

(1910) 12 MAD CK 0027
In the Madras High Court

Abbikesava Yanthiar, Manager and Karnavan op his Tarwad	APPELLANT
Vs	
Vyal Kotalvalli Namudri Illath Kesavan Nambudri and Others	RESPONDENT

Date of Decision : 20-12-1910

Acts Referred:

Citation : 9 Ind. Cas. 156

Hon'ble Judges : Krishnaswamy Aiyar, J;Ayling, J

Bench : Division Bench

Judgement

1. The plaintiff in Original Suit No; 16 of 1905, was the 1st defendant in Original Suit No. 10 of 1905. The judgment that we have just delivered in the other case Pallithara Vayal v. Abli Kesava 9 Ind. Cas, 155, covers the present case also. But some additional arguments were urged on behalf of the plaintiff in this case by Mr. Ananthakrishnier. He contended that so far as his client was concerned, there was no denial in 1875 This statement of his we cannot accept. Exhibit XII shows that the plaintiffs in that case namely, the predecessors of the present 4th and 5th defendants, claimed to be themselves urallars and would not admit the claim of any other person to the uraima. The present 1st defendant was joined subsequently to the institution of the suit as the 2nd defendant in that case. An issue was expressly raised as to whether the then plaintiffs were alone competent to institute that suit, and on that issue the District Munsif stated that it was unnecessary for him to express an opinion. On the question as to whether the 1st defendant, then the 2nd defendant, was entitled to the uraima, he passed a decree dismissing the Saumdayi and decreeing a certain sum of money in favour of the then plaintiffs on behalf of the devaswam. The decree for possession on behalf of the devaswam cannot inure to the benefit of the then 2nd defendant, because the District Munsif expressly stated he would not decide, in the teeth of the plaintiff's denial, that the 2nd defendant had the uraima right. It is not contended by Mr. Ananthakrishnier that the plaintiff in this case has been in actual possession of the suit temples. He claims to have been in possession constructively because the defendants were in possession and their possession inured to his benefit. He placed his case on the same footing as that

of a tenant-in-common who is not actually in management of the common property and whose title is denied. Even if the possession of the present plaintiff was only that of a tenant-in-common, we should be prepared to hold that there was sufficient evidence of exclusion. There is nothing in *Jogendranath Rai v. Baldeo Das* 35 C. 961 : 12 C.W.N. 127 : 6 C.L.J. 735 and in *Freeman on Co-tenancy* in Section 221, to which we were referred, which militates against the view that the present plaintiff has been excluded from participation in the uraima right of the plaint temples. And if there was such exclusion, Mr. Ananthakrishna Aiyar does not contend he would not be barred. But we are inclined to place the present case on a different footing, because the possession of a joint urallar is not that of a mere tenant-in-common but that of a joint tenant. The acts of the other trustees in management have been held to be illegal if any one trustee is not consulted in the management of the trust properties except in cases where by custom or by practice or the course of management any one trustee who does not actually participate may be deemed to have accepted or concurred in the management of the others. The acts of the 5th and 6th defendants in this case from the year 1875 to which Exhibit XII relates are acts which are only consistent with the explanation of a consistent denial of plaintiff's rights and a consistent exclusion from participation in the management of the plaint temple. We are, therefore, quite prepared to hold that the District Judge is right in his finding that the plaintiff's suit is barred by limitation.

2. We dismiss the appeal with costs.