
(1973) 03 AP CK 0009
In the Andhra Pradesh High Court
Case No : Appeal No. 508 of 1970

Chinna Jeeyangar Mutt, Thirupathi

APPELLANT

Vs

C.V. Purushotham and Others

RESPONDENT

Date of Decision : 16-03-1973

Acts Referred:

Limitation Act, 1908 — Article 134B
Limitation Act, 1963 — Article 31, 96

Citation : AIR 1974 AP 175

Hon'ble Judges : Venkatarama Sastry, J

Bench : Single Bench

Advocate : Advocate General for A. Venkatasami Reddy and E. Manohar, for the Appellant; T. Anantha Babu and R. Ramaujulu, for the Respondent

Judgement

1. The main point that arises in this appeal is about limitation. It is necessary to state a few facts in order to appreciate the position.

2. The appellant herein instituted the suit O. S. 81 of 1965 on the file of Subordinate Judge's Court, Chittoor for the declaration that the permanent lease executed by the previous head of the mutt on 19th Chitra of Vikari year in favour of Govindachari and the subsequent alienation on 19-4-1940 in favour of C. V. Ramanujam, father of defendants 1 to 4, are void inoperative and not binding on the plaintiff mutt, and that there has been a forfeiture of the said lease by non-performance of the conditions of the lease, for possession and mesne profits, past and future. According to the case of the plaintiff, the suit property belonged to the plaintiff mutt having been granted in inam to a previous head of the mutt by then ruler for the general maintenance of the plaintiff mutt. It was also confirmed at the time of Inam Commission on 16-5-1965, which issued also title deed No. 2460, to the plaintiff mutt. The said inam was confirmed as Devadayam Inam for the purpose of service to be rendered by Sri Chinna Jeeyangar Swami in Tirumalai Tirupathi Devasthanams. Under the provisions of Andhra Inams Abolition Act (Act XXXVII of 1965) a ryotwari patta was also granted for this

inam in favour of the mutt u/s 4 of the said Act. As the suit land is religious endowment it was inalienable in character, except in case of unavoidable necessity or clear benefit to the mutt. While so, one of the previous heads of the mutt executed a permanent lease in 1898 in favour of one Komandur Govinda Chari. The grandson of that lessee sold the suit property in 1920 to one Pandguluru Kuppu Ramaswamy Chetty of Thirupathi, who in his turn sold it in 1927 to Katari Narasimhalu Reddy and Chamarthi Narayana Reddy, both of them sold the suit property in 1928 to one Remala Pedda Subba Reddy. On 19-4-1940 the said Pedda Subba Reddy sold the same to the father of the defendants 1 to 4. In a partition between the members of the defendants' family it fell to the share of the first defendant. 6th defendant in their lessee. The permanent lease of 1898 was for a very low rent. The deed provided for the cancellation of the lease and the re-entry by the lessor in default of payment of rent for two consecutive years and the recitals in the document do not prima facie show the existence of any unavoidable necessity or clear benefit to the mutt. Plaintiff therefore attacked the permanent lease as an alienation by a previous manager of the mutt not binding upon the plaintiff institution. As it is a violable one, the plaintiff has filed the suit for recovery of possession of the property covered by the said alienations. The said alienations constitute a breach, of duty on the part of the head of the institution. Plaintiff further states that the rent payable under the lease also has not been paid at all. Plaintiff gave a notice prior to the suit on 15-5-1963 to the first defendant calling upon him to surrender possession, but the first defendant has not complied with it. Plaintiff was appointed as the head of the mutt on 16-5-1960, when he assumed the office as Chinna Jiyyanagar. Plaintiff therefore based the cause of action for the suit on the date of the permanent lease and also on the date of his appointment to the office as manager.

3. In the written statement filed by the first defendant he contested the claim of the plaintiff mutt. The original permanent lease stipulated payment of Rs. 10-8-0 per year as the rent and it was a fair rent and not a low one. There was no clause providing in the lease for re-entry. The lease was for necessity and benefit to the mutt. Prior to the lease the mutt was not deriving any income from the lands. It was assured of the rent specified in the document, apart from the fact that the Government cist was also made payable by the lessee. The lease was not a void one. The present Mathadhipathi is bound by the said alienation. The present Mathadhipathi is the 6th person in succession to the office of Chinna Jiyyanagar, after the alienating Jiyyanagar. He has no right to question the lease as violable at his option at this distance of time. The suit for such a relief is barred by limitation. It is not correct to say that the lease amount has not been paid to the plaintiff. The provisions of Hindu Religious and Charitable Endowments Act, 1951 have no application. If the lease is considered to be violable, he and his predecessors in title have perfected their title to the suit property by adverse possession. If the lease is considered to be a void one, the suit by the present plaintiff is barred by time. Plaintiff's appointment on 16-5-1960 will not give him

a cause of action to file this suit. 6th defendant has been evicted from possession by virtue of an order passed by the Tahsildar, Chandragiri under the Andhra Tenancy act on 16-5-1965. He is not, therefore a necessary party. The plaintiff is not entitled to any of the reliefs.

4. 6th defendant is a separate written statement contended that he was in possession of the suit land under a lease from the first defendant in his own right. He would abide by the decision of this court as to the ownership of the property.

5. On the above pleadings, the lower Court, framed the following issues:

1. Whether the permanent lease executed by the previous head of the mutt on 19th Chithra of Vikari year in favour of Komandru Govindachary was one effected for necessity or benefit to the plaintiff mutt and is binding on the plaintiff ? (Issue No. 1 raised as per order dated 24-7-1969).

2. Whether there was a forfeiture of the said lease by non-performance of the conditions of the lease ?

3. Whether the ryotwari patta granted in favour of the plaintiff mutt in respect of the suit properties under the provisions of the Inams Abolition Act, 1956 is not binding on the defendant and is not conclusive of the rights of the plaintiff mutt to the suit properties ?

4. Whether the defendants perfected their title to the suit properties by adverse possession ?

5. Whether the defendants are not liable for mesne profits ?

6. Whether 6th defendant is not a necessary party ?

7. To what relief ?

6. The title deed had been marked as Ex. A-18, while the unregistered lease deed executed by the previous manager of the mutt in favour of Govinda Chary was marked as Ex A-9. The ryotwari patta granted to the mutt under Andhra Inams Abolition Act has been marked as Ex. A-19. The defendants have filed only the true copies of the death register extracts of the five previous Peda Jiyyangars from 1906 to 1960. D. W. 1 the only witness examined for the defendants merely spoke about the succession of Peda Jiyyangars. There was no other oral evidence on either side in the suit.

7. On the above evidence the learned Judge held on issue No.1, that the permanent lease executed by the head of the mutt in favour of Govinda Chary was one effected for the necessity of the plaintiff mutt and is binding on the plaintiff. He found that issue No. 2 does not arise. Issue No.4 was found in favor of the defendants holding that they perfected their title to the suit property by adverse possession. It was held under issue No. 3 that the ryotwari patta granted to the plaintiff mutt under the Inams Abolition Act, 1956 is not binding

on the defendants. In view of the above findings the question of mesne profits was held not to arise. It was found that the 6th defendant was a necessary party. On the basis of the above findings the learned Judge held that the plaintiff mutt had no title to the suit properties. The permanent lease as well as the subsequent alienation culminating in the sale to the father of defendants 1 to 4, on 19-4-1940 gave rights to the defendants and the plaintiff has no title to recover possession of the suit property as the defendants have perfected their rights by adverse possession. Plaintiff's suit, therefore, was dismissed with costs.

8. The above decree has been challenged in this appeal. Learned Advocate-General, who appeared in this appeal for the appellant, has submitted that the dismissal of the suit on the ground of limitation is not proper as the suit is saved by Art. 96 of the new Limitation Act. He also challenged the findings given by the lower Court that the defendants have perfected their title by adverse possession. It is the contention of the learned Advocate-General that under Art. 96 of the new Limitation Act, introduced in the new Act (Act XXXVI of 1963) and which came into force on 1-1-1964, the plaintiff has got a right to institute the suit within 12 years from the date of appointment of the plaintiff as manager of the endowment, and the suit cannot be dismissed on the ground that more than 12 years have elapsed from the date of death of lessor under the permanent lease. The learned Advocate-General relied upon the report of the Law Commission, as well as the statements of objects of the New Limitation Act and contended that the new Act has brought about a change in regard to suits of this nature as suggested by the Law Commission. He has no doubt contended that a permanent lease, which was not for necessity, was operative during the lifetime of the aileron and every succeeding Mahant can create a new tenancy if there is evidence of payment and acceptance of rent. But in this case there is no such evidence. The scope of Article 96, according to the learned Advocate-General, has not come up for decision in any court till now and their Lordships of the Supreme Court have also left the question open in the decision reported in *Sri Sarangadevar Peria Matam and Another Vs. Ramaswamy Gounder (Dead) by Legal Representatives*, . On a plain reading of the wording in the article, the learned Advocate-General submits that the suit is governed by Art. 96 and is well within time. Regarding the finding about legal necessity the learned Advocate-General submitted that it has been held time and again by the decision of Privy Council that a case of permanent lease by the head of a mutt is, *prima facie*, not for the benefit of the institution or for any necessity. He also submitted that there is evidence about the legal necessity or any benefit or any bonafide enquiries made by the alienee on whom the burden of proof lies in this case. In the absence of any such materials, he contended, that the findings of lower Court in regard to legal necessity cannot be sustained.

9. Sri Ananthababu, Learned counsel appearing for the respondents contended that Article 96 cannot be applied to this case on account of the prohibition contained in Section 31 of the Limitation Act. According to his contention, it is only those suits wherein the previous Mahant died on or after 1-1-1952 and

before 1-1-1964 that are saved u/s 31 of the act. If the previous Mahant had died prior to 1-1-1952 the suit is barred by limitation. On the construction of Article 96, his contention is that the words "Previous Manager" used in Art, 96 means the immediately preceding manager and the word "Plaintiff" in column 3, would be the successor of the transferor and not the person of the nature of the present plaintiff. He therefore contends that Article 96 has to be confined only to suits by immediate successor, because the legislature wanted only to bridge that gap by virtue of this amendment. He submitted that if a right had been lost by virtue of adverse possession it cannot be revived. according to him by 1960 the title became extinguished. As regards the legal necessity, the learned counsel submits that the lower court presumed necessity and as the alienation has taken place more than 75 years back no evidence can be adduced in regard to legal necessity at this distance of time. He relies upon a decision of Supreme Court in Sree Sree Iswar Gopal Jieu Thakur Vs. Pratapmal Bagaria and Others, .

10. In reply to the above arguments, the learned Advocate-General submitted that there is no limitation placed in article 96 as contended by the learned counsel for the respondents. Section 31 is no bar as the old Act did not contemplate suits to be entertained by persons within 12 years from the date of their appointment. He has also contended that the Article cannot be limited to an aileron being only the immediate predecessor and the plaintiff being the immediate successor of the transferor. He relies upon the decision of Gopal Rao Ekbote, J., (as his Lordship then was) in L. Machi Reddy Vs. The Wakf Board of Andhra Pradesh, and contends that the plaintiff can file a suit. In reply to the arguments of the learned counsel for the respondent about legal necessity, the learned Advocate-General relies upon a decision in Palaniappa Chetty v. Pandara Sannadhi, ILR 40 Mad 709 : (AIR 1917 PC 33) considered to be for the benefit of the institution.

11. I have now to see on the basis of the above pleadings, evidence and the respective contentions, as to whether the suit is barred by limitation and whether the finding about legal necessity can stand.

12. There can be no doubt about the principle that the law of limitation is a procedural law and therefore the law to be applied to a suit is the law existing on the date of the suit. (Vide C. Beepathumma and Others Vs. V.S. Kadambolithaya and Others,). Therefore we have to apply the provisions of law of Limitation as it existed on the date of the suit viz. the New Limitation Act (Act XXXVI of 1963). Article 96, which has been introduced in this Act has replaced the two prior Articles 134-B and 134-C in the old Act 1 of 1908. They are extracted below:

96. By the manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.

Twelve years.

The date of death, resignation or removal of the transfer or the date of appointment of the plaintiff as manager of the endowment whichever is later. 134-B. By the manager of a Hindu Muhammadan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.

Twelve years.

The death, resignation or removal of the transferor.

134-C. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.

Twelve Years.

The death, resignation or removal of the seller.

13. The Law Commission observed in its 3rd report relating to Limitation Act, 1908 in paragraph 123 as follows :

"The starting point of limitation for suits covered by Art. 134-B is the date of death, resignation or removal of the transferor. This has given rise to some difficulties in certain cases. Thus, an Endowment Commissioner may find it necessary to challenge an alienation by one of the previous managers, after decades; or, there may be a gap of more than 12 years between the death, resignation or removal of one manager and the appointment of his successor. In such cases, it would be more equitable to make the date of the plaintiff's appointment as Manager the starting point for limitation. But there may be cases and circumstances where the existing provision may be more favorable to the institution. To provide for both contingencies, the later of the two dates should be taken as the starting point of limitation."

14. In the Statement of Objects and Reasons for the new Limitation Act, we find the following :

"This bill seeks to implement the Third report of the Law Commission on the Indian Limitation Act, 1908, with one important modification. While giving effect to the recommendations of the Commission as respects the re-arrangement of the Articles contained in the First Schedule in accordance with their subject-matter and the rationalisation of the periods of limitation as far as possible it is felt that it would be more advantageous to adhere to the existing scheme which in almost all cases indicates the specific point of time from which the period of limitation begins to run.

An earlier Bill on the subject-introduced in the Lok Sabha on the 23rd December, 1960 lapsed on its dissolution.

The notes on clauses explain in detail the provisions of the Bill."

15. In the notes on clauses relating to Article 92, we find the following :--

"Articles 92 to 96 reproduce respectively existing Articles 134 (first part), 48-A (first part), 134-A, 48-B, 134-B and 134-C. In the new Article 96, replacing existing Articles 134-B and 134-C, an amendment is made whereby the date of appointment of a new manager is also made the starting point of limitation in suitable cases."

16. It has been held by their Lordships of the Supreme Court in *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, as follows:--

"It has been said that although the Statement of the Objects and Reasons appended to a bill is not admissible as an aid to the construction of the Act as passed (See *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*,) yet it may be referred to only for the limited purpose of ascertaining the conditions prevailing at the time which necessitated the making of the law (see *The State of West Bengal Vs. Subodh Gopal Bose and Others*,)."

17. In view of the pronouncement, I have extracted above the report of the Law Commission and the objects and reasons can be referred to only for the purpose of explaining the circumstances under which the Act was passed and the reasons which necessitated it, and not with a view to interpret the provisions of Article 96.

18. As stated supra, the new Act has brought about a change in the complexions of suits filed by a manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment, which has been transferred by a previous manager for a valuable consideration. The change brought about by the new Act is by the insertion in column No. 3, which speaks of the time, from which the period begins to run, of the following words : "Or the date of appointment of the plaintiff as manager of the endowment whichever is later." This has been necessitated on account of the situation created by the pronouncements in various decisions of the land, relating to such type of suits. It is therefore necessary to consider the state of the law as it existed prior to the date of this amendment.

19. Article 134-B, which has been replaced by Article 96 was itself introduced into the Limitation Act 1 of 1908 by Act 1 of 1929. Prior to 1929 the law was governed only by Art. 134 of the Second Schedule to Indian Limitation Act IX of 1908. According to that Article in regard to suits :

"to recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for valuable consideration, the period prescribed for the institution of the suit was 12 years from the date of transfer."

20. In *Vidya Varuthi v. Balusami Ayyar*, ILR 44 Mad 831 : (AIR 1922 PC 123) the

Privy Council held that an alienation by the manager of a Hindu religious endowment or a superior by whatever name called, cannot be treated as the act by a "trustee", to whom property has been "conveyed in trust" and who by virtue thereof has the capacity vested in him which is possessed by a "trustee" under the English Law. In the case of a Hindu or Muhammadan endowment, the property may be conveyed in trust for a specific and definite purpose, in which event the person would be placing himself expressly under the English Law. In such a case the legal ownership is transferred to him and he would become a trustee in the specific sense of the term. The Privy Council therefore ruled that to such classes of suits Article 144 may be applied, if the possession of the defendant became adverse to the plaintiff. The Privy Council also further observed that according to the well-settled law of India, "apart from the question of necessity", the Mahant is incompetent to create any interest in respect of mutt property to enure beyond his lifetime." Their Lordships approved the prior decision of the Privy Council in the respect in ILR 40 Mad 709 : (AIR 1917 PC 33). Under the law prior to 1929, if the transfer was for no consideration Section 10 of the Limitation Act would be attracted and there would be no bar of limitation. If the transfer was of the institution itself with or without the properties attached to it, it would be a void alienation and limitation would run from the date of alienation itself. (Vide the decisions in (1900) ILR 23 Mad 271 (PC) and (1910) ILR 37 Cal 885 (PC)). Where only one or more properties of the endowment were alienated the position of the transferee became adverse only from the termination of the office by the previous manager because the manager could alienate the property during his lifetime, though it may not bind his successor. Such was the state of law immediately prior to the introduction of Article 134-B in the Act 1908 by the Act 1 of 1929.

21. Dealing with the scope of Section 134-B, his Lordship Ganjendragadkar, C. J. has observed in *Srinivasa Reddiar and Others Vs. N. Ramaswamy Reddiar and Another*, as follows :

"It is well known that the law of limitation in regard to suits instituted to set aside unauthorised alienation of endowed property by a Shebait or a Mahant or a Manager of a Hindu religious endowment was very uncertain prior to the decision of the Privy Council, in *Vidya Varuthi Thirtha v. Balusami Ayyar*, 48 Ind Ap 302 : (AIR 1922 PC 123). That is why subsequent to the said decision, any discussion about the question of limitation relating to such suits necessarily begins with a reference to the principles laid down by the Privy Council in *Vidya Varuthi*'s case. In that case the Privy Council held that the endowments of a Hindu Math are not conveyed in trust nor is the head of the math a "trustee" with regard to them, save as to specific property proved to have been vested in him for the specific object. The question which the Privy Council had to consider in that case was whether Art. 134 applied to a suit in which the validity of a permanent lease of part of the math property granted by the head of a math was challenged. Art. 134, covers suits brought with a view to recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards

transferred by the trustee or mortgagee for a valuable considerations. These words used in column 1 of Article 134 necessarily raise the question as to whether the head of a math is a trustee within their meaning ; and Mr. Justice Ameer Ali, who spoke for the Privy Council, answered that question in the negative. In consequence, the argument that Article 134 applied, was repelled, and it was held that Art. 144 would govern such a case.

In fact, it is substantially because of this decision that Articles 134-A, 134-B and 134-C, and Articles 48-A and 48-B came to be inserted in the first Schedule to the Limitation Act by Amending Act 1 of 1929. At the same time Section 10 of the Limitation Act was amended by addition of an explanatory clause which provided, inter alia, that for the purposes of Section 10, any property comprised in a Hindu religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be trustee thereof. As we have already noticed these newly added provisions in the Limitation Act came into force on 1st January, 1929."

22. The amended provision in Article, 134-B would apply only to the cases of illegal or unauthorised transfers (Vide *Atyam Veerraju and Others Vs. Pechetti Venkanna and Others*,). It was held in this decision that Article 134-B does not apply to a suit for recovery of property where the property was lawfully transferred by the previous manager and the transfer remains effective after the death, resignation or removal. In that case it was held that the lease from year to year, which is binding on the temple and which does not terminate with the expiry of the office of the manager or the succeeding managers. Such a lease would continue by its own force until it is terminated by notice.

23. It was also held by the Supreme Court in *Srinivasa Reddiar and Others Vs. N. Ramaswamy Reddiar and Another*, that the said Article would apply where the three requirements are proved, i.e. (1) that the property belongs to the religious endowment (2) that it was transferred by previous manager (3) and that the transfer was for valuable consideration. It did not matter whether the property was transferred by the previous manager stating that it was his own property. It was also held in another decision by the Supreme Court in *Sri Sarangadevar Peria Matam and Another Vs. Ramaswamy Gounder (Dead) by Legal Representatives*, that if the title of the mutt to any property was terminated by adverse possession the rights of the mutt in the property are also extinguished. It was not therefore open to a succeeding Mahant to recover, after his appointment, property which no longer belonged to the mutt, if before his appointment limitation under Article his appointment limitation under Article 144 has commenced to run against the mutt. That was a case in which there was an alienation in 1883 by way of a perpetual lease. The lessor under that lease died in 1915 and there was no succeeding mathadhipathi till 1939. On those facts it was held that the alliance acquired title to the lands by prescription not only from 1915 to 1927, but also after the Collector resumed the land in 1920 for over 12 years. It was observed that the absence of a legally appointed mahant did not

prevent the running of time did not prevent the running of time under Article 144 of the Limitation Act. In AIR 1933 75 (Privy Council) it was held that where a mahant has alienated the mutt property, the possession of the alienee does not become adverse during the tenure of the office of Mahant and limitation begins to run only from the time when the Mahant ceases to hold office. The same principle was laid down in ILR 44 Mad 831 : (AIR 1922 PC 123). The Full Bench of the Madras High Court in Venkateswara v. Venkatesa, ILR (1941) Mad 599 : (AIR 1941 Mad 449) FB) following the above principle held that the date of starting point for adverse possession was the date of death or resignation or removal of the manager, who effected the alienation and not the date of the election of his successor. These principles were applied to Hindu Religious Endowments in Sri Lakshminarayanaperumalswami Vs. Kasthuri Naicker and Others, , and in regard to Mohammadan endowments as well, (Vide AIR 1940 116 (Privy Council) .

24. From the above discussion the following position of law emerges. A Mahant of a mutt is incompetent to create any interest in respect of mutt property to enure beyond his lifetime. He can alienate the property permanently only for legal necessity or benefit to the estate. In the case of an alienation made by him, which was not for legal necessity or benefit the said alienation becomes violable at the instance of his successor. The right to question the alienation accrues to the successor only on the alienor's death. The adverse possession of the alienee also begins to run only from the date of his death and not until then. A permanent lease of temple lands is also an alienation of this nature. If it was not for legal necessity or benefit it is not binding on the mutt. The cause of action which once accrues continues. The right of the mutt would be extinguished in regard to that property at the end of the period prescribed by the law of limitation. Each succeeding mahant does not get a revival of the cause of action in his favour. The appointment of successor was never considered to give a fresh start of limitation under the law as it stood prior to 1963. Whether it was an alienation, made for legal necessity or not was a question depending upon the facts and circumstances of each case.

25. Such was the state of law when the Limitation Act was amended in 1963. The legislature must be presumed to know the existing law and the interpretation given by the courts to the law then in force. If the right to question a violable alienation in respect of a Hindu or Muhammadan religious or charitable endowment is denied to a mutt or religious institution, such an institution loses the properties once for all. As the State was interested in protecting and safeguarding the properties of such institutions, it brought about an amendment to achieve that purpose in 1963. The Law Commission, which was appointed to go into the question suggested that in the case of Hindu, Muslim and Buddhist religious or charitable endowments, a fresh start or charitable endowments, a fresh start or a terminus quo should be given for actions brought by the succeeding Mahant to set aside such alienations, which were not made for legal necessity or benefit of the institution. The Legislature also accepted that view

and inserted in column 3 to Art, 96, which previously had only the following words : "the death , resignation or removal of the transferor" the following words : " or the date of appointment of the plaintiff as manager of the endowment, whichever is later" . It is obvious from the plain word of the amendment that the legislature had in view such alienations about which a right to institute suits has already become barred and therefore it wanted to provide a fresh period of limitation in regard to them. The Legislature was also aware of the fact that according to the law as laid down by decisions prior to 1963, the date of appointment of the plaintiff as manager by an endowment did not give him fresh start of limitation the obvious difficulties felt in the interpretation of such law that this amendment has been brought about. By virtue of this amendment, if the plaintiff had been appointed within 12 years from the date of filing of the suit, he can question any alienation, which was not made for legal necessity or benefit to a mutt by a previous manager. The fact that 12 years have elapsed from the date of death, resignation or removal of the transferor manager would not stand in the way of the plaintiff in such a suit from recovering the property. That is clear from the last three words in the amendment "whichever is later", purposely introduced by the Legislature. In view of the amendments the courts have got to apply the plain words of the Statute to any action brought by any manager of a Hindu, Muslim or Buddhist religious or charitable endowment, to recover possession of the movable or immovable property of an endowment which was the subject of an alienation by a previous manager for valuable consideration. It is also clear that the transferor manager need not be the immediate predecessor of the plaintiff, that filed such a suit. From a reading of Article 96, such a conclusion cannot be arrived at, It is enough if the alienation was made by a previous manager. The first column does not say that it should be by the previous manager.

26. As observed by their Lordships of the Privy Council in *Abhiram Goswami v. Shyamma Charan Nandi*, (1909) ILR 36 Cal 1003 at p. 1014 (PC), Statutes of Limitation, like all others, ought to receive such a construction as the language, in its plain meaning, imports. The plea of hardship in the interpretation of the provisions of Limitation Act is out of place. (See for instance the observations (Extracted below) of the Privy Council in AIR 1932 165 (Privy Council)

"They think that the question must be decided upon the plain words of the article. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it; the words mean just what they say. The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardships. But in construing such provisions, equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think the only safe guide."

The same principles have been applied in ILR (1941) Mad 599 : (AIR 1941 Mad 449) (FB).

27. In view of the above pronouncements the argument of the learned counsel for the respondents that the giving of such liberal interpretation to the wording of Article 96 would amount to reviving the rights, which have become extinguished by the prior adverse possession of the alienees, cannot be countenanced. The mischief, if any, was done by the Legislature in adopting such a clear language in the statute. The duty of the court is to apply the law as it stands and not to refuse to apply the law on account of any hardship caused to the parties.

28. In view of the above position of law, in regard to the interpretation of Article 96, I hold that the present suit is not barred by limitation, since it was instituted within 12 years from the date of the appointment of the plaintiff as manager of the endowment.

29. The learned counsel for the appellant has placed reliance upon the decision of My Lord Gopal Rao Ekbote J, (as his Lordship then was) in *L. Machi Reddy Vs. The Wakf Board of Andhra Pradesh*, wherein the learned Judge has laid down, interpreting Art, 96 of the Limitation Act, that it is not necessary for its applicability that the transferor should have been the immediate predecessor of the plaintiff to the office of the Manager. It was not doubt a case wherein the transferor was alive and therefore the first clause in the third column has not come into operation. The learned Judge held that in all cases, it was not necessary that the previous Mutavalli must have died, removed or resigned (sic) and that even from the date of the appointment of the plaintiff as manager, the limitation would commence. It was therefore a case wherein the learned Judge applied the second part of the column No. 3 in Article 96, to a case of a suit challenging the alienation by a Mutavalli even though the transferor Mutavalli is alive.

30. I shall now consider the submission of the learned counsel for the respondents based upon the provision of Section 31 of the Limitation Act, 1963 as barring a suit of this nature, Section 31 is in the following terms :

"Nothing in this Act shall--

(a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 expired before the commencement of this Act; or"

31. It would be seen from the above section that it only speaks of suits appeals or applications which are instituted as per the period of limitation prescribed by the Indian Limitation Act, 1908 and not to the types of suits, which are provided by the new Limitation Act. In the Limitation Act of 1908, the right to file a suit under Article 134-B would arise on the death, resignation or removal of the transferor. But under the new Limitation Act, 1963 a suit can also be filed within 12 years from the date of appointment of the plaintiff as Manager. The latter type of suits contemplated by the Act are therefore a new variety of suits introduced by the new Act and are not covered by the Indian Limitation Act, 1908. If the terminus quo was repeated as in the case of 1908 Act, Section 31 would no

doubt come into play, but when the terminus quo in column 3, has been changed in the new Act, it cannot be said that the new suit contemplated by Art, 96 is the same suit from which the period of limitation was prescribed under the Indian Limitation Act, 1908. Moreover it has been held in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subhash Chandra Yograj Sinha*, "*S. B. K. Oil Mills v. Subhash Chandra*" that saving clauses are seldom used to construe the Act. The principle that is applied to such cases is to see whether the intention of introducing such a saving clause manifests the intention to destroy such type of suits contemplated by new Act altogether. When the old Article 134-B has been repealed and is followed by fresh legislation by means of Art. 96 in its place, with an additional clause in column No. 3 giving a fresh nature, we cannot infer the manifestation of an intention to destroy, even such type of suits by virtue of the provisions contained in Section 31. If Section 31 is interpreted to take away the right of suits contemplated by the new Article 96, the court would be practically rendering the beneficial provisions introduced by Article 96 of the new Limitation Act nugatory. In these circumstances I am unable to agree with the learned counsel for the respondents that Section 31 in any way affects the rights of the plaintiff in this suit.

32. I will now take up the question about the legal necessity for this alienation. The learned counsel for the appellant relied upon the decision of the Privy Council in ILR 40 Mad 709: (AIR 1917 PC 33) and contended that the alienation in this case was not one for legal necessity. In the said case also a permanent lease granted by Shebait as a trustee was in question. Lord Atkinson delivering judgment in that case observed as follows :--

"three authorities have been cited which establish that it is a breach of duty on the part of a Shebait, unless constrained thereto by unavoidable necessity, to grant a lease in perpetuity of debottar lands at a fixed rent however, adequate that rent may be at the time of granting, by reason of the fact that by this means the debottar estate is deprived of the chance it would have if the rent were variable of deriving benefit from the enhancement in value in the future of the lands leased."

This view was followed in ILR 44 Mad 831 : (AIR 1922 PC 123). The learned Advocate-General also has contended that the burden of establishing that the alienation was for legal necessity is on the alliance and in this case the said burden has not been discharged, i.e. no evidence has been let in about the existence of any legal necessity or benefit to the estate or any bona fide or reasonable enquiries made by the alliance.

33. The learned counsel appearing for the respondents however relied upon the decision of the Supreme Court in *Sree Sree Iswar Gopal Jieu Thakur Vs. Pratapmal Bagaria and Others*, , and contended that the legal necessity should be presumed in a case of this type, on account of impossibility of leading any evidence to prove such legal necessity in view of the lapse of a long period. He has drawn my attention to the following passage at page 216.

"The tenancy in question came into existence as long ago as 1869 and it is not surprising that no direct evidence bearing on the issue of legal necessity is available now. we have therefore to fall back upon the recital in the documents to ascertain the circumstances under which the documents, Exs. L & K were executed, because it is well settled that if all the original parties to the transaction and those who could have given evidence on the relevant points have passed away, a recital consisting of the principal circumstances of the case assumes greater importance and cannot be lightly set aside. See *Bangachandra v. Jagat Kishore*, 43 Ind App 249 : (AIR 1916 PC 110)."

But it may be noted that in the said case their Lordships have relied upon the recitals in the document as affording valuable evidence. If we look into the document in this suit, Ex. A-9, which is the impugned permanent lease in this case, we do not find any recitals as to the necessity in that document. That was a *Muchilaka* executed by the lessee in favour of the lessor. It says that the lessee has requested the lessor to give the land on permanent lease with permanent patta, and the lessor has agreed for the same and granted permanent patta of lease of his favour. The necessity for the grant of such permanent lease has not been mentioned in the said document. The lease also stipulated that the lessee should dig a well in the suit land at his own expense and construct a brick wall in the said land; that he should raise garden crops like chilly, plantain etc. and pay only a rent of three varahams (Rupees twelve) every year, 1 1/2 varahams by 15th Alpuri month and 1 1/2 varahams by 15th Viyari month. It was stipulated by him that he would cultivate the land by digging a well and by constructing a brick wall thereto by raising wet crops, by doing either self cultivation or by leasing it out from son to grandson and so on in succession till the sun and the moon enure by paying to the mutt only the stipulated rent at the stipulated period every year by obtaining receipts. It was also mentioned in that lease that there existed in the land another well. It is therefore clear that there was in the land a well already and that the land was being cultivated or was capable of cultivation. There was no reason mentioned in the document as to what prompted the Mahant from tying up the property for ever with the stipulations in this permanent lease. As observed by the Privy Council in ILR 40 Mad 709 : (AIR 1917 PC 33), the debottar estate is deprived of the chance it would have if the rent were variable of deriving benefit from the enhancement in value in the future of the lands leased. Unless forced by necessity to part with the land on a permanent lease of this nature, it cannot be held that the stipulations as are contained in Ex. A-9, can be justified as supported by legal necessity. Therefore in the absence of any recitals about legal necessity in the document and in the absence of any other evidence on the part of the defendants about such necessity, or any bona fide enquiries and also in the face of the recitals showing absence of legal necessity as discussed by me supra, the alienation in question cannot be said to be justified by only legal necessity or benefit to the estate. I am, therefore, not in a position to agree with the finding of the lower court the Ex. A-9 was supported by the legal necessity.

34. In view of any findings on the main issues about limitation and legal necessity, I have to hold that the plaintiffs are entitled for a declaration and possession of the plaint schedule properties as prayed for by them. It is therefore declared that the permanent lease executed on 19th Chitrai of Vikari year in favour of Govinda Chary and the subsequent alienation on 19-4-1940 in favour of Sri C. V. Ramanujam, the father of defendants, 1 to 4 are invalid, inoperative and not binding on plaintiff mutt. The defendants are directed to put the plaintiff mutt in possession of the suit property. There will be an enquiry into the mesne profits both past and future in a separate application to be filed for that purpose. The appeal is allowed, and not suit is decreed with costs throughout.

35. Appeal allowed.