

(1927) 06 AHC CK 0012
In the Allahabad High Court

Jaishth Madho Achariyaji and Others

APPELLANT

Vs

Thakur Sri Gat Ashram Narainji

RESPONDENT

Date of Decision : 24-06-1927

Acts Referred:

Limitation Act, 1963 — Section 10

Limitation Act, 1963 — Section 10

Limitation Act, 1963 — Section 10

Citation : AIR 1928 All 134 : (1928) ILR (All) 265 : 108 Ind. Cas. 452

Hon'ble Judges : Lindsay, J

Bench : Division Bench

Judgement

Lindsay, J.—The question to be decided in this appeal is one of limitation, namely, whether the suit was governed by Article 62, Schedule 1, Limitation Act, as contended by the appellant, or by Section 10, Limitation Act, as found by the Court below. Article 62 provides a period of three years" limitation for a suit to recover money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. Section 10 of the Act, contemplates a suit brought against a, person in whom property has become vested in trust for any specific purpose, or his legal representatives or assigns, for the purpose of following such property or the proceeds thereof or for an account of such property or proceeds; and it is declared that a suit for any of these purposes shall not be barred by any length of time. In order to decide this question it is necessary to consider the nature of the suit and the legal position of the contesting defendant, Jaishth Madho Achariyaji, who is the appellant before us. The plaintiff in the suit was the deity styled "Thakur Sri Gat Ashram Narainji Maharaj," installed in the temple at Muttra known as the Gaya Ashram Tila, and the suit was brought on his behalf by a lady named Sundar Kunwar, professing to act as the superintendent and guardian of the idol. This lady, and the eight defendants who were impleaded were described in the plaint as mutawallis.

2. As originally framed, the suit was one for rendition of accounts of the income and expenditure of the temple property, but by subsequent amendment it

became a suit for the recovery of a specified sum of money due to the temple for a period beginning with 15th November 1906, from defendant 1, Jaishth Madho Achari. The case for the plaintiff was that the temple was entitled to a one-half share of the income of a village named Khasrai Bhajanpura. The contesting defendant pleaded that the share of the temple was one-fourth, not one-half, and that he was entitled to appropriate a one-fourth share to his own use. This defence prevailed and the suit was dismissed, but on appeal to this Court, the decree was reversed. It was hold that the temple had a right to a half-share of the income from the village just mentioned.

3. This Court sent the suit back for disposal and it was then, for the first time, that the contesting defendant raised the plea of limitation with which we have now to deal. The plea was that by reason of Article 62 of the Schedule to the Limitation Act, the defendant could not be made liable for any sum accruing due prior to three years before the date of the suit. The Subordinate Judge repelled this plea, being of opinion that the defendant was a trustee in whom (along with the other mutawallis) property had become vested for a specific purpose. He held that the suit could not be barred by any length of time. The history of the temple is set out shortly in the judgment of the Court below. It appears to have been built by one Pran Nath Sastri who died in the year 1830. How the property which constitutes the endowment was acquired is not clear; but the temple has been supported out of the revenues of some villages in the Gwalior State, and has for many years been in receipt of an annual payment from the proprietors of the Awagarh Estate in these provinces. For some time indeed the temple properties were managed by one of the Rajas of Awa.

4. In the paper-book of First Appeal No. 401 of 1921, which was prepared when the present suit was previously under appeal to this Court, is to be found a report made by the special manager of the Awagarh Estate which discloses the origin of the annual contribution made by the estate to the temple. One of the Rajas, Pirthi Singh, allotted the revenue of two of the estate villages, Khasrai and. Bhajanpur, for the maintenance of the temple. By some arrangement made subsequently, a sum fixed at Rs. 1,650 per annum was treated as the equivalent of the revenue and came to be paid regularly in certain shares to the temple and the priests. No document creating a trust was ever prepared, but in the year 1850, under an award and an agreement, the temple was declared to be entitled to receive one-half of this annual sum, the other half being distributed among the Acharis, i.e., the descendants of Pran Nath Sastri.

5. A copy of this deed of agreement is in the paper-book of First Appeal No. 401 of 1921 (p. 23), as also a copy of a subsequent agreement executed by the Acharis-dated 2nd November 1874 (p. 25), by which they bound themselves to pay into the temple treasury in certain defined shares, a sum representing one-half of the total income received from the endowed property. The report of the special manager shows that since the year 1867, the Awagarh estate made the annual contribution of Rs. 1,650, handing it over to the Acharis in accordance

with the terms of the award just mentioned, until payment was withheld owing to disputes among the Acharis. After some interval the payments were resumed and the money has since been regularly made over to the Acharis who are the descendants of Pran Nath Sastri.

6. It is with this contribution from the Awa estate that we are concerned in the present suit, and the position seems to be that the proprietor of the Awa estate for the time being is the trustee, the temple, i.e., the idol installed in it being the costui que trust or beneficial owner of half the annual contribution made from the revenue of the village or villages called Khasrai Bhajanpur. There is no evidence to show that there has ever been any conveyance of these villages, or the income of them, to any trustee in trust for the specific purpose of the maintenance of the temple. The villages remain the property of the estate-subject to the obligation imposed by the owner upon himself-to pay yearly from the income of the villages a sum of Rs. 1,650 which is to be divided half and half between the temple and the custodians or mutawallis of the temple. While it may be that the mutawallis have at various times been described as "trustees" of the temple property, they are certainly not persons in whom, to use the language of Section 10, Limitation Act, "property has become vested in trust for any specific purpose." The position of mutawallis and shebait has been defined in a recent judgment of their Lordships of the Privy Council: *Vidya Varuthi v. Balusami Ayyar* AIR 1922 P.C. 123, at p. 843, where it is said:

Neither under the Hindu law nor in the Mahomedan system is any property conveyed to a shebait or a mutawalli in the case of a dedication. Nor is any property vested in him; whatever property he holds for the idol or the institution he holds as manager with certain beneficial interests regulated by custom or usage. Under the Mahomedan law the moment a waqf is created all rights of property pass out of the waqf and vest in God Almighty.

7. It follows from this that the position, of the contesting defendant in this suit-now the appellant-is not that of the express trustee referred to in Section 10, Limitation Act. As a mutawalli or custodian of the endowed property of the temple he may, in a general way, be described as a "trustee" a person in a position of trust with respect to the administration of the temple properties-but no property is vested in him upon trust for any specific purpose. Whatever sums, therefore, he has received for and on behalf of the idol installed in the temple can be treated only as sums received to the use of the plaintiff idol, and a suit to recover money so received is governed by Article 62 of the Schedule to the Limitation Act. This point is therefore decided in favour of the appellant. The only other ground of appeal which was argued was that concerning the rate of interest, 12 per cent. per annum, allowed by the Court below up to the date of the decree. It is said this is an excessive rate. We do not think so, and we should not be justified in interfering with the discretion of the Court below to award interest at what it considered a reasonable rate. The patent dishonesty of the appellant in appropriating money which he knew did not belong to him is a very

good ground for the award against him of interest at a substantial rate. The appeal succeeds to the extent that we substitute for the decree of the Court below a decree for profits received for the three years prior to suit at the rate of Rs. 412-8-0 per annum carrying interest at 12 percent. per annum up to the date of this Court's decree and thereafter at 6 per cent. per annum. The plaintiff will get proportionate costs upon this amount in the Court below. The appellant, in view of his conduct as described above, will pay his own costs in this Court.