

(1916) 10 MAD CK 0033
In the Madras High Court

Baluswami Aiyer and Another

APPELLANT

Vs

Venkitaswamy Naicken and Others

RESPONDENT

Date of Decision : 19-10-1916

Acts Referred:

Citation : 40 Ind. Cas. 531

Hon'ble Judges : Sadasiva Aiyar, J; Burn, J

Bench : Division Bench

Judgement

Burn, J.—The facts of this case, as far as it is necessary to state them, are as follows:—On 17th March 1891, 2nd plaintiff obtained a permanent lease Exhibit A of certain land within the limits of Madura town from the matathipathi of Sri Vyasarayam mutt the seat of which is in the State of Mysore. Second plaintiff was a near relative of the grantor. The rent reserved was a fixed sum of Rs. 24 per annum. The grantor died shortly after the execution of Exhibit A. His successor held office till 1906 when 26th defendant became the head of the mutt. In 1902, 2nd plaintiff sublet (Exhibits D and D1) to 1st defendant for a period of ten years and in 1905, 2nd plaintiff and his son 3rd plaintiff sold their rights under Exhibit A to 1st plaintiff (Exhibit E). From 1905 the properties controlled by the heads of the mutt were managed by the Diwan of Mysore under powers-of-attorney executed by the matathipathis and the Diwan in turn empowered defendants' 1st witness to conduct the management. In 1908, defendants' 1st witness visited Madura and it was then only that he became aware of the nature of the lease granted to the 2nd plaintiff. He at once objected to it and tried to induce 1st defendant to at torn to him. This 1st defendant, at that time, refused to do. In November 1911, however, 1st and 2nd defendants took a lease of the land for seventeen years from defendants' 1st witness. (Exhibit V). At the end of September 1912, the term fixed in the lease deed Exhibit D, expired. The rent for the whole period had been paid in advance. First and 2nd defendants are admittedly in possession of the land and claim to hold it under Exhibit V. In 1908 defendant's 1st witness objected to the lease of 1891 on the ground that it was not competent to the head of the mutt to grant a permanent lease of the kind.

He tried to get 1st plaintiff to come to terms but in vain. Certain payments were made by 1st plaintiff after 1908 and the effect of these is a subject of controversy between the parties. First plaintiff seeks (amongst other reliefs) a declaration that he is the permanent lessee of the property and a direction to the defendants to deliver up possession of it.

2. The main contentions on behalf of 1st plaintiff are (1) that the permanent lease is binding on the grantor and his successors, (2) that a valid title has been acquired under the provisions of the Limitation Act and (3) that the defendants are estopped from denying the 1st plaintiff's title. The findings of the learned Subordinate Judge are against the plaintiffs-appellants on all three points.

3. With regard to the first point there is no doubt that the head of a mutt cannot in the absence of necessity bind his successors-in-office by a permanent lease at a fixed rent for all time. This would be so, even if the rent had been adequate in 1891, *Maharanee Shibessouree Debia v. Mothooranath Acharjo* 13 M.I.A. 270. There is no allegation much less proof, of any such necessity. The first contention must be rejected.

4. In connection with the second point, a question arises as to the nature of the endowment and the position of the head of the mutt in relation to it. The exact terms of the original grant are not in evidence. It was conceded in argument that the grant was made by one of the Naicken dynasty of Madura. The case for the appellants is that the endowment was for a specific purpose, i.e., for the worship of Gopala krishnaswami who is described by the defendant's 1st witness as the titular deity of the mutt. "The evidence does not support this contention and it has been found against in the lower Court. A statement made by local agent of the mutt during the inam commission inquiries is relied upon for the appellants. It was apparently unsupported by any documentary evidence. The description of the inam as given at the close of the inquiry is, that it was granted " for the support of Vysaraya Madam" (Exhibit L) compare also description in Exhibit F. The evidence for the defendants is that the income from this property is not appropriated to any particular purpose but forms part of the general funds of the mutt. I think the grant must be held to have been made for the general purposes of the mutt.

5. What then is the position of the head of the mutt in relation to the general endowments of the institution? In *Sammantha Pandara v. Sellappa Ghetty* 2 M. 175 there is a description of "the nature of the generality of such institutions and the incidents of the property which is devoted to their maintenance." The property is stated to be "in a certain sense trust property, it is devoted to the maintenance of the establishment but the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income, provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution."

6. In *Giyana Samhandha Pandara Sannadhi v. Kandasami Tambiran* 10 M. 375 a

description is given of how the endowments of mutts were acquired and this description appears to fit the case now under consideration in so far as the facts have been ascertained. The judgment then proceeds to lay down that the head of the mutt came to own its endowments; in trust for maintenance of the mutt for his own support, for that of his disciples and for the performance of religious and other charities in connection with it according to usage."

7. In *Vidyapurna Tirtha Swami v Vidyanidhi Tirtha Swami* 14 M.L.J. 105 a different view was taken as to the position of the head of the mutt towards its endowments. It is this ruling which forms the basis of the judgment of the lower Court on the point now under consideration. The question was again examined by a Full Bench in the case reported as *Kailasami Pillay v. Nataraja Tambiran* 5 Ind. Cas. 4 . As I read the judgments in the last mentioned case, it was held that no general" rule could be laid down and that each case must be judged on the particular facts. Sankaran Nair, J., appears to accept the statement of the law in *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran* 10 M.k 375 as strictly accurate with regard to the endowments there referred to Vide *Kailasami Pillay v. Nataraja Tambiran* 5 Ind. Cas. 4 which seems to me similar in kind to the endowment now in question.

8. It is not, in my opinion, necessary to discuss these cases in detail, because, in my opinion, the matter is now governed by the decision of the Privy Council reported as *Ram Parkash Das v. Anand Das* 33 Ind. Cas. 583 The nature of the interest of the head of a mutt in the mutt property is declared in clear terms. ? The whole assets are vested in him as the owner thereof in trust for the institution itself" (page 713 Pages of 43 C.-Ed.), again at page 714 Pages of 43 C.-Ed., "the nature of the ownership is, as has been said, _ an ownership in trust, for the mutt or institution itself, and it must not be forgotten that although large administrative powers are undoubtedly vested in the reigning mahant this trust does exist and...must be respected." And at page 732 Pages of 43 C.-Ed. in referring to the retirement of the head of the mutt it is said, "the mahant in their Lordships" opinion is not only a spiritual preceptor, but also % trustee in respect of the as that over which he presides." Their Lordships seem to me to lay this down as a rule of general applicability for whereas in the matter of succession to the headship the usage and, custom of a mutt have to be considered in each case. This is expressly stated. It is true that the point to be decided in the ease related to the office of superior of the mutt and not to the management of the other property and that the latter decision of this Court does not seem to have been referred to. The judgment, however, opens with a considered pronouncement as . to the position of a head of the mutt as to his functions and the legal position with regard to the endowments. The fact that certain decisions of this Court may not have been referred to, does not make the ruling any the less binding.

9. There do not appear to be any circumstances peculiar to the present case, which would exclude it from the operation of the general rule. It seems to me,

therefore, that the sole beneficiary is the mutt. This is not an instance in which there is any individual interest in the head of the mutt independently of the institution itself. He is no doubt entitled to appropriate part of the income to his own maintenance on account of his position in the mutt but his rights in this respect are the same in kind as those others connected with the mutt who are entitled to be supported from its funds. In this view it is unnecessary to consider the bearing on the question of limitation of the cases where it has been held that the head of the mutt had a personal interest in the property alienated, e.g. *Ahhiram Gotirami Mohant v. Shyama Charan Nandi* 4 Ind. Cas. 449 and *Narasaya Udpa v. Venkataramana Bhatta* 16 Ind. Cas. 53. The decision in *Muthusamier v. Sree Sree Methanithi Swamiyar Avergal* 19 Ind. Cas. 694 proceeds on the footing that the position of the head of a mutt is that enunciated in *Vidyopurna Thirtha Swami v. Vidyaiidhi Tirtha Swami* 14 M.L.T. 105 but as already stated, this view appears to be overruled by the decision of the Privy Council.

10. I think, therefore, that the alienor held the property simply as a trustee. It has been held in *Bameshwar Malta v. Jiu Thakur* 29 Ind. Cas. 337 that a permanent lease is a transfer within the meaning of Article 134 of the Limitation Act of 1908. The same decision and that reported as *Narasaya Udpa v. Venkataramana Bhatta* 16 Ind. Cas. 53 are authorities for holding that the annual rent is a valuable consideration. The requirements of the Article would, therefore, seem to be fulfilled.

11. It has, however, been urged that the appellants are not entitled to take advantage of the Article because 2nd plaintiff was aware at the time he obtained the lease of the position of his lessor; the plaint alleges that the mutathipathi was a trustee and 2nd plaintiff in his evidence describes him as a trustee merely. There is nothing in the actual wording of Section 10 of the Act or in Article 134 to support the contention. It is, however, argued that this has been held to have been the meaning of the provision in the Act of 1877, and that these rulings are not affected by the changes in wording made in 1908. Vide *Tholadrtga Mudali v. Nagalinga Ghetty* (1916) 1 M.W.N. 28 The rulings relied on appear to rest on the remarks of Lord Cairns in delivering the judgment of the Privy Council in *Badhanath Dots v. Gislorne and Co.* 14 M.I.A. 1 : In that case the actual finding was that the transaction was consistent with the view that the alienee intended to take only such interests as the transferor was competent to alienate (Vide pages 17 and 19). This decision has been explained by Mookerjee, J. in *Ram Kanai Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur* 2 C.L.J. 546 and quite recently by Ayling and Srinivasa Aiyangar, JJ. in *Subbaiya Par daram v. Mohamad Mustapha Maracayar* 40 Ind. Cas. 50. In the latter case, the later rulings of this Court have also been considered and distinguished. The fact of knowledge may be an important piece of evidence, in judging of what interest the transferee contracted to take especially where (as in most of the cases cited) the transferor was a mortgagee but such knowledge cannot by itself disentitle the transferee to the benefit of Article 134 of the Act. In the present case I entertain no doubt that it was the intention of the grantor to create a permanent

lease and that 2nd plaintiff intended to take and did take the lease as a permanent one. Subsequent dealings with the property support this view. The grantor died a few months after the execution of Exhibit A. During the fourteen years that his successor held office the 2nd plaintiff continued to hold on the terms of the lease-deed, I would respectfully follow the view enunciated by Mookerjee, J., in the case referred to "and hold that the 2nd plaintiff perfected his title to a permanent lease as more than twelve years elapsed since the grant. The lessor intended to grant and the lessee intended to acquire an interest greater than the transferor was competent to alienate and all the requirements of Article 134 have been complied with.

12. The above finding is sufficient for disposal of the appeal and it is, therefore, unnecessary to consider the question of estoppel which is raised by the appellants.

13. The Subordinate Judge has given the 1st plaintiff a decree for Rs. 116 6 6 as damages against the 1st defendant. A memorandum of cross objections, was filed but was not pressed and is dismissed.

14. There is a further claim for Rs. 500 as damages for breach of the agreement in Exhibit D prohibiting the letting of trees for tapping in the last two years of the lease. The Subordinate Judge recorded no finding on the point as he considered the claim unsustainable for reasons given in paragraph 29 of his judgment. The evidence adduced is of a very vague description and, in my opinion, insufficient to enable a conclusion to be come to as to whether any and if so, what amount, is due to the 1st plaintiff on this account.

15. In the result I think the appeal should be allowed and 1st plaintiff given a decree for possession of the property, and a declaration that he is a permanent lessee. He will also be entitled to mesne profits from the 1st October 1912, till delivery. These profits will be recoverable from defendants Nos. 1 and 2 and will be determined by the lower Court and embodied in ft supple-mental decree. Having regard to the uncertainty of the law in this Presidency prior to the judgment of the Privy Council, I think the parties should bear their own costs in both Courts.

Sadasiva Aiyar, J.

16. I agree.