
(1913) 03 MAD CK 0003
In the Madras High Court

Muthusamier and Others

APPELLANT

Vs

Sree Sreemethanithi Swamiyar Avergal and Twelve Ors.

RESPONDENT

Date of Decision : 05-03-1913

Acts Referred:

Limitation Act, 1963 — Article 12

Citation : (1915) ILR (Mad) 356

Hon'ble Judges : Sadasiva Ayyar, J; Miller, J

Bench : Division Bench

Judgement

Miller, J.—In 1872 the matathipathi Sukgnana Nidhi Swamiar made an alienation of the inam in dispute by way of a lease in perpetuity to a

Brahman, Mudgala Charier, who enjoyed it till 1834 and then sub-leased or assigned his interests to the first and second defendants and to

predecessors of the twelfth and thirteenth defendants.

2. The lessor died in 1890 and was succeeded by Sri Sudhi Nidhi Swamiar, a person who had been managing the affairs of the mutt on behalf of

his predecessor during the latter years of his life. In 1889, before his predecessor's death, he, on behalf of the matathipathi, leased the inam to the

sixth defendant, cancelling the lease of 1872. The sixth defendant was, however, never able to obtain possession, and from 1893 onwards at any

rate, the Swamiar was collecting the rent reserved by the old lease of 1872 from the persons then occupying as transferees of the lessee, and in

1903 the litigation about the sixth defendant's lease having come to an end, he treated the occupants under the old lease as the tenants and

recovered rent from them apportioned according to the shares held by them in the inam.

3. In 1906 Sri Sudhi Nidhi Swamiar died and was succeeded by the plaintiff who sues to set aside the lease and recover possession of the inam.

4. The principal question, a question which arises in both the appeals, is whether the suit is barred by limitation. It is conceded for the appellants

that the lease is in excess of the powers of the matathipathi, and their contention is that the suit is barred because limitation must run from the date

of the alienation in 1872, the lease being void, or at the latest from the death of Sukgnana Nidhi Swamiar in 1890.

5. The respondents do not contend for the view taken by the Subordinate Judge, that each matathipathi has what I may call an independent life

estate in the mutt, and is in no way bound by any prescriptions by which his predecessor may have lost his title, As his view is not now supported,

it is sufficient to say that it is not justified by the judgment of Bhashyam Ayyanagar, J., in Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami ILR

(1904) Mad. 435 on which the Subordinate Judge seems to base it.

6. The Subordinate Judge however also holds that at any rate the lease was good for the life-time of Sukgnana Nidhi Swamiar and was adopted

by his successor and allowed to run on, and this view is that which is now pressed upon us.

7. We are bound by the decision of the Full Bench in Kailasam Pillai v. Nataraja Thambiran I.L.R.(1910) Mad. 265, the effect of which is, as I

understand it, to accept generally the view of a matathipathi's position taken by the learned Judges in Vidyapurna Tirthaswami v. Vidyanidhi

Tirthaswami ILR (1904) Mad. 435.

8. In that case Bhashayam Ayyanagar, J., holds that the corpus of the mutt property is inalienable except in special circumstances, but that the

produce, subject to the upkeep of the mutt, is at the absolute disposal of the matathipathi and he recognises what is further emphasised by the Full

Bench, that there may be properties vested in the matathipathi as a bare trustee.

9. I may therefore here state my opinion on the evidence that the inam in question now is not so vested in the plaintiff, the inam registers show that

it was granted for the support of the mutt, and the oral evidence is not inconsistent with that. The register shows further that at the time of the inam

settlement the produce was used for certain purposes and was not of itself sufficient for the upkeep of the mutt, but that it is not sufficient to

warrant us in holding that the grant was for those specific purposes. The statement as to the purposes to which the income was then being applied

was obviously made as showing that the inam might properly be confirmed for the support of the mutt. I take it therefore that the inam is one in

which the matathipathi has, subject to the upkeep of the mutt, that which is called in *Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami* ILR

(1904) Mad. 435 an absolute right to dispose of the income. It may still be open to us in this Court to hold that even this right is not altogether an

absolute right; but that is a question which it is not necessary to decide in this case.

10. There is nothing in this case to suggest that the lease in question operated to the detriment of the upkeep of the mutt. If it did so operate, if it

reduced the income below what is necessary for the upkeep of the mutt, it is possible that it might be held to be absolutely void ab initio; that may

be a difficult question, but fortunately it does not arise. Before us no one has suggested that as a fact the mutt was not adequately maintained by

Sukgnana Nidhi Swamiar or by his successor.

11. Now if the matathipathi has the management of the land and an absolute right to dispose of the income thereof, it seems difficult to withhold

from him the right to make for his own life or rather for the period during which he occupies the position of head of the mutt, a lease of a portion of

the property for any rent however small which he may deem sufficient; he may, subject to the reservation of a sufficient fund for the upkeep of the

mutt, make gifts of the rents received to any one whom he chooses to favour.

13. It is unnecessary to decide whether there exist any means of preventing him from so dealing with the surplus income as to create a scandal and

bring the mutt into disrepute: here all that has been done is to give land on a favourable rent to one who, we may presume, was a sufficiently pious

Brahman.

14. It is suggested that to allow transfers by way of lease to be made by successive matathipathis, each for the period of his headship of the mutt,

would be destructive of the institutions of which they are the heads: all the property, it is argued, even the mutt buildings, might be alienated to a

Christian, a Muhammadan or an outcasts. It is probable however that inasmuch as the upkeep of the mutt is the first consideration and the

matathipathis" interest is subject to that consideration, the law, if any one is entitled to put it in motion, would be able to prevent the transfer of the mutt buildings to any person incapable of continuing or unwilling to continue, to maintain the institution in accordance with the objects and views of its founder and the conditions laid down by him or imposed by usage. And it seems quite immaterial whether the lands are cultivated by a Christian or Muhammadan farmer, provided he is a good husbandman and pays his rent with regularity.

15. In *Abhiram Goswami v. Shyama Charan Nandi* ILR (1909) Calc. 1003, the Privy Council, as I understand the case, adopted what their

Lordships call the ""most favourable construction"" (of the powers of the alienor I presume) and were of opinion that the alienation was good for the

life of the alienor; and his immediate successor being insane, prescription would not run against him; and Article 134 being inapplicable, the plaintiff

was not barred.

16. Their Lordships do not, it is true, expressly state the case in this way, but I find it impossible to accept the contention on behalf of the

appellants that they may have confined their attention to Article 134 of the second schedule of the Limitation Act (Act XV of 1877), and have

overlooked the possibility of the extinction of the plaintiff's title by reason of Article 144. The report of the argument both in *Shama Charan Nandi*

v. Abhiram Goswami I.L.R (1906) Calc. 511 where the High Court's decision is reported, and in *Abhiram Goswami v. Shyama Charan Nandi*

I.L.R (1909) Calc 1003 indicates that is very unlikely, and I agree with the learned Judges who in *Narsaya Upada Vs. Venkataramana Bhatta*,

expressed the opinion that their Lordships proceeded on the view that the alienation was good for the life-time of the alienor, and is therefore an

authority that an alienation by the head of a religious foundation is not necessarily utterly void and of no effect. In reliance upon this authority and on

Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami I.L.R.(1904) Mad. 435 I am prepared to hold in the present case that the lease of 1872,

though beyond the powers of the lessor, was a lease which he could not have avoided during his own life-time.

17. And I think we may deduce from *Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami* ILR (1904) Mad. 435, the further rule that the lease is

voidable by the lessor's successors, in very much the same way that an alienation by a Hindu widow in excess of her powers is voidable by her

successors. Both the learned Judges in *Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami* ILR (1904) Mad. 435 hold that a matathipathi has an

estate very closely resembling that of certain ecclesiastical corporations sole in England. *Bhashyam Ayyangar, J.*, at page 457 holds that he is "as

much a corporation sole as a Bishop admittedly is" and at page 456 cites the decision of Lord Hardwicke in *Knight v. Moseley* (1753) Ambler

175 and of Sir George Jessel in *Mulliner v. Midland Railway Company* (1870) Ch.D. 611 as showing that the nature of the estate vested in certain

corporations sole is "the fee simple qualified and under restrictions in right of the church.

Subrahmanya Ayyar, J.

18. Too takes the same view: the Swamiar for the time being is "a real owner and not a mere trustee. He is, as he would be described in England,

a corporation sole" (page 442).

19. Consequently it seems to me that when the learned Judges speak of "an estate for life in the corpus," and of the individuals composing the line

of succession as being "in the position of tenants for life they do not mean that the estate is in fact that of a tenant for life." *Sankaran Nair, J.*, in

Kailasam Pillai v. Nataraja Thambiran ILR (1910) Mad. 265. expressly says it is not, but rather what Sir George Jessel pointed out in the case to

which *Bhashyam Ayyangar, J.*, refers "though in a certain sense owners in fee simple yet in many respects they" (certain corporations sole) "had

only the powers of tenants for life.

20. Being "owners of an inheritance" matathipathis could, but for "restrictions and qualifications in right of" their mutts, make leases so as to bind

their successors; in this country we have no statute which declares alienation by the head of a mutt to be "utterly void and of no effect" and we are

not bound to hold that the restrictions and qualifications which attach to the estate are, as regards their effect, different from those which prevent a

Hindu widow from binding her successors by unjustifiable alienations by way of lease. There are no doubt differences in respect of the purposes

which will justify an alienation, but there seems to be no reason to hold that the differences extend also to the duration of the lease as a valid

transfer. Of course, the successor of a matathipathi will be unable to validate it for all time. In that respect he will be like a female succeeding to a widow, say a daughter succeeding her mother as her father's heir: he will be able to validate the transfer only for the period during which he holds the office, and will be unable to bind his successors, but he will be able to avoid the lease altogether or affirm it for this period, and it will not be absolutely nullified by the death of the alienor.

21. This being my view of the position, I have to consider the question whether the plaintiff's immediate predecessor, Sri Sudhi Nidhi Swamiar, adopted the lease and ratified it so far as he could ratify it. In 1889, before he became matathipathi, and purporting to act for his predecessor, he gave, as I have already stated, another lease to the sixth defendant: he is not however shown to have done anything to support the sixth defendant's fruitless efforts to obtain possession, and from 1893, if not before that, he accepted rent from the transferees of the original lessee, I cannot find that after he became matathipathi he did anything to indicate an intention to avoid the lease, and on the other hand by accepting rent he did make clear his intention of adopting it. I am therefore able to accept the finding of the Subordinate Judge on this point.

22. The question of forfeiture does not in these circumstances require decision, and the only one remaining which I find it necessary to decide is one which arises in Appeal No. 185, the fifth defendant's appeal, and not in No. 186.

23. It is this: owing to the failure of the holders of a portion of the land to pay the local cesses payable by the inamdar, there was a sale by the Revenue authorities, and the fifth defendant became the purchaser. The question is whether he bought the right of the mutt, or only that of the lessee in occupation. I am not able to agree on this point with the Subordinate Judge that the interest of the mutt was not sold.

24. The facts are that the Deputy Tahsildar gave no notice of the sale to the mutt but issued his notice only to Ramachariar, who had been paying the taxes. Ramachariar told the Deputy Tahsildar that he had sold his interest in the land to Narayanachariar, and the Deputy Tahsildar put up the land for sale as that of Narayanachariar, and the sale-proceeds, after payment out of them of the amount due to the Local Board, were paid over

to Narayanachariar: possession of the land was obtained by the fifth defendant, but I do not find anything to show whether after the sale the mutt continued to receive any rent for the land sold.

25. I have had considerable doubt whether on this evidence I ought not to hold that the Deputy Tahsildar sold and the fifth defendant bought the interest of the permanent lessee alone. If the fifth defendant had paid rent to the mutt, that would have been clearer, but it is not shown that any rent was paid. On the whole I think the Deputy Tahsildar intended to sell the defaulter's interest, i.e., the interest of the owner, from whom the cesses were due, but thought that the person in occupation was the owner: the purchaser seems to have been under a similar mistake and to have thought that his purchase entitled him to possession as well as ownership.

27. The result is that the Deputy Tahsildar sold the interest of the defaulter, the mutt, without giving notice to the matathipathi. The sale was irregular and liable to be set aside, but passed the title and at the date of this suit it was too late to set it aside whether Section 59 of the Act II of 1864 or Article 12 of the second schedule to the Limitation Act be the provision of law applicable to the case.

28. Appeal No. 185 will, on this ground, have to be allowed and the suit, so far as it is for possession of the land, dismissed; the alternative prayer of the plaintiff for payment to him of the surplus sale-proceeds received by the third defendant may be allowed, and the decree will be modified accordingly and will be that which my learned brother sets out in the judgment which he will now deliver.

29. Appeal No. 186 is dismissed with costs.

Sadasiva Ayyar, J.

30. Appeal No. 186 is the principal appeal. It has been brought by the fourth defendant, who is in possession of three-fourths share of the plaintiff's village under deeds executed by the owners of the permanent lease right, which permanent lease right was created by the deed of 1872 in favour of Mudgala Chariar by the former matathipathi. I entirely agree, for the reasons given by my learned brother in the judgment just now pronounced by him, that the plaintiff was entitled to repudiate the lease as soon as he became matathipathi in March 1906 and to bring his suit for possession within 12 years of his becoming matathipathi. The Privy Council in *Bijoy Gopal*

Mukerji v. Krishna Mahishi Debi ILR (1907) Calc.329, held that a reversioner, after the death of a Hindu widow, was entitled to bring his suit for possession within 12 years of her death, repudiating in pais the widow's alienation, and that such repudiation may be indicated by the institution of the suit itself. The position of a matathipathi is (as pointed out by my learned brother), neither that of an absolute owner (as he cannot ordinarily alienate the corpus), nor that of a mere tenant for life (as he represents fully the ownership of the matam properties for certain purposes), and is, therefore, in many ways analogous to that of the estate of a Hindu female heir to a male's estate. A matathipathi has been compared to a corporation sole in Vidyapurna Tirthaswami v. Vidyanidhi Tirthaswami ILR (1904) Mad. 435, but (speaking for myself) I do not like to dwell on that analogy, as (unless we are very careful) that analogy might not only mislead us into the complications and difficulties of considering and construing the varied opinions given in English cases about corporations sole, but there is this fundamental distinction, namely, that whereas "the properties belonging to an English Bishop" (a corporation sole under the English Law) "including his savings from the revenues of the benefice, devolve upon his legal representatives or heirs," the savings of a matathipathi devolve upon the succeeding matathipathi. I am also not at all sure that as regards even the income of the mutt properties, a matathipathi has as absolute and unqualified power of disposition as a Bishop over the income of his benefice, that is, to squander it away in even immoral or extravagant ways. I should be very loath to come to the conclusion that Section 92(1) of the CPC (corresponding to old Section 539) does not apply to mutts, as was suggested during the course of the arguments in these cases, and that the public and the Advocate-General and the Courts of Justice are powerless to stop the wholesale misuse of the income of a charitable and religious institution like a matam. [In a recent case, the right to protect the religious institution was allowed to a mere disciple in management of the mutt by my learned brother and Abdur Rahim, J. See Kasi Chetty v. Srimathu Devasikomony Nataraja Dikshitar (1913) M.W.N. 181.] I concur with Sundara Ayyar, J., in the judgment in Narsaya Upada Vs. Venkataramana Bhatta, and I adhere to the opinion expressed therein as to the effect of the three recent Privy Council

decisions beginning with *Abhiram Goswami v. Shyama Charan Nandi* ILR (1909) Calc. 1003 discussed therein. In the result, I agree with my

learned brother that Appeal No. 186 should be dismissed with costs.

31. As regards Appeal No. 185, my conclusion is that it should be allowed. This appeal has been brought by the fifth defendant, who purchased

the remaining one-fourth share in the village in a revenue sale held for recovery of road-cess due by the matam. It is clear from Section 3(10),

Section 64(2) and Section 66 and 73 of the Local Boards Act (V of 1884) that it is the inamdar (matam) that was liable for the road-cess and not

any tenant of the matam. The revenue sale was held according to the procedure laid down by the Revenue Recovery Act, such procedure having

been incorporated into the Local Boards Act by Section 76 of the latter Act. By Exhibit J1(b), Ramachariar, on whom notice was served as the

defaulter (that is, I take it, as the landlord inamdar), informed the Deputy Tahsildar in April 1902 that he had sold away his "one-fourth share in the

village" to Narayanachariar and that the amount should be collected from Narayanachariar, who was in possession of the one-fourth share in the

village. Ramachariar did not inform the Deputy Tashildar that he and Narayanachariar were not landlords, but only lessees.

32. Exhibit J1(c) shows that one-fourth share in the village itself was intended to be sold and not merely a lease right therein. I find it difficult to

hold that what was sold was the right not of the defaulter but the rights of a lessee of the defaulter, which lessee could not be made legally liable for

the road-cess and whose lease rights also could not be made liable, as a sale held for road-cess under the Local Boards Act is not a sale free of

encumbrances or undertenures, but only the rights of the landholder as they stood on the date of sale. Though the sale procedure was that

prescribed by the Revenue Recovery Act, the substantive provisions in the Revenue Recovery Act (Sections 32 and 42) that a sale for recovery of

arrears of land revenue frees the land from all encumbrances and from all favourably rented leases, do not apply to a sale under the Local Boards

Act. See *Ramachandra v. Pitchaikanni* ILR (1884) Mad. 434, and *Chinnasami Mudali v. Tirumalai Pillai* ant} the Secretary of State for India

I.L.R.(1902) Mad. 572. It seems to be better to hold (if it can be fairly so held) that a sale conducted by a Revenue Officer was conducted with

jurisdiction, though irregularly, than to hold that it was conducted wholly without jurisdiction. Purchasers in sales held by Revenue Officers for realisation of public taxes should not have their title remaining in jeopardy for long, and public policy seems to me to require that when such sales are attacked long afterwards on the ground of want of jurisdiction in the officer conducting the sale, such ground should be strictly established by cogent evidence, which seems to me to be wanting in this case. (That the plaintiff himself thought that the sales was intended to convey away the mutt's interest seems to be indicated by paragraphs 8 and 11 of the plaint. In paragraph 8, he calls the sale an "irregular revenue sale" and not a sale held without jurisdiction. In paragraph 11, he prays in the alternative for the balance of the revenue sale amount.) Taking it then, that the sale was held with jurisdiction, the irregularities committed by the Revenue Officer in having the notices served on Narayanachariar (the man in possession), treating him as the defaulter instead of on the real defaulter (the matam), cannot be now made a basis for attacking the sale, as the time fixed by law for the setting aside of the sale on the ground of irregularities [see *Malkarjun v. Narhari* ILR (1901) 25 Bom. 337], had expired long before the present suit was brought.

33. In the result, this appeal must be allowed with appellant's costs payable by the plaintiff and the order of the lower Court directing the plaintiff and the third defendant to pay sums of money to the appellant will be set aside. A money-decree will be given in favour of the plaintiff against the third defendant for the sum of Rs. 382-8-0, balance of the revenue sale-proceeds with interest thereon at 6 per cent, per annum from the date of suit and proportionate costs on that amount from the third defendant in the Lower Court, To this extent, the lower Court's decree will be modified.