

(1949) 10 MAD CK 0069

In the Madras High Court

Case No : Second Appeal No. 1053 of 1947

Kuthiravattath Kottayil Kotharayan alias Nallapata Nayar alias
Prabakaran Thamban

APPELLANT

Vs

Muthu alias Muhammad and Others

RESPONDENT

Date of Decision : 14-10-1949

Acts Referred:

Limitation Act, 1908 — Section 144

Citation : AIR 1950 Mad 355

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : C. Unikande Menon, for the Appellant; K. Kuttikrishna Menon and V. Balakrishna Eradi, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—The appellant, who is the present second stani of Kuthiravattath Swarupam, brought the suit, out of which the second appeal arises, for recovery of possession with mesne profits of the suit properties from defendant 1. It is necessary to set out in brief outline the previous transactions regarding this property. By Ex. P-2 dated 7th June 1905, one Kunhunni Thamban, who was then the second stanom-holder of Kuthiravattath Swarupam, executed a karipanayam deed in favour of one Alu alias Karumankutti for a sum of Rs. 1500. On 31st July 1920 under Ex. P-1, the same Kunhunni Thambam granted a registered kanom over the same properties to defendant 1 and defendant 1 is now admitted to be in possession of the properties after having redeemed the previous mortgage under Ex. P.2. This Kunhunni Thamban became the first stani in 1927 as a result of which, the person who succeeded to the second stanom was one Appu Thamban. This gentleman lived till 1942 when the present plaintiff succeeded him as the second stani.

2. The basis of the present suit is that Ex. P-1 would not be binding on the stanom of the properties because they were granted by a stani who is only a

limited estate-holder and therefore would not enure beyond his lifetime. Even in cases where a succeeding stani accepted the rent from the previous mortgagee or lessee and recognised the position of the alienee still a person who succeeds such successor will not be bound by such transactions. The lower Courts have found that the kanom deed Ex. P.2 is not valid and binding so far as this stanom is concerned, But, relying upon the observations of the learned Judges in Rajah of Palghat v. Raman Unni, 41 Mad. 4 : A. I. R. 1918 Mad. 675, the learned Subordinate Judge has found that the suit is barred by limitation. The learned Subordinate Judge has quoted in extenso passages from the judgment of the learned Chief Justice, Sir John Wallis in Rajah of Palghat v. Raman Unni, 41 Mad. 4 : A. I. R. 1918 Mad. 675 as well as from the judgment of his colleague Seshagiri Aiyar J., in the same decision. It may be mentioned here that Seshagiri Aiyar J., was himself a party to an earlier decision in Patinharkara Vallabhan Chattan Rajah Avergal and Kuruvayil Kovilagath M.R. Ry. Vallavanathanathikara Vallabhah Vali Raja Avergal Vs. Rama Varma alias Kolathoor 5th Rajah Moothaiyil Vallabhah Chattan Kovil Kuruvikul alias Mankata Kovilagath Vallabhan Chattan Kovil Kuruvikal and Others and Rama Varma alias Kolathur V. Rajah Avergal styled Walluvanathudaya Kattunnen Moothayil Vallabhan Chathan Kovil Kuruvikal alias Mankath Kovilagath Vallabhan Chathan Kovil Kuruvikal and Others, , where observations tending to a somewhat contrary view point regarding the powers and status of stani were enunciated by him. The learned Judge in Rajah of Palghat v. Raman Unni, 41 Mad. 4 : A. I. R. 1918 Mad. 675, explains away his earlier dicta and agrees with the learned Chief Justice that as regards limitation and adverse possession, a succeeding stani is in the position of a person who inherits an estate so that if the period of limitation has begun to run during the lifetime of a person who holds the property his successor in interest will also have such period running against him.

3. The learned counsel for the appellant relies upon passages in the judgment of their Lordships of the Judicial Committee in Vidyavaruthi v. Balusami Aiyar, 44 Mad. 881 : A. I. R. 1922 P. C. 123. Mr. Ameer Ali, in delivering the judgment of the Judicial Committee states that in the case of Mahants a succeeding Mahant is not bound by alienations created by a previous Mahant and that the period of limitation is governed by Article 144, Limitation Act. It is stated that one Mahant does not succeed another and any alienation by a particular Mahant cannot enure beyond his lifetime. The learned Judges in Rajah of Palghat v. Raman Unni, 41 Mad. 4 : A. I. R. 1918 Mad. 675, followed the Privy Council decision in Gnanasambanda Pandara Sannadhi v. Velu Pandaram, 23 Mad. 271 : 27 I. A. 69 and at P. 10 of the Report, Wallis C. J. makes the following observation :

"A stanom, according to the customary law of Malabar is descendible from one stanomholder to another in a peculiar line of succession, and it appears to me each successive holder is in the same position as an ordinary heir succeeding on intestacy. In either case it is the law of the land and not any act of the previous holder or owner that confers title on the successor. The fact that the law of the land confers limited powers of disposition in one case and unlimited powers in

the other case can make no difference. In both cases it seems to me that for the purposes of the definition of plaintiff in the Limitation Act, which is intended to include predecessors-in-title of whom the successor is the representative, the heir must be considered to derive his title from and through the purchaser and the intermediate holders or owners who have taken by inheritance. It would defeat the whole scheme of the Limitation Act to hold that adverse possession against the predecessors of an owner taking by inheritance was of no avail against such owner unless it could be shown that the owner derived title from him otherwise than by inheritance, and I think, as I have already said, that the succession to mutts, stanoms etc., stands on the same footing."

Seshagiri Aiyar J. also discussed this aspect of the case, and at pp. 14 and 16 we find observations to the same effect. Since the learned Judge himself has explained away his earlier observations in *Patinharkara Vallabhan Chathan Rajah Avergal and Kuruvayil Kovilagath M.R. Ry. Vallavananathikara Vallabhah Vali Raja Avergal Vs. Rama Varma alias Kolathoor 5th Rajah Moothaiyil Vallabhah Chathan Kovil Kuruvikul alias Mankata Kovilagath Vallabhan Chathan Kovil Kuruvikal and Others and Rama Varma alias Kolathur V. Rajah Avergal styled Walluvanathudaya Kattunnen Moothayil Vallabhan Chathan Kovil Kuruvikal alias Mankath Kovilagath Vallabhan Chathan Kovil Kuruvikal and Others*, , we have to take it that his view is the same as has been enunciated when he delivered the judgment in *Rajah of Palghat v. Raman Unni*, 41 Mad. 4 : A. I. R. 1918 Mad. 675. The observations in *Rajah of Palghat v. Raman Unni*, 41 Mad. 4 : A. I. R. 1918 Mad. 676 of both the learned Judges are applicable to the facts of the present case and that decision is binding upon me. Such being the case, I am of opinion, that the decision of the lower appellate Court on the question of limitation is correct and the second appeal is dismissed with costs.

4. No leave.