

(1922) 04 PAT CK 0010

In the Patna High Court

Case No : Appeal Nos. 101 and 102 of 1919, 28, 29, 30 and 32 of 1920

Mahanth Ramrupgir and others

APPELLANT

Vs

Lal Chand Marwari and others

RESPONDENT

Date of Decision : 12-04-1922

Acts Referred:

Citation : (1922) 04 PAT CK 0010

Final Decision : Allowed

Judgement

Das, J.—These analogous appeals arise out of suits instituted by the appellants for recovery of certain properties held by Mahant Bhuan Gir as Mahant of an asthal at Pakri Khemkaran and now in the possession of the defendants as a result of a certain transaction of Mahant Bhuan Gir Plaintiff No. 1 claims to have succeeded Bhuan Gir as Mahant of the asthal. The remaining plaintiffs have taken certain conveyances from plaintiff No. 1, and have actually paid the expenses of this litigation. The plaintiffs allege that Bhuan Gir was addicted to certain vicious habits and that there was an entire absence of legal necessity in respect of the various transactions into which Bhuan Gir entered, as a result of which the properties, to recover which the present suits have been instituted, have passed into the hands of the defendants. It appears that Bhuan Gir left for a pilgrimage sometime prior to 1895, and has not been heard of since. In 1895 the plaintiffs instituted suits for recovery of these properties and they alleged that Bhuan Gir had in fact died on the 15th Baisakh 1299. The defendants in their written statement raised the plea that Bhuan Gir was in fact alive at the date of the institution of the suits and they maintained that the suits were premature. Both the Court of first instance as well as the High Court on appeal found in favour of the defendants on the point raised by them and dismissed the plaintiffs' suit as premature, the judgment of the High Court being dated the 30th November 1897. As Bhuan Gir has not been heard of since the date of the pronouncement of the judgment by the High Court the plaintiffs instituted these suits in June 1917.

2. The defendants raise various questions of law and facts; but the learned Subordinate Judge has decided all the points, save one, in favour of the plaintiffs. He has come to the conclusion that Bhuan Gir held the properties as a trustee for the asthal and that there was no necessity for him to dispose of these properties. But he came to the conclusion that the suits having been instituted more than twelve years from the date of the alienations in question, they are barred under the provision of Art. 134 of the Limitation Act. It has, however, been held by the Judicial Committee in the recent case of *Vidya Varuthi v. Balusami* AIR 1922 P.C. 123=44 Mad. 831 =48 I.A. 302 (P.C.) that the endowments of a Hindu Math are not "conveyed in the trust" nor is the head of the math a "trustee" with regard to them, save as to any specific property proved to have vested in the head for a specific and definite object, and that consequently Art. 134 of the Limitation Act does not apply where the head of a Math has alienated the properties not proved to be subject to a specific trust. It is not the case of the respondents that the properties in dispute were conveyed in trust to the head of the asthal at Pakri Khemkaran or that they were vested in him for a specific and definite object. In my opinion the decision of the learned Subordinate Judge on this point cannot be supported and must be reversed.

3. The learned Vakil for the respondents accepts the position that in view of the decision of the Judicial Committee, to which I have just referred, the decision of the learned Subordinate Judge cannot be supported, but he maintains that though Art. 134 does not apply, the suits are nevertheless barred under Art. 144 of the Limitation Act. Under Art. 144 of the Limitation Act the period, begins to run from the time when the possession of the defendant becomes adverse to the plaintiff. There are decisions far too numerous to mention that where the property is in a juridical person and such property is transferred by a person who is only the representative and the manager of that juridical person then there is adverse possession to the right of the juridical person from the date of the alienation. It is sufficient to refer to *Damodar Das v. Lakhan Das* (1907) 37 Cal. 885=7 I.C. 240=37 I.A. 147 (P.C.). The facts of that case were these; the properties in question which were annexed to the Math at Bibisarai formed part of the debutter estate of idol Sri Gopaljin the Bibisarai Math being subordinate to the Math Bhadrak. On the death of a Mahant, a controversy arose between two chelas as to the right of succession to the Maths and the property annexed to them. The dispute was settled by an arrangement embodied in an ekrarnama dated the 3rd November 1874 executed by the senior chela in favour of the junior chela, by which the Math at Bhadrak was allotted in perpetuity to the senior chela and his successors, while the Math at Bibisarai and the properties annexed to it were allotted to the junior chela and his successors for the purposes connected with his Math, Subject to an annual payment of Rs. 15 towards the expenses of the Bhadrak Math. Less than twelve years after the death of the senior chela, but considerably more than that period after the date of the ekrarnama, the appellant, the successor of the senior chela, brought a suit against the junior chela to recover possession of the properties annexed to

Bibisarai Math, on the allegation that they were debutter properties dedicated to the worship and service of the plaintiffs' idol, and that they should not have been alienated in favour of the predecessor-in-title, of the defendant. Now it will be noticed that if the period of limitation began to run from the date of the alienation the suit was clearly barred by limitation : but that if it began to run from the date of the death of the person who alienated the property, the suit was well within time. It was held by the Judicial Committee that the period began to run from the date of the ekrarnama and that the suit was accordingly barred by limitation. The basis of the decision was stated by Sir Arthur Wilson who delivered the judgment of the Board to be this; that in point of law the property dealt with by the ekrarnama was prior to its date to be regarded as vested not in the Mahant, but in the legal entity, the idol, the Mahant being only his representative and Manager. The learned Vakil for the respondents strongly relied on this case and maintained that the plaintiffs' suits having admittedly been brought more than twelve years after the dates of the alienations in question must be dismissed as barred by limitation.

4. But there is a second and a different line of cases upon which Mr. Imam strongly relies. The first of these cases is *Abhiram Goswami v. Shyama Charan Nandi* (1909) 36 Cal. 1003=4 I.C. 449=36 I.A. 148 (P.C.). The facts of that case were these : in 1787 the then Raja of Pandra made a grant by way of lakheraj debutter", the entire mauza of Gorfalbari to the predecessor-in-title of the plaintiff. It will be noticed that the grant was in terms not to an idol but to the predecessor-in-title of the plaintiff who received the gift as one for the service of the particular idols whose, shebait he was. On the 6th February 1860 and on the 2nd November 1896 respectively the then Mahant of the endowment, granted leases of the mauza in question in favour of the defendants. The action was brought within twelve years of the death of the Mahant who granted the leases in question, but considerably more than twelve years after the dates of the leases for possession of the mauza on the ground that there was no power in his predecessor to alienate the mauza in favour of the defendants. The Judicial Committee came to the conclusion that the leases were valid only during the lifetime of the Mahant by whom these were granted, and that as Art. 134 of the Limitation Act did not apply, the plaintiffs suit could not be regarded as barred by limitation. It will be noticed that on the construction of the original grant in favour of the plaintiffs predecessor-in-title it was argued on behalf of the lessees that the property was in fact not debutter property but was the property of the Mahant by whom the leases were granted. The argument was that although the grant was to the Mahant and by way of lakheraj debutter there was no complete or specific dedication of the mauza to the service of any idol, but that the gift; was to the Mahant personally and descendible to his heirs in return for blessings bestowed on the donor and his family. The Judicial Committee came to the conclusion that the donee received the gift as a gift for the service of the particular idols whose shebait he was and that the income of the mauza was entirely appropriated to that service. It will be noticed that if the argument of the

respondents before us be well founded argument was a clear answer to the suit in Abhiram Goswami's Case (1909) 36 Cal. 1003=4 I.C. 449=36 I.A. 148 (P.C.)

5. The only other case to which I need refer is the case of Vidya Varuthi Thirtha v. Balusami Aiyar (1). The properties which were the subject-matter of the litigation in that case were undoubtedly endowed properties in the sense that their income was appropriated to the purposes of the endowment, but the title to the properties was in the head of the endowment and the income was at his absolute disposal during his lifetime. On the 17th March 1891 the then Mahant, who may be described as Mahant No. 1 gave a lease in favour of plaintiff No. 2. The Mahant died shortly after and was succeeded by Mahant No. 2. In 1902 plaintiff No. 2 gave a sub-lease to defendants Nos. 1 and 2. In 1905 plaintiff No. 2 assigned his interest under the lease of the 17th March 1891 to plaintiff No. 1. In the same year the management of the Math passed into the hands of the Diwan of Mysore. In 1906 Mahant No. 2 died and was succeeded by defendant No. 26 who may be described as Mahant No 3. In 1912 the sub-lease in favour of defendants 1 and 2 expired. Before the expiry of the lease they obtained a lease for seventeen years from the Diwan of Mysore. On the 5th March 1913 the suit was instituted for recovery of the land from defendants 1 and 2 and the question raised was whether Mahant No. 1 was entitled to grant a lease in favour of plaintiff No. 2 and if he was not so entitled, whether the plaintiffs had acquired a title in themselves by adverse possession. Now it will be noticed that the alienation in question took place on the 17th March 1891 and the dispossession of the plaintiffs took place in 1912. If it be considered that the time began to run from the date of the lease, the plaintiffs undoubtedly acquired a title in the subject-matter of the lease by adverse possession. If, on the other hand, it be held that the time began to run only from the death of the Mahants who granted and recognized the lease, then it could not be said that the plaintiffs had acquired a title by adverse possession for though Mahant No. 1 died shortly after granting the lease there was evidence which was accepted by the Judicial Committee that Mahant No. 2 recognised the transfer and received the rent from the plaintiffs. Mahant No. 2, it will be remembered, died in 1906, and if the period of limitation only began to run from the date of the death of Mahant No. 2 it could not be said that the plaintiffs, had acquired a title by adverse possession. The Judicial Committee came to the conclusion that neither under article 134 nor under article 144 had the plaintiffs acquired a title to hold the land as against the endowment. It will be useful to quote the following passage from the judgment of the Judicial Committee :-

"Before the Board an alternative argument has been advanced. It is contended that the second plaintiff acquired the title he is seeking to establish by twelve years" adverse possession under article 144. That article declares that for a suit for possession of immoveable property or any interest therein not hereby (i.e., by the schedule) otherwise specially provided for" the period of limitation is twelve years" from the date when the possession of the defendant became adverse to the plaintiff. In view of the argument it is necessary to discover when,

according to the plaintiff, his adverse possession began. He was let into possession by Mahant No. 1 under a lease which purported to be a permanent lease, but which under the law could enure only for the grantor's lifetime. According to the well settled law of India (apart from the question of necessity, which does not here arise, a Mahant is incompetent to create any interest in respect of the Mutt property to enure beyond his life. With regard to Mahant No. 2, he was vested with a power similarly limited. He permitted the plaintiff to continue in possession and received the rent during his life. Such receipt was with the knowledge which "must be imputed to him that the tenancy created by his predecessor ended with his predecessor's life, and can, therefore, only be properly referable to a new tenancy created by himself. It was within his power to continue such tenancy during his life, and in these circumstances the proper inference is that it was so continued, and consequently the possession never became adverse until his death."

6. Now how is the decision in *Damodar Das v. Lakhan Das* (2) to be reconciled with the decisions in the other two cases ? In *Damodar Das*" case the period of limitation, according to the decision of the Judicial Committee, began to run from the date of the alienation and not from the date of the death of the person who made the alienation. In the two other cases the period of limitation was held to run not from the dates of the alienations in question, but from the dates of the death of the persons making the alienations. In my opinion the true rule is this; where the property is vested in the juridical person, as it was in *Damodar Das*" case, and the Mahant is only the representative and Manager of the idol, the act of alienation is a direct challenge upon the title of the idol, and the idol or the manager of the idol on behalf of the idol must bring the suit within 12 years from the date of the alienation. But where the title is in the Mahant or the Shebait, as it was in the two other cases to which I have referred, the act of alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to the purposes of the endowment; and there is no adverse possession so long as the "person making the alienation is alive and the possession of the defendant becomes adverse to the plaintiffs only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation.

7. I have now to see whether the title to the properties in dispute was in the juridical person or in the succession of Mahants who presided over the affairs of that juridical person. In my opinion, there is no doubt whatever that the title is not in the juridical person but in the Mahants. Ex. 12 is an extract from the certified copy of register relating to pergana Tilokechand and it shows that the villages stood in the name of the Mahant as "Bishunprit" and "Sheotar" villages. Exs. 13, 13a and 13b show that the grants in question were made in favour of the Mahants although the documents by which the grants were made are variously named as "sheotar" and "shaoprit" documents. Ex. 11 is the certified copy of a rubakar dated the 2nd November 1836 in certain proceedings instituted

by the Government to assess revenue on these properties. The document recites that the original grant was made by Raja Pratap Singh in favour of Lachmi Gir, the predecessor-in-title of the plaintiff, and that the property was Shivater property and that in 1836 the question arose whether the grantee was entitled to hold the land revenue free. Certain proceedings were instituted to try the question whether the grant had been made previous to the 12th of August 1765, the date of accession of the East India Company to Diwani, the British Government having adopted the principle that grants previous to the accession to Diwani accompanied with possession should be held valid. As the grantee could not establish that the grant had in fact been made to him prior to the accession of the East India Company to Diwani, it was held that revenue should be assessed on these properties and we find from various documents in the record that settlement was concluded with Mahant Manik Gir, one of the predecessors-in title of the plaintiff. There can be no doubt whatever that though the property was endowed property in the sense that its income had to be appropriated to the purposes of the endowment, still the title was in the successive Mahants and that accordingly time began to run from the date of the death of Bhuan Gir who alienated the properties in dispute. There is no evidence when Bhuan Gir died, but as he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, we are entitled to presume that he is dead. I am of opinion that these suits are not barred by limitation.

8. While I am on the question of limitation, it will be convenient to dispose of another point which was raised by Mr. Sultan Ahmad who appeared on behalf of some of the respondents. He argued that assuming that time began to run from the date of the death of Bhuan Gir, the suits must still be held to be barred by limitation inasmuch as it was the plaintiff's own case in the suits which he instituted in 1895 that Bhuan Gir died on the 15th Baisakh 1299. Alternatively he argues that the plaintiff must show that his suit is within time. In other words, he must give evidence as to the date when Bhuan Gir actually died. In my opinion, the arguments are without any substance. It is quite true that it was the plaintiff's case that in the suit which he instituted in 1895 that Bhuan Gir died on the 15th Baisak 1299, but that case was not accepted by the Courts. As regards the argument that Bhuan Gir must have died more than 12 years before the institution of these suits, the short answer is that though a person who has not been heard of for 7 years is presumed to be dead, there is no presumption as to the time of his death, and that if any one seeks to establish the precise period at which such persons died, he must do so by actual evidence. The plaintiffs in substance say this: "We have not heard of Bhuan Gir for seven years and we would naturally have heard of him if he had been alive. Consequently we ask the Court to presume that he is dead." The Court is entitled to presume that, he is actually dead at the date of the institution of the suit and if it be the defendants' case that he died more than twelve years prior to the institution of these suits, it is for the defendants to establish the date of Bhuan Gir's death by actual

evidence. I must overrule the contentions raised on behalf of the defendants on the question of limitation.

9. The learned Subordinate Judge decided all the other issues in favour of the appellants, but the respondents have challenged the decision of the learned Subordinate Judge on these issues, and it will now be necessary for me to consider how far the arguments advanced on behalf of the respondents are entitled to succeed. It is argued that the suit is bad for non-joinder of parties. It appears that prior to 1895, there was a transfer by plaintiff No. 1 of certain share in the properties in dispute in favour of one Mahabaruni Prasad and it was argued before us that the failure to join him as a plaintiff in the action debarred the plaintiffs from recovering possession at any rate of such share of the properties which plaintiff No. 1 sold to Mahabaruni Prashad. The argument, in my opinion, is unsubstantial. The conveyance was admittedly prior to 1895 and it was found in the suits which the plaintiffs instituted in 1895 that the plaintiffs had no cause of action. In other words, plaintiff No. 1 had no title in him to convey. Accordingly it was unnecessary for him to join Mahabaruni Prashad as a plaintiff in the action. It was also argued that as one of the appellants Nurul Husain died pending the disposal of the appeals in this Court and that as the plaintiffs declined to substitute the heirs of Nurul Husain in the place of Nurul Husain, the plaintiffs are incompetent to get a decree in respect of the share which the plaintiff No. 1 sold to Nurul Hussain. In my opinion the question is one between plaintiff No. 1 and Nurul Hussain. Now the answers to this argument are two in number. In the first place, the suit was filed on the 30th November 1916 and the conveyance in favour of Nurul Hussain is dated the 15th of June 1917. In other words, Nurul Hussain took the transfer pendente lite and it was wholly unnecessary to join him as a plaintiff in the action. He was in fact added as a plaintiff on the 30th January 1918 on his own application. In my opinion he was not a necessary party to the suit and it is not a defect in the constitution of the appeal that his heirs were not substituted in his place. The other answer is that the question whether any title passed to Nurul Hussain is a question of evidence which can only be decided in a proceeding between the plaintiff and Nurul Hussain. We do not know whether Nurul Hussain paid the purchase-money to plaintiff No. 1 and it may have been agreed between them that title would not pass until the payment of the full consideration money. I am wholly unable to decide this point in the present proceedings between the plaintiffs and the defendants.

10. The next argument of Mr. Sultan Ahmad is that as a result of the resumption proceedings to which I have already referred, the properties in suit must now be regarded as having been resumed by the Government and settled with the Mahant in his personal capacity. Mr. Sultan Ahmad puts his argument as follows:- The properties were either in the idol or in the Mahant. If they were in the idol the suit is clearly barred. If they were in the Mahant then we are bound to consider the effect of the resumption proceedings. If the result of the resumption proceedings was to vest the property in the Mahant then Bhuan Gir was fully competent to alienate the property and Mr. Sultan Ahmad relied on Divi Punniah

v. Goratula Kotamma (1916) 40 Mad. 939. That was a case where the Government resumed certain lands which were held previously as charitable inam and after imposing an assessment granted a patta to one of the persons who were the trustees thereof prior to the resumption. It was held that the representatives of the other trustees had no right to claim a share in the land as against the trustee to whom the patta was given. Now in my opinion the question here is entirely different. It was not the object of the paramount authority in the resumption proceedings to resume the lands and to re-settle the lands with the persons who originally held the lands. As the history of the legislation on the subject shows the resumption was not of the land but of the revenue and that resumption meant nothing more than assessing the land to Government revenue. In my opinion the person with whom the Government settled the land in 1836 must be regarded as having continued to hold the land on the same terms and subject to the same restrictions as bound him prior to the resumption proceedings.

11. It was lastly argued that there was legal necessity in respect of the transaction in question. The learned Subordinate Judge has dealt with this question and has decided the issue in favour of the plaintiff. Mr. Sultan Ahmad argued before us that it was sufficient for him to establish that there was representation made to his predecessors-in-title that there was necessity for the loans; and that he made due enquiry to satisfy himself that there was in fact such necessity although it may be that there was no necessity to raise the loans; and he relied upon the decision of the Judicial Committee in a recent case to the effect that the recital is clear evidence of representation and if the circumstances are such as to justify a reasonable belief that an enquiry would have confirmed its truth then when proof of actual necessity has become impossible the recital coupled with such circumstances will be sufficient evidence to support the deed. We have been referred to the documents which establish that the transactions took place so far back as the 19th December 1878 and the 6th March 1880, and we accept Mr. Sultan Ahmad's contention that proof of actual necessity has become almost impossible. But before he can take advantage of the principle laid down by the Judicial Committee he must establish that the circumstances were such as to justify a reasonable belief that an enquiry would have confirmed the truth of the representation of which the recital is evidence. Now we have no proof at all as to what the circumstances in 1878 were. The income of the properties was between Rs. 3,000 and Rs. 4,000 a year. We have no evidence that the circumstances at that time were such as to compel Bhuan Gir to go to the defendant's predecessors-in-title for loans. In my opinion the issue was rightly decided by the learned Subordinate Judge in favour of the appellants.

12. I would allow these appeals set aside the judgment and decree passed by the Court below and give the plaintiffs a decree for possession in respect of the properties specified in the print with costs in book the Courts and mesne profits.

13. Bucknill, J.

14. I agree.

Appeals allowed.