
(1898) 03 MAD CK 0002
In the Madras High Court

Alagirisami Naickar and Others and Subbayyar

APPELLANT

Vs

Sundareswara Ayyar and Others

RESPONDENT

Date of Decision : 15-03-1898

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13(II)
Limitation Act, 1963 — Section 28

Citation : (1898) ILR (Mad) 278

Hon'ble Judges : Davies, J;Benson, J

Bench : Division Bench

Judgement

1. The first plaintiff (who will hereafter be called the plaintiff as the second plaintiff was only formally joined) brought this suit to establish his right to the entire office or offices of Nagara

Mutharai and Kattiyam in the temple of Sri Meenatchi Sundareswarar at Madura and to recover from the possession of the seventh defendant the village of Thandayanendal, one of two

villages, the profits from both of which form the emoluments of the offices aforesaid. The other village Vandavasi was already in the plaintiff's possession and it had been the subject of a

previous suit, to which reference will soon be made. The plaintiff impleaded defendants Nos. 1 to 5 as the committee men and the sixth defendant as the manager of the devastanam in

question, on the ground that they were supporting the seventh defendant in his usurpation of the offices in suit and the emoluments thereof. The seventh defendant set up his right to a moiety

of the offices and of the emoluments and apparently claimed to keep the village of Thandayanendal in his sole possession as the other village was in the plaintiff's possession. The Subordinate

Judge, though he was of opinion on the merits that the seventh defendant was entitled to half the offices and half the emoluments, found that the question was *res judicata* against the seventh

defendant by the final judgment of the High Court in the previous suit, and he therefore gave the plaintiff a decree declaring his right to the entire offices and the entire emoluments and

directed the delivery by the seventh defendant of the plaint village, Thandayanendal, to the plaintiff. At the same time he issued an injunction to the other defendants not to interfere with the

rights declared by the decree in the plaintiff's favour. In Appeal No. 81 of 1897, the committee represented by defendants Nos. 2, 4, 5 and 6 appeal on the ground that they have full power

to appoint to the offices in question, and that the plaintiff is a man of bad character and unfit to hold the office: and added to these grounds of appeal they champion the seventh defendant's

cause and support his appeal which is Appeal No. 83. Now, on the grounds which strictly appertain to them selves, that is, the power of appointment and the unfitness for office of the

plaintiff they have no case whatever. As observed by the Subordinate Judge, they were hardly necessary parties to the suit, for they have no real power of appointment in themselves. They

have simply to appoint to the offices the person hereditarily entitled to hold the same provided he is competent: and as to the alleged unfitness of the plaintiff there was absolutely no proof, so

that the committee's appeal may be dismissed in limine.

2. It remains to deal with the substantive appeal of the seventh defendant. In the previous suit which was Original Suit No. 108 of 1889 terminating in Second Appeal No. 1895 of 1891 in

this Court, the seventh defendant was the plaintiff and the present plaintiff was the Second defendant. Therein the seventh defendant claimed his right to a moiety of the offices and the

emoluments, and this very plaintiff in that suit admitted the seventh defendant's right, and both the Court of First Instance and the Lower Appellate Court found in favour of the right. The

High Court, however, dismissed the seventh defendant's claim on the ground that the offices and the emoluments were indivisible and went by right to the older branch of the family to which

the plaintiff does and the seventh defendant does not belong. The seventh

defendant urged in support of the decrees of the lower Courts in his favour that whatever the original grant might

have been, yet he had acquired a title to the moiety of the offices and the emoluments by adverse possession for over twelve years. The learned Judges who heard that case however refused

to hear him on that point, because they considered that he had not alleged it as the basis of his claim. In this suit, however, he has alleged adverse possession as the basis of his defence and

we are unable to agree with the Subordinate Judge in his statement that the High Court decided in the previous suit that there was no adverse possession and so the subject was *res judicata*.

As already observed, the High Court refused to decide upon that question and all they did decide on this point was that they would not hear it as it had not been pleaded in the plaint. The

plaintiff's *vakil* thereupon urges that whether the point was decided or not the seventh defendant ought to have made it a ground of attack in his previous suit and by his omission to do so be

is now barred from setting it up under the terms of Explanation II of Section 13 of the Code of Civil Procedure. If it were certain that the claim by adverse possession had not been made in

the previous suit, the provision of law quoted might operate as a bar; but we find on a perusal of the judgments in the previous suit that on the question raised by the third issue in that suit as

to whether the seventh defendant enjoyed the offices and the property in his independent right, or as a servant for wages, the question of the character of the seventh defendant's possession

was necessarily brought into consideration, and it was found by both the Courts that he had long enjoyed half the offices and either the whole or half of the village then in suit adversely to the

plaintiff's family. So that it cannot be said that this right by adverse possession was not made a ground of attack in the former suit. Now upon the evidence in this suit there is not a shadow of

doubt that from at least the year 1863 onwards, the seventh defendant has been in adverse possession of a moiety of the offices and the emoluments. It is not so clear whether there had been

adverse possession previous to 1863, though there is ample proof that the seventh defendant's branch of the family were claiming as of right half the offices and the property so far back as

1858 (see. Exhibit CXXXIX). In 1863 when the plaintiff's father was dismissed, the Collector appointed the seventh defendant and his brother to the entire offices and registered the two

villages Thandayanendal and Vandavasi in their joint names (Exhibits LXIII) and (XVIII) and put them into actual possession of the plaint village Thandayanendal; and it would appear that

they were not put into possession of the other village Vandavasi which was then registered in their name because they already had possession of it. The plaintiff was then ten years old and he

came of age in 1869, the age of majority at that time being 16. His right to sue for the recovery of the offices and the villages which had been given to others in 1863 began in that year, and

the period of limitation then was six years. But as the plaintiff was a minor he had three more years after he came of age to sue, i.e., until 1872. In 1872, when the seventh defendant and his

brother had been in adverse possession for nine years and their title by prescription was becoming almost ripe, a settlement was come to as evidenced by Exhibit XXVIII by which the

plaintiff's branch of the family were to take half the offices and the emoluments and the seventh defendant's branch the other half, the actual arrangement being that the offices should be held

in rotation and the lands in equal shares. The adverse possession, of the seventh defendant which had commenced in 1863 and was nearly perfected in 1872 in respect of the entire offices

and the property was thereafter continued and has continued up to date, which is, of course, much longer than the statutory period, with respect to a moiety of the offices and the property.

The effect of the arrangement in 1872 thus was the giving up by the seventh defendant of half of the right, the whole of which he was on the point of acquiring by prescription.

3. As to the law, it is clear that the right to an office such as this with its emoluments can be acquired by adverse possession as such a right is treated like the right of the manager of a temple

or an uraima right as a personal right where there is no question of the malversation of the trust property. *Balwant Rao Bishwant Chandra Chor v. Purun Mal Chauble* L.R. 10 L.A. 90

Nilahandan v. Padmanabha ILR 14 Mad. 153 and *Lakshmi Ammah v. Kesavan* Second Appeal No. 500 of 1890 (unreported). So that although it has been held in the previous case that

the offices and emoluments ought to have been held indivisibly, yet we must find that another has acquired a divisible right to a moiety by twelve years' adverse possession, and that plaintiff's

right thereto is extinguished. (Article 124

Article 124:

Description of suit. | Period of | Time from which period begins
| Limitation | to run.

For possession of an hereditary | Twelve years... | When the defendant takes possession
office. | | of the office adversely to the plaintiff.]

of the second schedule of the Limitation Act and Section 28. [At the determination of the period hereby limited to any person for instituting a suit for possession of any property, "his right to
such property shall be extinguished.] of the same Act.)

4. We therefore allow the appeal of the seventh defendant that he is entitled to one half of the offices and the emoluments in question in this suit, and the plaintiff will hence be entitled to a

decree for only the other half. The injunction and the order as to the seals contained in the lower Court's decree have, in view of our decision become unnecessary; and certain manyams

which were claimed in the plaint were also wrongly included in the decree of the Subordinate Judge as the claim to them had been abandoned in the suit. The decree must be modified

accordingly. The simplest way to give effect to our judgment will be to set aside

the whole decree of the Subordinate Judge's Court and to substitute a decree to the following effect that the

plaintiff be declared entitled to half the offices of Nagara Mutharai and Kattayam as described in the plaint and that the seventh defendant do forthwith put him in possession of half those

offices, together with half of the village of Thandayanendal hereunder described. The parties having lost and gained equally will bear their own costs throughout. The costs in the lower Court

of defendants Nos. 1 to 6 may be paid out of the temple funds; but their costs in this Court must be paid by themselves out of their private funds, as their appeal was uncalled for, inasmuch

as it was sufficient for the seventh defendant to have appealed.