

(1899) 12 PRI CK 0009

In the Privy Council

Gnanasambanda Pandara Sannadhi

APPELLANT

Vs

Velu Pandaram and another

RESPONDENT

Date of Decision : 19-12-1899

Acts Referred:

Citation : (1899) 27 IndApp 69

Hon'ble Judges : Hobhouse, Morris, Davey, Robertson, Richard Couch, JJ.

Judgement

Richard Couch, J. 1. The suit in this case was brought by the respondent Velu Pandaram to establish his right to the management of an endowment connected with a temple in the Province of Madras and to the possession of the lands forming the endowment, either absolutely or jointly with the second respondent Chockalinga, and the only question in this appeal is whether the suit is barred by the law of limitation. 2. The earliest document relating to the endowment is dated December 19, 1850, at which time the superintendence of it was vested in the Government. It is an agreement executed by Velu Pandaram, the grandfather of the respondent Velu, who is described as claimant to the endowment in question. It is addressed to the East India Company's Government, and states that in accordance with certain Government orders the lands attached to the endowment--which are specified- "having been delivered to my possession by Government and taken charge of by me, I shall conduct the cultivation and other affairs of the said lands from Fasli 1260, and use the income derived therefrom solely for the said temple." 3. On August 18, 1857, another agreement was executed by the same Velu Pandaram, by which he bound himself and his successors in the management of the endowment to act according to the conditions stated in it, and said that in default of his doing so the Government might remove him. 4. In 1863 the Government, then the Queen's, was engaged in divesting itself of direct responsibility for the superintendence of these religious institutions, and on October 31, 1863, an agreement was executed by the same Velu Pandaram and by Kuppa Pandaram, described as son of his elder brother, in which, after saying they are the claimants to the endowment and stating some assessments of lands belonging to it, it continues. "We shall from

the current Fasli 1873 conduct properly the Pooja (worship), Naivethiam (offerings), etc., and of the temple with the said assessment amount, and also keep in the temple under our signatures a detail account of receipt and disbursements in respect of it, and pay in full the kaval revenue of the said lands to the Circar every Fasli." The former agreements were executed by Velu only, but it would appear from this last that the endowment had been held by the brothers as a joint family, and that Kuppa had succeeded as heir to his father's interest in it. 5. Velu died at some time, not stated, prior to 1868, leaving an adopted son Nataraja, who died in 1884, leaving the respondent Velu his son and heir, who attained majority in February, 1891; Kuppa died in 1866, leaving a widow Visalakshi and a son, the respondent Chockalinga, who attained majority in 1880. 6. On September 17, 1868, Visalakshi executed a deed of sale to the manager of another temple who was predecessor in title . to it to the appellant. She is described in the deed as mother and guardian of Chockalinga and of another boy since dead, sons of the late Kuppa Pandaram, one of the two hereditary trustees. The operative part of the deed is, "I have conveyed to you by absolute sale my hereditary right and interest appertaining to the half-share of the hereditary right of management of the charity termed (describing this endowment) enjoyed by my husband until his death and afterwards by me for discharging the debts of the family incurred by my husband and myself in the management of the said endowment and for the maintenance present and future of myself and my little children for Es. 2000, the price settled therefor by mutual consent." 7. On February 13, 1869, a similar conveyance was executed by Nataraja of the half-share which he possessed of the hereditary right to the endowment for a like sum of Rs. 2000 for the purpose of discharging the debts incurred in the management of the endowment. 8. In *Rajah Vurmah Valia v. Ravi Vurmah Mutha* L.R. 4 Ind. Ap. 76 this Committee held that an assignment by the urallars (managers) of a pagoda of the right of management thereof was beyond their legal competence under the common law of India, and that no custom to do so had been established. There is no proof of any custom in this case, and consequently these deeds of sale are void and did not give any title to the purchaser. The title remained in Chockalinga and Nataraja, and the possession which was taken by the purchaser was adverse to them. 9. The law of limitation applicable to the case is Article 124 of the 2nd schedule to the Act XV. of 1877, which says that in a suit for possession of an hereditary office the period of limitation is twelve years, which begins to run when the defendant takes possession of the office adversely to the plaintiff or any person from or through whom he derives his right to sue. Chockalinga attained majority in 1880, and had by Article 44 of the Act three years for suing to set aside the sale by his guardian. He did not do so, and by Section 20 of the Limitation Act his right became extinguished. Their Lordships are of opinion that there is no distinction between the office and the property of the endowment. The one is attached to the other; but if there is, Article 144 of the same schedule is applicable to the property. That bars the suit after twelve years" adverse possession. 10. Nataraja also was barred, and his right was extinguished. The respondent Velu Pandaram

is his son, and the suit was brought by him against the appellant and Chockalinga, who apparently had refused to be a plaintiff. The plaint states that the endowment was founded by the ancestors of Velu and Chockalinga, and it was arranged by them that only the members of their family should hereditarily hold the properties which were their family property, and from the income thereof conduct the worship and charities connected with the temple, and prayed that his right might be declared to the sole management of the temple, or, if he was held not to be entitled to the sole management, that he might be held entitled to it jointly with the appellant. The Subordinate Judge held him to be entitled jointly with the appellant; the High Court has held him to be entitled to the sole right of management. 11. The contention on behalf of Velu before their Lordships has been that he does not derive his right to sue from or through Nataraja; that on his death in 1884 a fresh right accrued to Velu, and the period of limitation then began. Of the many cases cited by Mr. Branson in his argument one only, *Trimbak Bawa v. Narayan Bawa* Ind. L.R. 7 Bomb. 188, is applicable to this contention. In that case a grant for some religious purposes had been made to one Balobha and his descendants. His estate including this grant became divisible among his sons, and the share of Vithoba, one of them, was taken in execution in 1870 and illegally sold. The sons of another son of Balobha by some process became possessed of this share. Vithoba died in 1876, never having taken any steps to recover the property, and in 1879 his son sued the other descendants of Balobha for one-third share of the management. The defence set up was that by Article 12 of the same schedule of the Limitation Act a suit to set aside an execution sale must be brought within a year from the conclusion of the sale. The Court held that where the founder Of an endowment has vested in a certain family the management of it "each member of such family succeeds to the management, to use technical language per formam doni, and that therefore on Vithoba's death the plaintiff's right to succeed to the management in this case was quite unaffected by any proceedings against Vithoba during his life." 12. There is no evidence of the origin of the endowment in this suit. It must be assumed that it was by a gift from the founder. The Government appears to have considered it to be hereditary in the family by admitting Kuppa in the agreement in 1863 to share in it with his uncle. In *Tagore v. Tagore* L.R. Ind. Ap. Supp. 47 it was held by this Committee L.R. 1ml. Ap. Supp. 66 that all estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance, are void as such, and that by Hindu law no person can succeed thereunder as heir to estates described in the terms which in English law would designate estates tail. The Hindu law of inheritance did not permit the creation of successive life estates in this endowment, and this ruling is decisive against the contention on behalf of Velu, and is contrary to the judgment in the Bombay case. 13. The respondent Velu can only be entitled as heir to his father Nataraja and from and through him, and consequently his suit is barred by Article 124. In their Lordships' opinion the ruling in *Tagore v. Tagore* L.R. Ind. Ap. Supp. 47 is applicable to an hereditary office and endowment as well as to other immovable property. 14. The Subordinate Judge, following the decision of the Bombay High

Court, made a decree declaring the plaintiff entitled to joint management with the appellant, and ordering delivery of joint possession of the lands to him. From this decree both the plaintiff and the appellant appealed to the High Court. The appellant's appeal was dismissed on the ground that the plaintiff's right accrued on Nataraja's death. On the plaintiff's appeal the High Court varied the decree below and declared the plaintiff entitled to the sole right of management, and ordered that the possession of the properties attached to the endowment should be delivered to him. It has been shown that both decrees are erroneous, and their Lordships will humbly advise Her Majesty to reverse them, and to order the suit to be dismissed with costs in both Courts. The respondent Velu Pandaram will pay the costs of this appeal.