

D *Ram Nath* v. *Ram Nagina* A.I.R. 1962 Patna 481 and *Kailasam* v. *Nataraja* A.I.R. 1918 Madras 1016 referred to.

(iv) It is not correct to say that Mahantship is property and nomination by a Mahant of a successor is a disposal of that property to take effect after the death of the Mahant. Nomination is not a disposal *simpliciter* of the office of Mahantship of the Mutt of its properties, to take effect after the death of the incumbent. It is the creation of a relationship generating a capacity in the E nominee to succeed to the Mutt on the death of the incumbent. This concept, however, cannot be put in a straight jacket of any jurisprudential concept. The Division Bench opined that the junior as the successor designate, carried with him a certain status and received dignity and honours befitting that status. [82B]

(v) The fundamental difference between relationship or status and capacity is that the former is a legal state of being while the latter is a legal power of doing. The imposition of status carries with it attribution or a fixed quota of capacities and incapacities, but it does not directly compel the holder to do or F refrain from doing any particular act. Capacity on the other hand, is a legally conferred power to affect the rights of oneself and other persons to whom the experience of the caparity is directed subject to certain defined limits. Capacity in this form is an incident of status. [84B]

R. H. Graveson's 'Status in the Common Law' p. 127, *Allen on Legal Duties*, p. 33; Treatise on the Conflict of Laws 1935 p. 649; "*Status and Capacity*" 46; *Law quarterly Review*, 277; *Salvesen* v. *Administrator of Austrian Property* G [1927] A.C. 641; *Wiboret* v. *Niboret* 1878 P.O. (*CA*) 1 and *Ross* v. *Ross* 129 Mass. 243, referred to.

(vi) The fact of a person being legally nominated as junior, having a peculiar relationship with the senior is status, and the capacity to succeed to the head is the incident of that status. The status, when created by a nomination, cannot be withdrawn or cancelled at the mere will of the parties. [85C-D]

Tiruvambala Desikar v. *Manikkavachaka Desikar*, I.L.R. 40 Mad. 177, H referred to.

The nomination when made can be cancelled or revoked only for a good cause and as admittedly, there was no good cause shown in this case for cancellation of the nomination by Ex. B-9, the cancellation was bad in law. The

appellant was holding the status of the Elavarasu of the Kasi Mutt during the life-time of the defendant. Now that the defendant is dead, it is declared that the appellant was holding the position of the Slavarasu during the life-time of the defendant, that the revocation of the nomination was bad and the appellant was entitled to succeed to the headship of the Mutt on the death of the defendant. [89C] A

CIVIL APPLLATE JURISDICTION : Civil Appeal No. 1677 of 1969.

Appeal by special leave from the judgment and order dated the 12th January, 1968 of the High Court of Madras in Letters Patent Appeals Nos. 4 and 29 of 1967. B

K. S. Ramamurthy and *K. Jayaram,* for the appellant.

S. V. Gupte, S. K. Sastri, S. Gopalan and *M. S. Narasimhan,* for the respondent.

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The Judgment of the Court was delivered by

MATHEW, J. The appellant as plaintiff filed a suit for a declaration that he was entitled to continue as the Elavarasu or Junior Head of the Tiruppanandal or the Kasi Mutt and for a perpetual injunction restraining the defendant, the Head of the Mutt, from interfering in any way with his functioning as the Elavarasu or Junior Head of the Mutt. D

The defendant, who is now dead, contended that the appellant was not validly nominated as the Elavarasu of the Mutt, that even if he was nominated as the Elavarasu, the appellant acquired no right by the nomination to continue as the Elavarasu, that the appellant's conduct after he became the Elavarasu was such that he was unworthy to become the future head of the Mutt, that he (the defendant) cancelled the nomination and so the appellant had no right to get the declaration prayed for. E

The questions which arose for consideration in the trial court were: whether the appellant had been nominated by the defendant as the Elavarasu of the Kasi Mutt; whether, by virtue of the nomination, the appellant was holding an office or had acquired any right or status; whether the appellant was guilty of misconduct which disentitled him to continue as the Elavarasu and whether the appellant's nomination as the Elavarasu was validly cancelled by the defendant. F

The trial court found that by Exhibit B-1 will, the defendant nominated the appellant as the Elavarasu of the Kasi Mutt, but that he acquired no status nor did he become the holder of an office by virtue of the nomination. The court further found that the defendant was competent to cancel the nomination even though the appellant was not guilty of any misconduct and that he had cancelled it by executing Exhibit B-9 will. The trial court, therefore, dismissed the suit. G

The District Judge, in appeal by the appellant, confirmed the findings of the trial court and dismissed the appeal.

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In the second appeal filed by the appellant, a learned single judge of the High Court of Madras found that by the nomination of the appellant as the Elavarasu, he became the holder of an office or that,

A at any rate, he acquired a status and that the defendant could terminate the office or status only for a good cause and in the light of the finding of the trial court as affirmed by the first appellate court that the appellant was not guilty of any misconduct, the cancellation of the nomination by Exhibit B-9 will was ineffective. The learned judge, therefore, granted a decree to the appellant declaring that he was the B duly appointed junior head of the Kasi Mutt and that he was entitled to continue as the junior head, subject to the right of the head of the Mutt to remove him for good cause. The learned judge, however, did not make a declaration that the appellant had a right to succeed to the headship of the Mutt after the life time of the defendant, nor was the appellant granted an injunction restraining the defendant from interfering with the appellant exercising the right as the junior head.

C Appeals were preferred against this decree by both the appellant and the defendant to a Division Bench of the High Court.

The Division Bench reversed the decree passed by the learned single judge on the basis of its finding that the appellant did not become the holder of an office by virtue of the nomination and so it D was open to the defendant to cancel the nomination without notice to the appellant and without assigning any reason.

It is against this decree that this appeal has been preferred by special leave.

The questions which fall for consideration in this appeal are: whether, by virtue of the nomination, the appellant obtained a status E or a right in law or became the holder of an office, and, whether the defendant was competent to cancel the nomination without good cause.

It is not disputed that on September 12, 1951, the defendant executed a will (Exhibit B-1) reciting that he had nominated the appellant as the Elavarasu of the Kasi Mutt. The will also stated that cer- F tain ceremonies were performed on the occasion of the nomination. It then provided that by virtue of the nomination, the appellant will succeed the defendant as the Head of the Mutt. There is also no dispute that till January 2, 1960, when the defendant revoked the will (Exhibit B-1) by Exhibit B-9 stating that "it was not necessary to appoint the appellant as the Elavarasu", the appellant was the Elava- G rasu by virtue of his nomination.

In *Giyana Sambendha Pandara Sannadhi* v. *Kandasami Thambiran*(1) herinafter referred to as "Sambandha Case", Muttusami Ayyar, J. has traced the historical evolution of the Kasi Mutt and the Dharmapuram Adhinam. The Dharmapuram Adhinam and the Kasi Mutt are monastic institutions. They are presided over by ascetics who have renounced the world. The Mutt at Tiruppanandal i.e. Kasi Mutt was H affiliated to the Dharmapuram Adhinam as a disciple Adhinam. An Adhinam is a central institution from which the chief ascetic exercises

(1) I.L.R. 10 Madras 375.

control and supervision over a group of endowed institutions and religious trusts. A Thambiran is an ascetic attached to an Adhinam and when he becomes the head of the Adhinam, he is referred to as Pandara Sannadhi. A Mutt was originally established at Benares by one Kumaragurupara Thambiran of the Dharmapuram Adhinam. The Dharmapuram Adhinam had come into existence several centuries before the institution of the Mutt at Benares. The Mutt at Tiruppanandal was established later in aid of the Mutt at Benraes by Tillanayaka Thambiran, a successor of Kumaragurupara Thambiran who functioned between 1720 to 1756. In course of time, the Mutt at Tiruppanandal became the principal Mutt and the Mutt at Benares a subsidiary one. As the Mutt advanced in fame, endowments and trusts began to come in. So, subsidiary institutions came to be established and the Tiruppanandal Mutt ceased to be an isolated institution. It became an important centre exercising supervision and control over several subordinate Mutts in Southern India, over the Mutt in Benares, and over Mutts at Merangi in Nepal and at Achiram in Travancore so much so that in some of the later correspondence one finds that Tiruppanandal is referred to as an Adhinam. The Dharmapuram Adhinam was regarded by the Thambiran at Tiruppanandal as his Gurupitham, the seat of his religious preceptor. The Thambirans at Tiruppanandal were, in a spiritual sense, subordinate to the Pandara Sannadhi at Dharmapuram. In course of time, a junior Thambiran came to be associated with the senior Thambiran in the management of the Tiruppanandal Mutt. The necessity for the services of a junior at Tiruppanandal was felt, because, it would on the one hand, give an opportunity to the senior to see whether the junior might be relied upon as a competent successor, while, on the other hand, it would enable the junior to acquire experience before he became the head of the Mutt. The practice in the Dharampuram Adhinam of there being a senior and a junior Pandara Sannadhi at one and the same time was the probable origin of the double agency at Tihuppanandal. But, as only a Pandara Sannadhi could initiate a Thambiran, it came about that the Thambirans for the Mutt at Tiruppanandal and Benares came from the Dhamapuram Adhinam. During the first part of the 19th century (1833 to 1841) there were two managing Thambirans both at Benares and at Tiruppanandal, a senior and a junior; and the peculiar feature of this period consisted in this double agency at each centre of control, which was probably due to the considerable increase in the number and value of endowments to be superintended.

A B C D E F

Succession to the office of Mahant or Head of a Mutt is to be regulated by the custom of the particular Mutt and one who claims the office by right of succession is bound to allege and prove what the custom of the particular insitiution is, for, the only law regulating succession to such institutions is to be found in the custom and practice of that institution (see the decisions of the Privy Council in *Greedharee Doss* v. *Nandokissore Doss, Mohunt*(1) and *Ramalingam Pillai* v. *Vythialingam Pillai*(2). As was observed in *Vidyapurna Tirthaswami* v. *Vidvanidhi Tirthswami*(3), in most cases,

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(1) (1867) M.I.A. 405.
(2) (1893) 20 I.A. 150.
(3) I.L.R. 27 Madras 435.

A especially in Southern India, the successor is ordained and appointed by the Head of the Mutt during his own life time and in default of such appointment, the nomination may rest with the head of some kindred institution or the successor may be appointed by election by the disciples and followers of the Mutt or, in the last instance, by the court as representing the sovereign. Where the head of a religious institution is bound by celibacy, it is frequently the usage that he
B nominates his successor by appointment during his own life time, or by will. Such a power of nomination must, however, be exercised not corruptly or for ulterior reasons, but *bona fide* and in the interests of the Mutt; otherwise, the appointment will be invalid [see *Nataraja* v. *Kaliasam*(1); *Ramalingam Pillai* v. *Vythialingam Pillai*(2); *Ram Prakash Das* v. *Anand Das*(3) and *Vailyanatha* v. *Swaminatha*(4)].

C From the decision in the Sambandha Case it is clear that the custom in the Kasi Mutt is for the head of the Mutt for the time being to nominate a successor to succeed him from one among the Thambirans of Thirukkuttam of the Dharmapuram Adhinam; that the nomination is made by will and that is attended by certain religious ceremonies like Manthakashyam, Deekshha, Pooja and Arukattai.

D There was no contention in the written statement that the necessary ceremonies for a valid nomination of a junior head in the Kasi Mutt were not performed. Exhibit B-1 states in unambiguous language that the ceremonies were performed. Both the trial court as well as the first appellate court found, on the basis of the oral evidence, that the religious ceremonies for the nomination were not performed at the time of the nomination, but at an anterior date. When
E the defendant had himself admitted in Exhibit B-1 will that the nomination was made after the ceremonies were performed, there is no scope for any controversy as to whether the ceremonies were performed. The statement in Exhibit B-1 that the ceremonies were performed was made at a time when there was no controversy between the parties. And, it was on the basis that there was a valid nomination that the appellant was associated with the defendant from 1951 to 1960 as the
F Elavarasu of the Mutt.

Quite apart from these circumstances, we do not think that for a nomination to be valid, performance of any religious ceremony is necessary, unless, of course, the usage of the institution has made it mandatory. "In many cases when a successor is appointed by Mohunt, he is installed in office with certain ceremonies." This cannot be
G deemed to be essential" (see B. K. Mukherjea, "Hindu Law of Religious and Charitable Trusts", 3rd ed. (1970), p. 257). This observation was quoted with approval by this Court in *M. B. Bhagat* v. *G. N. Bhagat*(5). See also the decisions in *Krishnagiri Tr...amgiri* v. *Sheriddar Kavlekar*(6) and *Raghunath* v. *Ganesh*(7).

The Division Bench of the High Court was of the opinion that as the nomination was made by Exhibit B-1 will, there was no reason
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(1) (1920) 48 I.A. 1. (2) [1893] 20 I.A. 150. (3) (1916) 43 I.A. 73.
(4) (1924) 51 I.A. 282. (5) (1972) 2 S.C.R. 1005 at 1010.
(6) A.I.R. 1922 Bombay 202. (7) A.I.R. 1932 All. 603.

why that will could not be revoked under law and therefore the nomination stood revoked by the execution of Exhibit B-9 will. In other words, one line of reasoning adopted by the High Court was that, as a will is revocable at the pleasure of the testator at any time before his death, the nomination made by Exhibit B-1 will was revocable without assigning any reason.

The definition of "will" in s.2(h) of the Indian Succesion Act, 1925, would show that it is the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. By exercising the power of nomination, the head of a Mutt is not disposing of any property belonging to him which is to take effect after his death. He is simply exercising a power to which he is entitled to under the usage of the institution. A nomination makes the nominee stand in a peculiar relationship with the head of the Mutt and the Hindu community and that relationship invests him with the capacity to succeed to the headship of the Mutt. A nomination takes effect *in presenti*. It is the declaration of the intention of the head of the Mutt for the time being as to who his successor would be; therefore, although it is said that the usage in the Mutt is that the power of nomination is exercisable by will, it is really a misnomer, because, a will in the genuine sense of the term can have no effect *in presenti*. There can be no dispute that a nomination can be made by deed or word of mouth. In such a case, the nomination invests the nominee with a present status. That status gives him the capacity to succeed to the headship of the Mutt on the death of the incumbent for the time being. If that is the effect of nomination when made by deed or word of mouth, we find it difficult to say that when a nomination is made by will, it does not take effect *in presenti*, and that it can be cancelled by executing another will revoking the former will. Such, at any rate, does not seem to be the concept of nomination in the law relating to Hindu Religious Endowments. A nomination need not partake of the character of a will in the matter of its revocability, merely because the power of nomination is exercised by a will. In other words, the nature or character of a nomination does not depend upon the type of document under which the power is exercised. If a nomination is otherwise irrevocable except for good cause, it does not become revocable without good cause, merely because the power is exercised by a will. If the power of nomination is exercised by a will, it is *pro-tanto* a non-testamentary instrument. A document can be partly testamentary and partly non-testamentary. In *Ram Nath* v. *Ram Nagina*(1), the head of the Mutt for the time being exercised his power of nomination, more or less in terms of Exhibit B-1 here, namely, by making the nomination of a successor and providing that he will be the owner of the properties and charities of the Mutt and also of the other properties standing in the name of the head of the Mutt. The court held that so far as the nomination and devolution of the properties of the Mutt were concerned, the will operated as a non-testamentary instrument. The Court said that the condition which must be satisfied before a

(1) A.I.R. 1962 Patna 481.

A document can be called a will is that there must be some disposition of property and that the document must contain a declaration of the intention of the testator not with respect to any thing but with respect to his property. According to the Court, if there is a declaration of intention with respect to his successor, it cannot constitute a will even if the document were to state that the nominee will become the owner of the properties of the Mutt after the death of the executant of the will as that is only a statement of the legal consequence of the nomination.

In Kailasam v. *Nataraja*(1), the court expressed the view that a will making a nomination is only the evidence of a past event. In other words, a will is the record of a nomination and that it is not by the will that a nomination is made.

Exhibit B-1 makes it clear that the nomination had already been made. It says :

> "I have nominated as my successor Mahalinga Thambiran, who is one among the Thambirans of Thirukkuttam of Dharmapuram Adinam and obtained Manthakashyam, Deeksha, Pooja and Arukatti and who is performing pooja in our Mutt."

The statement in the will that after the death of the Head, the Junior will be the owner of the properties pertaining to the Mutt is a declaration as to the legal consequence of the nomination. The fact that in the Kasi Mutt there is no usage that the power of nomination was exercised otherwise than by will does not mean that a nomination will stand cancelled when the will is revoked.

Mr. Gupte for the respondent argued that Mahantship is property and nomination by a Mahant of a successor is a disposal of that property to take effect after the death of the Mahant and, therefore, the power of nomination can be exercised only by a will, and, if it is exercisable only by a will, it follows that when the will is revoked, the nomination would stand cancelled.

We do not think that this contention is correct. As we said, the power of nomination is a concept pertaining to the law of Hindu Religious Endowments. It is not because the Mahantship was treated as property that in the Sambandha Case it was observed that in the Kasi Mutt nomination is made by a will, but because it was the custom of that Mutt. The Privy Council has said that a nomination can be made by word of mouth (see *Greedharee Doss* v. *Nandokissore Doss, Mohunt*(1). And there is no reason why it cannot be made by a deed. If the power of nomination is exercised by word of mouth or by deed, it is not clear how the exercise of the power would be valid if Mahantship itself is property and nomination is regarded as the disposition of that property to take effect after the death of the head of the Mutt. For, if nomination is merely a declaration of the intention of the head of the Mutt as to the disposal of the office of Senior Pandara Sannadhi

(1) A.I.R. 1918 Madras 1016, at 1018. (2) [1867] MIA 405

which is generally regarded as property or of the properties appertaining to the office, to take effect after the death of the incumbent of the office for the time being, then the power of nomination can be exercised only by a will. The fact that according to the law of Hindu Religious Endowments, a nomination can be made by deed or word of mouth is positive proof that nomination is not a mere disposal of the office or of the properties appertaining to it, but the creation of a present relationship generating the capacity to succeed to the office and to the properties appertaining to the office. In other words, by word of mouth or deed one cannot dispose of an office, if it is property, to take effect after the death of the person uttering the word or executing the deed and, therefore, nomination is not a disposal *simpliciter* of the office of the headship of the Mutt or its properties, to take effect after the death of the incumbent. It is the creation of a relationship generating a capacity in the nominee to succeed to the headship of the Mutt on the death of the incumbent. What, then, is the nature of that relationship ?

Mr. Gupte said that so long as no present right or status is conferred or created by a nomination, the Head of the Mutt can cancel on revoke the nomination at any time he pleases and that there is no foundation for the assumption that nomination can be cancelled only for good cause.

As already stated, a nomination is a concept pertaining to Hindu Religious Endowments. And it is *sui generis*. One cannot put it in the straight jacket of any jurisprudential concept.

The Division Bench was of the view that "the junior as the successor designate of the headship of the Mutt carried with him a certain status on account of that fact and received dignity and honours befitting that status".

The question is whether, by the nomination, the appellant acquired a status in law, and, if he acquired a status, whether it was liable to be put an end to by the defendant at his whim.

John Austin has said that status is "the most difficult problem in the whole science of jurisprudence." The question whether the junior Pandara Sannadhi or the Second occupies a status, has to be decided with reference to the law relating to Hindu Religious Endowments. It is a well known custom in several Mutts, for the heads to nominate their successors. Junior heads so nominated form a class by themselves and as they stand in a relationship with the senior heads which is peculiar in the sense that no other class of persons hold that relationship with them, the question is whether, according to the law of Hindu Religious Endowments, they acquire a status in law. The custom or usage will certainly govern the question whether the head of the Mutt has the power to make a nomination during his life time, and the manner of its exercise and the religious ceremonies to be performed at the time of the nomination. But, in the absence of any custom or usage, the question whether nomination would confer a

A status upon the junior heads so nominated is a matter for the court to decide in the light of the law relating to Hindu Religious Endowments. And, in deciding it, the interests of the Hindu religious community and of the Mutts in general are of paramount importance. Whether or not a particular condition or relationship is one of status depends primarily on the existence and extent of the social interest in the creation and supervision of such a condition or relationship. B The test is not a simple one of the existence or non-existence of the concern of the society; it is also one of the degree of such concern. It is, further, abvious, that the degree and even the existence of this concern in a particular condition will vary from time to time in the same society. It is not possible to draw a clear line of distinction in a dogmatic and *a priori* manner between conditions of status and special conditions not of status. In other words, the picture of status C cannot be painted in elemental colours of black and white on any *a priori* considerations. "It is rather a matter for a court to decide at the time of action whether a particular condition does or does not involve a sufficient degree of social interest to be characterised as status, assuming that all other features of status are present"(1). Bentham's idea of status was that it was "a quality or condition which generates certain rights and duties"(2). D Beale defines status as a personal quality or *relationship* not temporary in nature nor terminable at the mere will of parties with which third parties and even the State are concerned(3). C. K. Allen said that status is a condition of belonging to a particular class of persons to whom law assigns certain capacities and incapacities(4). Status is defined by Graveson as a special condition of a continuous and institutional nature, differing E from the legal position of the normal person which is conferred by law and not purely by the act of the parties, whenever a person occupies a position of which the creation, continuance or relinquishment and the incidents are a matter of sufficient social or public concern(5). The distinguishing mark of a class for the purpose of status is that legal consequences result to its members from the mere fact of belonging to it.

F In *Salvesan* v. *Administrator of Austrian Property*(6), Lord Haldane asked the question : "For what does status mean in this connection?" and answered it by saying that in the case of marriage, it is something more than a mere contractual relation between the parties to the contract of marriage. He also said that status may result from such a contractual relationship, but only when the contract G has passed into something which Private International Law recognizes as having been superadded to it by the authority of the State, something "which the jurisprudence of the State under its law imposes when within its boundaries the ceremony has taken place."

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(1) See R.H. Graveson, "Status in the Common Law". p. 127.

(2) see Allen, "Legal Duties, p. 33.

H (3) see "Treatise on the Conffict of Laws" (1935). p, 649.

(4) see "Status and Capacity" ,46 Law Quarterly Review, 277.

(5) see "Status in the Common Law", p .2. [1927] A.C. 641

In *Nibovet* v. *Nibovet*(1), Brett, L. J. said :

> "The status of an individual, used as a legal term, means the legal position of the individual in or with regard to the rest of the community".

The fundamental difference between status and capacity is that the former is a legal state of being while the latter is a legal power of doing. Status determines a person's legal condition in community by reference to some legal class or group and cannot normally be voluntarily changed. The imposition of status carries with it attribution of a fixed quota of capacities and incapacities, but it does not directly compel the holder to do or refrain from doing any particular act. Capacity, on the other hand, is a legally conferred power to affect the rights of oneself and other persons to whom the exercise of the capacity is directed, subject to certain generally and legally defined limits—limits which vary in relation to each particular form of capacity. Capacity in this form is an incident of status. And, a distinction therefore must be made between the legal principles applicable to the major conception of status and those affecting the minor conception of its incidents(2). The closest approach to a judicial statement of the distinction between status and its incidents is found in the judgment of Gray, C. J. in *Ross* v. *Ross*(3) :

> *"The capacity or qualification to inherit or succeed to property, which is an incident of the status* or condition, requiring no action to give it effect, is to be distinguished from the capacity or competency to enter into contracts that confer rights upon others."

It would follow that status is a condition imposed by law and not by act of parties, though it may be predicated in certain cases on some private act as the contract of marriage. Whether the condition of status will be imposed as the result of private contract or private or public act depends on the public interest in the relation created by the contract or act. In other words, as we said, the interest and concern of the society of which parties form part determine whether or not status will be imposed or conferred as the result of private contract or by private or public act. Social interest is a feature of the concept of status; unfortunately, this aspect has been little stressed in the cases. "Austin's neglect of this aspect of status has made no small contribution to the judicial disregard of social interest involved in the concept"(4).

In *Ross v. Ross*(3), Chief Justice Gray said :

> "A general principle *that the status or condition of a person, the relation in which he stands to another person, and by which he is qualified and made capable to take certain rights in that other's property,* is fixed by the law of domicile".

(1) (1878) P. D. (C.A.) 1 at 11

(2) see C.K. Allen, "Legal Duties and Other Essays in Jurisprudence", (1931) pp. 28ff and also his article "Status and Capacity", 46 Law Quarterly Review, 277.

(3) 129 Mass. 243 (1880).

(4) see R.H. Graveson, "Status in the Common Law", p. 60.

A *In Tarak Chandra Das and Another v. Anukul Chandra Mukherjee*(1), B. K. Mukherjea, as he then was, said :

"Now, legal character is the same thing as status."

What is the relationship in which junior heads stand to their seniors ? In *Sambandha Case* (supra), Muttusami Ayyar, J. said (at P. 493) :

B "By appointment as junior, the Tambiran became a spiritual brother or a brotherly companion and by both the senior who appoints and the junior who is appointed belonging to the same Adhinam, they were associates in holiness."

As we said, status is something apart from and beyond its incidents. "The status of a child is not his duties or disabilities in relation to his parents, but the legally recognised fact of being a child"(2). C The fact of a person being legally nominated as junior, having a peculiar relationship with the senior is status, and the capacity to succeed to the head is the incident of that status. The status, when created by a nomination, cannot be withdrawn or cancelled at the mere will of the parties. The law must determine the condition and circumstances under which it can be terminated. Merely because the status originated from the act of a senior head in making the D nomination, it would not follow that the senior head can put an end to it by another act. In other words, the junior heads as a class occupy a position of which the creation, continuance or relinquishment, and its principal incident, namely, succession to the office of the headship of the Mutt are matters of sufficient social or public concern in the sense that the Hindu religious community is vitally interested in all of them.

E There was some debate at the bar on the question whether, by nomination, the junior gets a contingent interest in the office or in the properties of the Mutt, the contingency being the survival by the junior of the head of the Mutt. A contingent interest or ownership is a present right. But we do not propose to decide that point in this appeal. As we said, the concept of nomination is *sui generis*; and that F makes it rather difficult to bring it under any legal rubric. Perhaps, it has its analogue in Canon Law and that was the reason why Bhashyam Ayyangar, J. in *Vidyapurna Tirthaswami* v. *Vidvanidhi Tirthaswami*(3) likened the position of a junior head to that of a co-adjutor in Canon Law. A co-adjutor stands in a peculiar relationship with the Bishop. He has a right to succeed the Bishop; while he is a co-adjutor, he has no administrative functions of his own, G but has only to do the work assigned to him by the Bishop. But, nevertheless, during the life time of the Bishop he enjoys a status and is accorded honours and regard by the religious community, second only to those accorded to the Bishop.

Even if it is assumed that the position of a junior head is not a status as known to law, we think that the relationship created by the nomination is one which cannot be put an end to by the head H at his sweet will and pleasure.

(1) A.I.R. 1946 (33) Calcutta 118, at 119.
(2) see R.H. Graveson, "Status in the Common Law", pp. 122-127.
(3) I. L. R. 27 Mad. 435.

In *Tiruvambala Desikar* v. *Kanikkavachaka Desikar*(1), the question was whether the head of the Dharmapuram Adhinam has, after making a valid nomination, an uncontrolled right to concel it and nominate another person as the junior head. A Division Bench of the Madras High Court consisting of Wallis, C. J. and Seshagiri Ayyar, J. held that the Head of the Mutt, after making a valid nomination cannot revoke the nomination at his sweet will and pleasure, but only for good cause Wallis, C. J. said (at P. 190) :

> "It has been contended before us that the defendant only held office at the pleasure of the Pandarasannadhi and that consequently the latter was entitled to dismiss him without giving him any opportunity of being heard. The nomination and ordination of a junior Pandarasannadhi is the customary manner of providing for the line of succession in Mutts of this kind, and it is not shown that the Pandarasannadhi has any power of arbitrary dismissal, while on the other hand, it has been held in a previous suit relating to the institution that he may dismiss for good cause. In *Vidyapurna Thirtha-swami* v. *Vidvanidhi Tirthaswami*(2) where the question was whether a Pandarasannadhi forfeited his position as such by reason of lunacy, recourse was had to the analogies of the Canon Law and applying those analogies to this case, the position of the junior Pandarasannadhi during the life time of the elder would appear to be that of a co-adjutor with the right of succession, a right of which he cannot be deprived except for grave cause."

Seshagiri Ayyar, J., after stating that the ordinary mode of succession in Mutts is by appointment by the head either by will or by word of mouth observed :

> "...I feel no hesitation in holding that the appointer has not the absolute power to dismiss which is claimed for him....I shall refer to what takes place on the nomination of a successor in this Mutt. Exhibit-C... mentions.. the ceremonies that have to be gone through in selecting a successor and also those which the person selected has to undergo. The most important of these is the abishegam. The rites to be observed on this occasion are described by the plaintiff as his thirty-third witness. This may be taken to represent correctly what happens when a junior Pandara-sannadhi is appointed. It is also in evidence that the senior Pandarasannadhi himself offers puja to the junior because by the abishegam the junior attains Godhead. He performs separate puja to Gods Vigneswara and Subrahmanya. He is called the Sadhaka Acharya, or co-adjutor with the senior..." (PP. 194-195).

The learned judge then said that a person *appointed by will* and on whom abishegam has been performed becomes heir presumptive entitled to succeed to the headship on the happening of a vacancy.

(1) I.L.R. 40 Madras 177. (2) I. L. R. 27 Mad. 435.

A He further said that when the nomination carries with it certain dignity and is construed by the worshippers as implying sanctity of the person, it would lead to disastrous results to hold that the appointee is dependent for his position upon the will of the appointer as the conscience of the people regards him as the unquestionable successor. He then summarised his conclusions as follows : (at P. 197)

B "(1) that the head of the Mutt is entitled to appoint a Junior Pandharasannadhi; (2) that this junior has a *recognized status;* (3) that he is entitled to succeed to the headship, if he survives the appointer; (4) that for good cause shown he can be removed; (5) that the tenure of his position is not dependent upon the goodwill of the appointer; and (6) that it is not open to the head of the mutt to dismiss him arbitrarily".

C Counsel for the appellant argued that this decision lays down the correct law and there is no reason why it should not apply to the case in hand. He said that it is from the Dharmapuram Adhinam that the Kasi Mutt took its origin and that the same principles must apply to the Kasi Mutt. As regards the Dharmapuram Adhinam, Muttusami Ayyar, J. said in *Sambandha* Case(1) :

D "It should be observed here that there were a senior and a junior Pandara Sannadhi at one and the same time, and that the junior succeeded the senior *unless dismissed for misconduct,* and that a will was left at times by the senior Pandara Sannadhi appointing his junior as his successor. *This indicates probably the source from which the course of succession at Tirupranandal was originally derived."*

E The Division Bench of the High Court was of the view that the decision in *Tiruvambala Desikar* v. *Manikkavachaka Desikar*(2) was inapplicable to resolve the controversy here for the reason that Achariya Abishegam ceremony which invested the junior head there with certain spiritual powers was admittedly not performed in the instant case. It was submitted by Mr. Gupte for the respondent that

F the foundation of the decision in the above case was the finding in that case that there was the ceremony of Achariya Abishegam on nomination and that that had the effect of investing the junior head with certain spritual powers and as the nomination of the appellant was not attended with Achariya Abishegam, the nomination did not invest the appellant with any spiritual capacity so as to make the nomination irrevocable. In *Sambandha* Case(1), Muttusami Ayyar,

G J. said :

".....a ceremony called Achariya Abhishegam is performed only in the case of Tambirans who are raised to the position of a senior or junior Pandara Sannadhi. It consists in anointing and bathing him as an achariya or preceptor and consecrating him as such with the recitation of religious texts prescribed for the occasion. The belief

H with which it is performed is that unless a Tambiran is solemnly consecrated as a preceptor, he is not competent

(1) I. L. R. 70 Mad. 375. (2) I. L. R. 40 Mad. 177.

to initiate laymen in forms of prayer conducive to their spiritual happiness and to ordain laymen as Tambirans with efficacy" (Para 8 of the judgment). A

What this paragraph says is that Achariya Abhishekam ceremony is performed only for raising a Tambiran to the position of a junior or senior Pandara Sannadhi in the Dharmapuram Adhinam. It would not follow from what Muttusami Ayyar, J. has said that the right to succeed which is the invariable legal incident of a nomination is conferred by virtue of Achariya Abhishekam. Nomination must, in logic and in fact, always precede the Achariya Abhishekam. The effect of Achariya Abhishekam, according to the learned judge, is to confer on the junior head the spiritual capacity to ordain Tambirans or, in other words, to initiate laymen into the spiritual fold (Thiruk-kuttam) of Tambiran. The learned judge did not say that Achariya Abhishekam has the effect of investing the junior head with an indefeasible right to succeed to the headship of the Mutt. In other words, if revocability is otherwise a characteristic of nomination, it would not cease to be so by virtue of the religious ceremony of Achariya Abhishekam. Even if it be assumed that Achariya Abhishekam would invest a junior head with the power to ordain Tambirans which he would not otherwise have, it would not follow that by virtue of Achariya Abhishekam he would obtain a right, much less an indefeasible right, to succeed if nomination *per se* has no such effect. B C D

In the judgment in *Sambandha Case*(1), Muttusami Ayyar, J. has referred to a case where the head of the Dharmapuram Mutt—one Sadayappa—made three wills in succession nominating the same person. Counsel for the respondent wanted us to infer from this that a power to nominate, if it is exercised by a will, can also be revoked by another will; but as already stated, the will, in most cases, is only a record of the exercise of the power of nomination and the mere fact that the head of the Mutt in question executed three wills successively naming the same person as the junior head would not in any way militate against the contention of the appellant that nomination once made cannot be revoked arbitrarily. If there was an instance in the particular institution of a head who, after having exercised the power of nomination by a will, executed another will nominating another person, the position would probably have been different. E F

Looking at the matter from another angle, we come to the same conclusion. We have already said that the power of nomination must be exercised not corruptly or for ulterior reason but *bona fide* and in the interest of the Mutt and the Hindu community. It then stands to reason to hold that power to revoke the nomination must also be exercised *bona fide* and in the interest of the institution and the community. In other words, the power to revoke can be exercised not arbitrarily, but only for good cause. We do not pause to consider what causes would be good and sufficient for revoking a nomination as the defendant had no case before us that he revoked that nomination for a good cause. G H

(1) I. L. R. 10 Mad. 375.

A We hold that a nomination when made can be cancelled or revoked only for a good cause and, as admittedly, there was no good cause shown in this case for cancellation of the nomination by Exhibit B-9, the cancellation was bad in law. Therefore, it must be held that the appellant was holding the status of the Elavarasu of the Kasi Mutt during the life time of the defendant. Normally, a court will declare only the rights of the parties as they existed on the date of the B institution of the suit. But, in this case, on account of the subsequent event, namely, the death of the defendant, we have to mould the relief to suit the altered circumstance. If the defendant had been alive, it would have been sufficient if we had declared, as the learned single judge has done, that the appellant was the Elavarsu of the Kasi Mutt. Now that the defendant is dead, we make a declaration that the appellant was holding the position of the Elavarasu during the life C time of the defendant, that the revocation of the nomination of the appellant as the Elavarasu by Exhibit B-9 was bad, and that the appellant was entitled to succeed to the headship of the Mutt on the death of the defendant.

The decree passed by the Division Bench of the High Court is set aside and the appeal is allowed. In the circumstances, we make D no order as to costs.

S.C. *Appeal allowed.*