

(1934) 12 MAD CK 0050
In the Madras High Court

Rajagopala Naidu and Others

APPELLANT

Vs

Ramasubramania Ayyar and Others

RESPONDENT

Date of Decision : 07-12-1934

Acts Referred:

Citation : AIR 1935 Mad 449

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—Appellants as representing the five pattraigars or groups of inhabitants of their village, sued to recover possession of the village temples and the properties stated to be their endowments. The suit was filed in February 1920, and the plaint stated that defendant 1 had been in unlawful management and possession from December 1911, the date of his father's death. It is common ground that the father of the defendants, one Aswatha Ayyar, was in possession and management from 1890 up to his death in December 1911; but the plaintiffs claim that Aswatha Ayyar was in possession only as their nominees. Defendant 1 denied that the plaintiffs had any right to the management of the suit temples or their properties and set up title in Aswatha Ayyar, either in accordance with the custom of the institution or by prescription. In the alternative he also contended that he himself, having been in possession from December 1911 had acquired a title by prescription or that, at any rate, the plaintiffs' suit is barred by limitation. On the merits—with reference to the alleged claim of the plaintiffs and the management of the institution by themselves or through) their nominees, the learned Subordinate Judge found in favour of the plaintiffs. But he upheld the defendants' claim to prescriptive title and dismissed the suit. Hence this appeal.

2. In the view that we take on the question of limitation, it is unnecessary to deal with the questions raised by issues 1 to 3, as to the plaintiffs' title to manage the suit temples and properties, by themselves or through their nominees. Mr. Muthiah Mudaliar, on behalf of the appellants, questioned the lower Court's-

conclusion on the point of limitation, on three grounds. He argues that the learned Judge was wrong in holding that Aswatha Ayyar's possession of the properties or the office ever became adverse during his¹ lifetime. He next contended that the defendant could not tack on the period of Aswatha Ayyar's possession to his own to make² up the period of 12 year's possession. Lastly he contended that the suit was not governed by Article 124 but only by Article 144. Taking these arguments in order, it is true that the Subordinate Judge finds that Aswatha Ayyar came into possession as a nominee of the plaintiffs in the year 1890. But he also points out that in 1905 the plaintiffs purported to dismiss Aswatha Ayyar or revoke his appointment. When their new nominee Pavadai Pillai instituted O.S. No. 48 of 1905, Aswatha Ayyar filed a written statement (Ex. 15-A) on 9th September 1905, wherein he set up right in himself and repudiated the claim of the plaintiffs. That suit was no doubt dismissed on the ground that Pavadai Pillai had no right, of action. and that the villagers alone should, if³ at all, institute a suit. But we are not in the present litigation, concerned with the frame of that suit; but the learned Juige was right in holding that in view of the purported dismissal of Aswatha Ayyar by the plaintiffs and his definite repudiation of the plaintiff's claim in his written statement the plaintiffs could not maintain that after September 1905, Aswatha Ayyar's possession was one consistent with their claim and title,

3. Aswatha Ayyar however died within 12 years of that suit. Mr. Muthiah Mudaliar therefore argues that Aswatha Ayyar could not within hi³ lifetime have acquired a prescriptive title under Article 124. This is no doubt so but the learned Judge has held that defendant 1 who, according to the plaint case, got into possession and managemont immediately on Aswatha Ayyar's death, was entitled to tack on the period of Aswatha Ayyar's adverse possession to his own. To this Mr. Muthiah Mudaliar raises two objections; first, he suggests that defendant 1 did not really get into possession of the office immediately on Aswatha Ayyar's death but there was an interruption by reason of the period during which Aswatha Ayyar's widow was in management. This is not the case in the plaint and it is also shown by Ex. 3-A that Aswatha Ayyar's widow was managing only as guardian on behalf of Aswatha Ayyar's sons, There was therefore no interruption between Aswatha Ayyar's death and the assumption of management by or on behalf of defendant 1. It is next contended that as Aswatha Ayyar only claimed a tenure of office which gave him a right to appoint a successor and not a mere hereditary right and it is now found by the lower Court that defendant 1 was not appointed by Aswatha Ayyar, ther^a is really no continuity of title or possession between Aswatha Ayyar and defendant 1 and that the two must be regarded only as independent trespassers in which case defendant 1 will not be entitled to tack on the possession of Aswatha Ayyar with his own. We are not by any means satisfied that this is so. In his written statement; Ex. 15-A Aswatha Ayyar did not commit himself to any particular description of the tenure on which he held the office. No doubt in para. 5 of that written statement he referred to one Subbaraya Naicker having first managed the temple, to his having appointed one

Aiya-swami as the trustee after him, who in turn appointed one Velayudham and to himself as having been appointed by Velayudham. But in para. 8 he went on to say that even if the five groups of the villagers had any right in the management of the suit temples

they have forfeited that right by bar of limitation: As the defendant herein has been looking after the management of the temples, for a period of more than 12 years prejudicially to their right and free from their interference they are precluded from removing him from the management by bar of limitation.

4. This claim is equally consistent with his prescribing for a hereditary tenure or a tenure with a right of appointing a successor. Further the doctrine of independent trespassers will come in only when the second man trespasses upon the possession of the first or the first man abandons possession. It has not been applied to a case in which on the death of the first man while still in possession the person who thinks he is entitled to succeed, steps in without any interruption. In support of his view, as to the tacking of possession of the two persons, the learned Judge has referred to *Ramayya v. Kotamma* 1922 Mad 59 and *Krishnaswami Thathachariar v. Veeraswami Mudali* 1919 Mad 291. In view of the reasoning in these cases, it would be difficult to regard defendant 1 as an independent trespasser not entitled to tack on the period of possession of Aswatha Ayyar to his own.

5. Mr. Muthiah Mudaliar argued that defendant 1 put forward a claim in the written statement only as "heir," and if the written statement of Aswatha Ayyar is no1; to be understood, as claiming a "hereditary" office, the kind of estate prescribed for by Aswatha Ayyar would be different from the kind of estate which defendant 1 must be presumed to prescribe for and as neither of them has had 12 years of complete adverse possession, neither of them could be held to have acquired such a title as will operate to extinguish the plaintiff's title. He also relied on cases which throw doubt upon the applicability of Article 124 to cases where the succession to an office does not devolve on a person by a definite rule of devolution, but the successor has to be selected by appointment by the predecessor or from amongst a number of persons entitled to succeed. Some of these cases are reviewed in the judgment in *Paramnanda Das Goswami v. Radakrishna Das* 1926 Mad 1012. In the view we have above expressed, as to the written statement of Aswatha Ayyar, it does not seem to us necessary to discuss this aspect of the question. We do not read defendant 1's written statement as putting forward a different kind of tenure from that put forward by Aswatha Ayyar.

6. It is however unnecessary for the "purpose of this case to decide whether or not defendant 1 has acquired a hereditary right. The dismissal of the suit was certainly justified under Article 120, even if there be room for doubt as to the applicability of Article 124. It has been "held in *Kidambi Raghavachariar v. T.A.N. Raghavachariar* (1903) 26 Mad 113 and *Paramnanda Das Goswami v. Radakrishna Das* 1926 Mad 1012 that Article 120 will be the governing article in

respect of suits to recover (possession of an office which is not hereditary and such must be held to be the nature of the plaintiffs' claim. Mr. Muthiah Mudaliar contends that the plaintiffs are not suing for recovery of an office but only for recovery of the properties attached to the temple and that as the suit is within 12 years calculated from 1911 it is not barred under Article 144. But it has long been established that, where properties are attached to an office whether by way of endowment or by way of emoluments, the right to possession of the properties goes with the right to the possession of the office and if the right to sue for recovery of possession of the office is barred, the possession of the properties cannot be dissociated therefrom and independently dealt with. This principle was laid down as early as in *Tami Razu Ramayogi v. Pantina Narasiah* (1871) 6 MHCR 301 and followed in *Kidambi Raghavachariar v. T.A.N. Raghavachariar* (1903) 26 Mad 113, *Govindaswami Pillai v. Dakshinamoorthi Poosari* (1912) 35 Mad 92 and *Paramnanda Das Goswami v. Radhakrishna Das* 1926 Mad 1012.

7. Some reliance was placed by the appellants on *Sankaran v. Krishna* (1893) 16 Mad 456. That case does not really support the appellants. The learned Judges there point out that even if the defendant could not be held to have acquired a title to the office under Article 124, the plaintiffs' suit could be dismissed on the ground of limitation. No doubt they left it open in that case whether the suit was governed by Art. 120 or Article 144; but the other decisions to which we have referred have clearly held that in circumstances like the present, the suit, in so far as it is for the recovery of an office, will be governed by Article 120. Whether defendant 1 can be held to have acquired a hereditary right or not, we do not think it necessary to decide in this case. It being clear from the allegations in the plaint that defendant 1 has been discharging the duties of the office, he must clearly be held to be in possession of the office within the meaning of the explanation in Col. 3, Article 124. That explanation only lays down a general rule for determining the question of "possession" in respect of offices and is applicable to cases governed by Article 120, wherever the claim is in substance one to recover possession of an office. In this view, the appeal fails and must be dismissed with costs of respondents 1 and 2.