

(2004) 10 MAD CK 0065
In the Madras High Court
Case No : A.S. No. 391 of 1992

Sri Raghavendra Swami Mutt

APPELLANT

Vs

Panchapakesa Iyer

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Limitation Act, 1908 — Article 134B

Limitation Act, 1963 — Article 96, 9(1)

Madras Hindu Religious Endowments Act, 1926 — Section 76

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 34

Citation : AIR 2005 Mad 129 : (2004) 4 LW 545 : (2004) 4 MLJ 727

Hon'ble Judges : N.V. Balasubramanian, J;A.R. Ramalingam, J

Bench : Division Bench

Advocate : Chandramouli, for the Appellant; T.R. Rajagopalan and Chitra Sampath, for the Respondent

Judgement

N.V. Balasubramanian, J.—This is an appeal by the plaintiff against the judgment and decree dated 19.12.1991 in O.S.No.992 of 1990 on

the file of Subordinate Judge, Tiruchirappalli. Learned Subordinate Judge dismissed the suit and against the judgment and decree, the plaintiff has

preferred this appeal.

2. The averments made in the plaint are that the suit property belongs to the mutt, called Sri Sumatheendra Swami Mutt which is a branch Mutt of

Nanjangaud Sri Raghavendra Swamy Mutt. There is no dispute that Sri Raghavendra Swamy Mutt is a Hindu Mutt as defined under the provisions

of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the HR & CE Act") and the Mutt is

camping at Mantralayam in the State of Andhra Pradesh. So far as the Sri Sumatheendra Swami Mutt which is a branch Mutt of Sri Raghavendra

Swamy Mutt is concerned, it is situate at Srirangam and it is a public trust and its properties are held in public trust. The suit property is one of the properties held by the plaintiff Mutt and the said property is a public trust property. Since the Matadhipathi of Sri Raghavendra Swamy Mutt was at Mantralayam and there were vast extent of properties endowed to the plaintiff trust, it is stated that the Matadhipathi of Sri Raghavendra Swamy Mutt found it difficult to personally manage the properties and accordingly used to appoint power agents to manage the properties. It is stated that the power agents were appointed under the belief that they would discharge their duties in the best interest of the Mutt, but in certain cases this has not proved to be true. So far as the suit property and other properties which are situate at Srirangam are concerned, the then Matadhipathi of the Mutt appointed one S.Srinivasa Rao and Krishna Murthy Rao to manage the properties at Srirangam. It is stated that they were neither faithful, nor pious and acted to the detriment of the plaintiff Mutt. It is stated that the plaintiff became aware of the dishonest transactions at the time when the suit was filed. It is further stated that the power agents Srinivasa Rao and Krishna Murthy Rao had leased out the suit property to one C.S.Subba Rao on a perpetual lease by a lease deed dated 16.2.1946 and the deed of lease contains various clauses. According to the plaintiff, the lease is not legally valid as the Matadhipathi has no right to lease out perpetually the properties belonging to the public trust for a period exceeding five years. It is stated that the plaintiff trust should obtain the necessary permission from the Commissioner of Hindu Religious and Charitable Endowment Department if the lease exceeds a period of five years and on the facts of the case, no such permission was obtained. It is also stated that there was no necessity for the Mutt to lease out any of its properties on perpetual lease and at that time, the Mutt was getting very good income from the properties endowed to the Mutt and from public contributions like donations to the Mutt, Hundial collections, etc. It is therefore stated that the perpetual lease granted in favour of Subba Rao is void ab initio as there was no legal necessity for the grant of perpetual lease. It is stated that the power agents have acted dishonestly and exceeded their powers delegated to them and hence, any arrangement made with the agents would not bind the plaintiff Mutt. It is stated that one of the conditions in the lease deed was that the property as a vacant land should not be

alienated, but Subba Rao alienated his right in favour of Krishna Murthy as vacant site who, in turn, alienated in favour of Seetha Prabhakara Rao

as vacant site. It is stated that Seetha Prabhakara Rao alienated the property in favour of the defendant in the year 1989 as vacant site. It is also

stated that all the transactions were made when the property was a vacant site and the transactions were made in gross violation of the lease deed

dated 16.2.1946. It is therefore stated that the alienation in favour of the defendant is legally void and the plaintiff is entitled to recover possession

of the suit property. It is further stated that only on 18.11.1990 the plaintiff came to know about the transactions when the present agent of the

mutt visited the suit property. It is stated that the defendant has tried to put up a building in the suit property for which he has no right and the

defendant is bound to surrender the suit property to the plaintiff. Hence, the suit has been filed on the ground that the plaintiff is entitled to

possession on the basis of its title to the suit property as the alleged deed of lease is void ab initio and the lease is in violation of section 34 of the

H.R. & C.E. Act. It is also stated that it is not open to the defendant to claim adverse possession in view of section 10 of the Limitation Act and

section 109 of the H.R. & C.E. Act and the cause of action arose when the defendant was trying to put up a building in the suit property.

3. The defendant in the written statement denied that the plaintiff is the Matadhipathi of the Mutt. He also denied the power of attorney executed in

favour of the power agent , Guru Raja Rao who instituted the suit on behalf of the Sri Raghavendra Swami Mutt. The main contention of the

defendant was that the grant of lease is not detrimental to the plaintiff Mutt. It is also stated that the plaintiff has chosen not to question the

alienations to others, but singled out the defendant alone and when other lease deeds executed by the power agents have not been questioned,

there are no reasons as to why the plaintiff should question the similar perpetual and permanent lease deed executed by the same power agents in

favour of the defendant alone and the same power agents cannot be dubbed unfaithful for one transaction and good agent for other transactions. It

is also alleged that the suit instituted by the present Matadhipathi lacks bona fide and the defendant is the bona fide purchaser for value. It is also

stated that the defendant purchased not only the site, but also the building thereon. It is stated that the document dated 16.2.1946 is not really a

deed of lease but one of sale. It is also stated that the suit is barred by limitation. It is stated that it is a permanent lease coupled with interest and

the parties who have taken under the lease have prescribed title to that extent. In the additional written statement it is stated that a premium of

Rs.600/- was paid in the year 1946 at the time of entering into the lease. There was one reply statement by the plaintiff and another additional

written statement by the defendant and we perused them.

4. Learned Second Additional Subordinate Judge, Tiruchirappalli, on the basis of pleadings, framed necessary issues for consideration and after

considering the evidence let in by the parties, dismissed the suit. It is against the judgment and decree, the present appeal has been preferred. We

heard Mr.Chandramouli,learned senior counsel appearing for the appellant/plaintiff and Mr.T.R.Rajagopalan, learned senior counsel supported by

Mrs.Chitra Sampath, learned counsel appearing for the respondent/defendant. After hearing the arguments of Mr.Chandramouli, learned senior

counsel for the appellant and Mr.T.R.Rajagopalan, learned senior counsel and Mrs.Chitra Sampath, learned counsel for the respondent, the

following points arise for consideration:

1. Whether the present suit is barred by limitation?
2. Whether the present Matadhipathi is competent to file the suit?
3. Whether the alienation by way of perpetual lease on 16.2.1946 (Ex.A-3) was necessary and beneficial to the plaintiff mutt and is valid?
4. Whether the sanction of the H.R.& C.E. Board was obtained for the grant of perpetual lease exceeding five years u/s 76 of the Madras Hindu Religious and Endowments Act, 1927?
5. Whether there was denial of title by the defendant by raising a plea that the transaction under Ex.A-3 would amount to forfeiture of the lease?
6. Whether the transfer in favour of the defendant made was in respect of vacant site alone or whether the superstructure was existing on the date of transfer of the site in favour of the defendant?

5. We are of the view, for considering the points raised it will be convenient to refer to the deed of lease dated 16.2.1946 (Ex.A-3). The lease was

granted by two power agents of the Matadhipathi of Sri Raghavendra Swamy Mutt in favour of one Subba Rao and it is a perpetual permanent

lease of the suit property. Under the terms of the deed, a premium of Rs.600/- was paid by the lessee as consideration for the grant of lease and the lessee was also required to pay a monthly rent of Re.1/- only as lease amount. The deed of lease authorised the lessee to put up construction on the vacant site granted by way of lease and the lessee was required to pay towards rent a sum of Rs.3/- in every three months at the rate of Re.1/- per month. The property leased is described in the schedule to the deed of lease. The lessee was permitted to put up a building according to the Rules framed by the Municipality. He was also required to pay property tax. Clause-8 of the deed of lease provides that the lessee is not empowered to transfer the right of lease or the vacant site in favour of any third party and if any such transfer is made, that will not bind the lessor. Clause-9 also provides that before transferring the rights under the deed of lease in favour of a third party, the lessee is required to inform the Mutt by a registered notice. Clause-10 provides that if there is any breach of conditions of lease, the lease will automatically be terminated and the lessor is also given the power to enter into the property leased and take possession of the same. There is also another clause saying that there were debts payable by the Mutt and the perpetual lease was granted as the Mutt was getting premium though the property was let out for a very low rent. The lease deed was executed on 16.2.1946 and at that time, the Matadhipathi of Sri Raghavendra Swami Mutt was Sri Sri Suyameenthira Theertha Swamigal. The said Matadhipathi was holding the office of the Mutt till 1966 and from 1966 to 1986 there was another Matadhipathi and from 13.2.1986 Sri Sushameendra Threetha Swamigal has been the hereditary trustee and Matadhipathi of Sri Raghavendra Swami Mutt. The suit was instituted on 12.12.1990 after the plaintiff had the knowledge of the alienation on 18.11.1990. There is also no dispute that Sri Raghavendra Swami Mutt was at Nanjangud and later it was shifted to Manthralayam, Yemmiganur taluk in the State of Andhra Pradesh.

LIMITATION:

6. The first question that arises for consideration is whether the suit is barred by limitation. The deed of lease was executed on 16.2.1946.

Admittedly, Sri Raghavendra Swamy Mutt is a Hindu religious institution and the properties belong to the said religious institution. Section 109 of

the HR & CE Act, 1959, as it stood when the suit was instituted, saved from the operation of the law of limitation for a suit for the recovery of

property belonging to the religious institution which did not vest in a person before 30.9.1951. In other words, section 109 of the HR & CE Act

provided that it is not open to a person to claim adverse possession against the property belonging to the religious institution unless he has pleaded

and proved that the property belonging to the religious institution was in his possession adverse to the claim of the said religious institution and the

property also vested in him prior to 30.9.1951. The deed of lease, admittedly, was entered into on 16.2.1946 and even the present defendant or

his predecessors-in-title could not have claimed adverse possession in the suit property as he was in the property for less than five years as on

30.9.1951 and the present suit is not barred by the provisions of the Limitation Act. A similar view was taken by a learned Judge of this Court in

Rajanarayanaperumal Temple Vs. Rethinam Pillai, where the learned Judge held that section 109 of the HR & CE Act is a special provision

regarding the law of limitation and that would prevail over the general provisions contained in the Limitation Act and by 30.9.1951 if twelve year

period had not elapsed from the date of transfer of the property belonging to the religious institution and the property did not vest in the defendant,

the provisions of the Limitation Act would not apply and the religious institution is entitled to file a suit for recovery of possession of the property

belonging to the said religious institution. We hold that the suit instituted by the plaintiff is not barred by limitation.

7. The next point that arises is what is the starting point of limitation for the present suit. There is no dispute that at the time when the lease was

entered into on 16.2.1946, Sri Sri Suyameenthira Theertha Swamigal was the Matadhipathi of Sri Raghavendra Swamy Mutt, and he was holding

the office till 1966 and after 1966 his successor was in the office till 1986 and the Matadhipathi who instituted the present suit came to the office in

the year 1986 and the suit was filed in the year 1990.

8. Under Article 96 of the Limitation Act, 1963 the limitation for a suit by the Manager of a Hindu or Muslim or Buddhist religious or charitable

endowment to recover possession of movable or immovable property is twelve years from the date of death or resignation or removal of the

transferor or the date of appointment of the plaintiff as manager of the endowment whichever is later. Article 134-B of the Limitation Act, 1908

provided for the limitation for a suit by religious institution and under Article 134-B of the 1908 Act, the time to file the suit would run from the

death, resignation or removal of the transferor, but, under Article 96 of the Limitation Act 1963 the time to file a suit would run not only from the

date of death, resignation or removal of the transferor, but also from the date of appointment of the manager of the endowment, whichever is later.

Article 96 of the Limitation Act, 1963 has introduced certain important and significant changes in the matter of filing a suit by the manager of a

religious or charitable endowment by providing the starting point of limitation from the date of appointment of a person as a manager of the

endowment also.

9. S.Natarajan,J. (as His Lordship then was) has considered the question with reference to the starting point of limitation in a suit instituted by a

Mutavalli in Sornathammal v. Tamil Nadu State Wakf Board in S.A.No.800 of 1972 dated 11.7.1975. Learned Judge after noticing the decision

of Andhra Pradesh High Court in Chinna Jeeyangar Mutt, Thirupathi Vs. C.V. Purushotham and Others, held that if the Matadhipathi had been

appointed within twelve years from the date of filing of the suit, it will be open to him to question any alienation by a previous manager which was

not made for legal necessity or benefit to the mutt. The Court also took the view that the fact that 12 year period had already elapsed from the date

of death or resignation or removal of the transferor manager would not stand in the way of the manager who assumed office subsequently to file a

suit for the recovery of the property. The Court held that it is not necessary that the transferor manager should be the immediate predecessor of the

plaintiff manager. The unreported judgment of Natarajan,J. in S.A.No.800 of 1972 dated 11.7.1975 and the decision of the Andhra Pradesh High

Court in Chinna Jeeyangar Mutt, Thirupathi Vs. C.V. Purushotham and Others, were followed by Ismail,J. (as His Lordship then was) in The State

Wakf Board, Madras Vs. Subramanyam and Others, and the learned Judge held that under Article 96 of the Limitation Act, 1963, a suit can be

filed within a period of twelve years from the date of appointment of the manager of the religious institution and such a suit would not be barred by

limitation. Learned counsel for the respondent has not seriously disputed the proposition of law that in view of Article 96 of the Limitation Act,

1963 the present suit instituted by the Matadhipathi of Sri Raghavendra Swamy Mutt is not barred by limitation. Though one of the points framed

is whether the present Matadhipathi is competent to file the suit, learned senior counsel for the respondent has not seriously disputed the capacity

of the present Matadhipathi to institute the suit.

VALIDITY OF THE DEED OF LEASE:

10. Now let us consider the question whether the deed of lease is valid or not. Before considering the question, we are of the view that it is

necessary to refer to some of the decisions cited before us. In the case before the Privy Council in *PALANIAPPA CHETTY v. SREEMATH*

DEVASIKAMONY PANDARASANNADHI ILR 40 Mad 709 the facts were that one of the appellants applied to the then Shebait of a temple

for the grant of perpetual lease of the property belonging to the temple at the rent of Rs.1-8-0 per annum for the purpose of erecting buildings for

an annathanam mutt, and the lease was granted and the subsequent Shebait questioned the alienation made by his predecessor on the ground that

the alienation was in respect of absolute interest in a portion of the immovable property dedicated to the services of the temple for the purposes of

charity. In the factual situation, the Privy Council held that the powers of a Shebait are similar to the powers of a manager for an infant heir to

charge an estate belonging to the infant and the power can be exercised in a case of need or for the benefit of the estate. The Privy Council also

held that the actual pressure on the estate, the danger to be averted or the benefit to be conferred upon the estate are the things to be regarded.

The Privy Council also noticed the judgment of Knight Bruce, LJ. in *Hanooman Persaud Panday v. Babooee Munraj Koonweree* (1856) 6

M.I.A., 393 and the observations of Sir Montague E. Smith wherein it was held that as a general rule of Hindu Law, properties given for the

maintenance of religious worship and of charities connected with it are inalienable. The Privy Council held that it is competent for the Shebait of

property dedicated to the worship of an idol in the capacity as Shebait and manager of the estate to incur debts and borrow money for the proper

expenses of keeping up the religious worship, repairing the temples or other

possessions of the idol, defending hostile litigious attacks and other like objects. The Privy Council held that the evidence did not establish that the Shebait was constrained by any necessity to make such a lease or that any benefit accrued to the estate from it and hence, the grant of a permanent lease by a Shebait of a portion of the lands dedicated to the worship of the idol of which he is a trustee was invalid as against his successor in the shebaitship.

11. In RAMASWAMY,P. v. SRI-LA-SRI SOMASUNDARA SRI GNANASAMBANDA DESIKA PARAMACHARIA SWAMIGAL 99

L.W. 9 the suit was filed by Madurai Adheenam for declaration that the perpetual lease granted by the earlier Adheenam would not bind the

plaintiff Mutt. In that case, the amount of premium that was received was Rs.650/- and the lease amount payable was Rs.12/- per annum. The

question that arose before this Court was whether the perpetual lease granted by the previous Adheenam was valid. This Court after noticing the

decision in Palaniappa Chetty v. Sreemath Deivasikamony Pandarasannadhi 40 ILR Mad 709 held that a Madathipathi or the Head of a Mutt has

no unqualified power of alienation spect of Mutt properties. This Court also noticed the decision of this Court in AIR 1936 183 (Privy Council)

wherein it was held that a permanent lease or an absolute alienation of debutter property was held to be beyond the ordinary powers of

management whether it be in the case of the head of a mutt, shebait of a family idol or the dharmakartha of a temple and such alienation could be

justified only by proof of necessity for the preservation of the endowment or institution. This Court (in Ramaswamy case) held that unless it is

shown that a permanent lease was entered into for legal necessity or for the benefit of the estate of the mutt, the said lease would not bind the

succeeding Matadhipathi and the burden of establishing the circumstances justifying an alienation of the mutt property is on the alienee. One of the

contentions raised was that the Mutt was not in affluent circumstances on the date of lease and the Mutt was borrowing small sums for expenses

and was raising loans on promissory notes, but this Court held that the mere fact that the Mutt was not in affluent circumstances would not

necessarily justify the Matadhipathi to alienate a part of the Mutt property when it is not shown that such alienation was for the benefit of the Mutt.

Ultimately this Court held that the grant of permanent lease was not valid and would not bind the Mutt after the lifetime of the Matadhipathi who granted the lease.

12. Before considering the decisions relied upon by the learned senior counsel for the respondent, in our view, it will be useful to refer to some of

English decisions on this topic. In *THE ATTORNEY-GENERAL v. THE SOUTH SEA COMPANY* (1841) 4 Beav 453, 49 ER 414, the

Chancery Division of the English Court held as under:-

The Court must consider the original fairness and prudence of the transaction. There is necessarily a great difference between the dealing of an

individual with his own property, and the dealing of a trustee with trust property. The trustee is not permitted to act as he pleases, or upon his own

view of what is best; he is so to act as to be always prepared to show to the satisfaction of a Court of Equity, that he has acted fairly and prudently

in the administration of the trust, and for the benefit of the cestui que trusts. The difficulty of doing this after a great lapse of time is obvious; but if

the difficulty is overcome, the trustees and those dealing with them are not to be charged as in the case of breach of trust, merely because there

was an alienation of the specific property comprised in the trust.

13. Recently, in *BAYOUMI v. WOMEN'S TOTAL ABSTINENCE* (2004) 3 ALL ER 110 the Court of Appeal, Civil Division has laid down

the law as under:-

Statutory restrictions on the sale, lease or other disposition of charity land in England and Wales were introduced by the Charitable Trusts

Amendment Act, 1855. Before that statutory intervention, the position was that, subject to the terms upon which the land had been conveyed to

them, charitable corporations and charity trustees had power to sell, lease or mortgage charity land. But the transaction was liable to be set aside in

equity unless it was shown to be beneficial to the charity; and the onus to establish that it was beneficial to the charity was on the purchaser.

14. We are of the view that unless the permanent lease granted by the agents of the previous Matadhipathi was entered into for legal necessity or

for the benefits of the the mutt, the said lease does not bind the succeeding Matadhipathis and the burden of establishing the circumstances

justifying the alienation of the mutt property by way of perpetual lease on the

monthly rent of Re.1/- per month as rent is on the lessee. The Privy

Council in *PALANIAPPA CHETTY v. SREEMATH DEVASIKAMONY PANDARA SANNADHI* ILR 40 Mad 709 held that there must be

evidence regarding the actual pressure on the estate and the danger to be averted and the benefit to be conferred upon the estate. In

HUNOOMAN PERSAUD PANDAY v. BABOSEE MUNRAJ KOONWEREE (1856) 6 M.I.A., 393 it was held that the vendor is bound to

enquire into the necessity for the loan and to satisfy himself as well as he can with reference to the parties with whom he is dealing that the manager

is acting in the particular instance for the benefit of the estate. The Court held that the property which was given for maintenance of religious

worship should not be alienated and the authority of the Matadhipathi to deal with the property is subject to the condition that he should not

alienate the property and only in the case of need or benefit of the institution, the Matadhipathi could alienate the property and there must be

special circumstances or necessities in the case of grant of perpetual lease.

15. The submission of Mr.T.R.Rajagopalan, learned senior counsel for the respondent is that the lease was made in the year 1946 and the suit was

instituted in the year 1990. He also referred to the recitals in the deed of lease dated 16.2.1946 and submitted that the indebtedness of the Mutt

and the necessity for the lease are stated in the deed and the property was leased out for a premium of Rs.600/- from each lessee which would be

a substantial amount in the year 1946. His submission was that previous two Matadhipathis have not questioned the grant of lease and all the

parties to the said transaction are not in a position to give evidence and the plaintiff mutt should have produced evidence relating to the transaction

in question. He therefore submitted that on the basis of the decision of the Supreme Court in *Sree Sree Iswar Gopal Jieu Thakur Vs. Pratapmal*

Bagaria and Others, the recitals in the document would offer valuable evidence to the transaction as the original parties to the transaction and those

who could have given evidence on the relevant point such as legal necessity have passed away and hence, the recitals consisting of the

circumstances leading to the alienation would assume greater importance and could not be lightly set aside.

16. Learned senior counsel referred to the decision of the Privy Council in *BAWA*

M.L.J.501 in support of his submission, wherein the Privy Council held as under:-

In the case of Chockalingham Pillai and others v. Mayandi Chettiar ILR(1896) Mad. 485 it was pointed out that although the manager for the

time being had no power to make a permanent alienation of temple property in the absence of proved necessity for the alienation, yet the long

lapse of time between the alienation, and the challenge of its validity is a circumstance which enables the court to assume that the original grant was

made in exercise of that extended power. Their Lordships have no hesitation in applying that doctrine to the present case. If in fact the grant was

made by a person who possessed the limited power of dealing under which a shebait holds lands devoted to the purposes of religious worship, yet

none the less there is attached to the office in special and unusual circumstances, the power of making a wider grant than one which enures only for

his life. At the lapse of 100 years when every party to the original transaction has passed away, and it becomes completely impossible to ascertain

what were the circumstances which caused the original grant to be made, it is only following the policy which the Courts always adopt, of securing

as far as possible quiet possession to people who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not

unlawfully made.

17. Learned senior counsel also referred to the decision of Calcutta High Court in Sree Sree Lakshmi Narayan Jiu Thakur and Others Vs.

Jagadish Chandra Sur and Others, wherein the Calcutta High Court held as under:-

In 43 I A 249 [Banga Chandra Dhur Biswas v. Jagat Kishore, (1916)3 AIR PC 110 : 43 IA 249:44 Cal 186 the evidentiary value of recitals in

ancient documents was considered by their Lordships of the Judicial Committee, who expressed themselves in the following terms:

"If the deeds were challenged at the time or near the date of their execution, so that independent evidence would be available, the recitals would

deserve but slight consideration, and certainly should not be accepted as proof of the facts. But, as time goes and all the original parties to the

transaction and all those who could have given evidence on the relevant points have grown old or passed away, a recital consistent with the

probability and circumstances of the case assumes greater importance and cannot lightly be set aside; for it should be remembered that the actual proof of the necessity which justified the deed is not essential to establish its validity. It is only necessary that representation should have been made to the purchaser that such necessity existed, and that he should have acted honestly and made proper enquiry to satisfy himself of its truth. The recital is clear evidence of the representation, and if the circumstances are such as to justify a reasonable belief that an inquiry has become impossible, the recital, coupled with such circumstances, would be sufficient evidence to support the deed. To hold otherwise, would result in deciding that a title becomes weaker as it grows older, so that a transaction perfectly honest and legitimate when it took place, would ultimately be incapable of justification merely owing to the passage of time.

18. In *Pratap Mull Bagaria and Another Vs. Sree Sree Iswar Gopal Jiew Thakur* represented by N.N. Rudra and Another, a Division Bench of

Calcutta High Court laid down the law as under:-

The Madras High Court held in 19 Mad.485 (*Chockalingam Pillai v. Mayandi Chettiar*) that although a manager for the time being has no power

to make a permanent alienation of a temple property in the absence of proved necessity for the alienation, yet the long lapse of time between the

alienation and the challenge of its validity is a circumstance which entitles the Court to assume that the original grant was made in exercise of that

extended power. This principle was approved of and acted upon by their Lordships of the Judicial Committee in 49 I.A.54 (*Bawa Magniram*

Sitaram v. Kasturbhai Manibhai). In the case before us the recitals in the document are certainly ambiguous. But regard being had to the long lapse

of time between the date of the leases and that of the present proceedings and the conduct of successive shobdars, it would not be wrong, I think,

to make a presumption in favour of the lessee. On the whole, therefore, I am inclined to hold that the leases were for legal necessity.

19. Learned senior counsel for the respondent also submitted that the plaintiff Mutt is having all account books wherein the details regarding the

transactions made in the year 1946 were entered into. He relied upon the decision of the Privy Council in *MURUGESAM PILLAI v.*

MANICKAVASAKA DESIKAR 32 M.L.J.369 in support of his submission that as the

transaction has been challenged after a long interval of

time, the plaintiff Mutt should have produced the relevant records and for the non-production of the same, an adverse inference should be drawn

against the plaintiff. Learned senior counsel referred to the following passage in Murugesam Pillai case:-

A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract

doctrine of the onus of proof, and failing accordingly to furnish to the Courts the best material for its decision. With regard to third parties, this may

be right enough: they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in their Lordships' opinion, an

inversion of sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the written evidence in their possession

which would throw light upon the proposition. The present is a good instance of this bad practice. It is proved in the case by the first witness that

"the Mutt has regular fair day-books; they are not now before the Court; ledgers are also maintained in the Mutt." These ledgers and day-books

were in the possession of the defendants or those of them who were heads of the institution, and they are not put in evidence. The proposition that

these defendants challenged was that the expenses incurred had been incurred for the Mutt and were necessary for its purposes. The best

assistance to a Court of justice would have been a scrutiny of these documents, and their Lordships feel free to conclude that if they had been by

their entries confirmatory of the defendant's view the defendants would have brought them into Court.

20. We have carefully considered the decisions. It is no doubt true that the deed of perpetual lease was entered into on 16.2.1946 and two

Matadhipathis who subsequently assumed the Office did not question of grant of lease of the property. It is well-settled that the trustee is not

prevented from alienating the trust property, but the alienation of the mutt property should be bona fide and there must be actual pressure on the

estate or there must be some danger which was sought to be averted or there must be benefit to be conferred upon the trust by such transaction.

The transaction is challenged nearly after a period of 44 years and that is also a relevant fact in considering the question of validity of the

transaction and the burden is on the alienee to show that the alienation was for the benefit of the trust. The alienee must establish that the alienation was for the benefit of the trust.

21. As far as the facts of the case are concerned, the defendant has examined two witnesses and there is absolutely no evidence to show that the

lease was for the benefit of the trust. Though the defendant in his deposition as D.W.1 has stated that he made enquiry before he purchased the

property, he has not stated anywhere as to the nature of the enquiry he made. The other witness examined on the side of the defendant is D.W.2

who is the husband of the vendor who made over the property in favour of the defendant. Though D.W.2 has stated that he obtained legal opinion

before getting the assignment, he has not even produced the copy of the legal opinion obtained by him. There is absolutely no evidence either

documentary or oral from the side of the defendant to show that the lease made in the year 1946 was for the benefit of the plaintiff trust, and there

is no evidence to show that there was some pressure on the estate which necessitated the Matadhipathi to alienate the property, nor there is any

evidence to show that there was some danger to the plaintiff Mutt which was sought to be averted by the perpetual lease created in favour of

lessee for a rent of Re.1/- per month along with the premium . It is no doubt true that the lease was not questioned by two earlier Matadhipathis

and there is nothing to show whether the Power of Attorney Agents are alive or not. As far as the plaintiff is concerned, the witness examined on

the side of plaintiff is a Power Agent of the plaintiff Mutt. Though he has stated that the transaction was entered into the account books maintained

by the Mutt and earlier Matadhipathi also received the amount through his agent, but he has not produced the records or relevant account books.

Though he has stated that the Mutt was not indebted in the year 1946 and there was no financial constraint in the year 1946 for the Mutt to

alienate the property on perpetual lease, but he has not produced necessary evidence in support of the statement.

22. The submission of Mr.K.Chandramouli, learned senior counsel for the respondent is that in R.S.MUTT v. BOARD OF COMMRS. H.R.E.

AIR 1957 Andh. 150 a Division Bench presided over by Chandra Reddy, J. (as His Lordship then was) and Srinivasachari,J. has noticed that it is

an admitted fact that at least 2000 or 3000 acres of land in Bellary District were endowed to the plaintiff Mutt and at Manthralaya about 5000 or

6000 people were fed and there was a kalyana mandapam at Manthrayala and various activities at Manthrayala show that Sri Raghavendra

Swamy Mutt is a prosperous Mutt. Now, we are of the view that it is not necessary to go into the question as the onus is on the alienee to show

that there was legal necessity or benefit to the Mutt by the alienation. The defendant has not established by acceptable evidence that there was

legal necessity or there was pressure on the estate or some danger that was sought to be averted by the alienation by way of grant of perpetual

lease and there was benefit to the Mutt by the alienation. It is no doubt true, as observed by the Supreme Court in Sree Sree Iswar Gopal Jieu

Thakur Vs. Pratapmal Bagaria and Others, that if all the original parties to the transfer and those who could have given evidence on the relevant

points such as legal necessity have passed away, a recital consisting of the principal circumstances of the case assumes importance and cannot be

lightly set aside. We have already noticed various decisions of this Court, the Calcutta High Court and the Privy Council where it was held that

recitals of necessity for alienation contained in ancient documents would be sufficient evidence to support the deeds and actual proof of the

necessity which justified the deed is not essential to establish its validity.

23. In Smt. Rani and Another Vs. Smt. Santa Bala Debnath and Others, the Supreme Court held that though the recitals are, however, admissible

in evidence, their value would vary according to the circumstances in which the transaction was entered into and the weight to be attached to the

recitals varies according to the circumstances. The Supreme Court also held that where the evidence which could be brought before the Court is

within the special knowledge of the person who seeks to set aside the sale and is withheld by him, such evidence being normally not available to

the alienee, the recitals go to his aid with greater force and the court may be justified in appropriate cases in raising an inference against the party

seeking to set aside the sale on the ground of absence of legal necessity wholly or partially when he withholds evidence in his possession.

24. We have seen the evidence of the defendant (D.W.1) and he has stated that he made necessary enquiry before entering into the transaction,

but he has not produced any evidence to show the nature of the enquiry he made or the kind of enquiry or the persons with whom he made the enquiry. As far as other witness examined on behalf of the defendant, namely, the husband of the vendor is concerned, he has stated that he obtained legal opinion from one advocate Gopal, but has not produced a copy of the legal opinion obtained from the advocate. He has also not stated in his evidence that there was legal necessity or any benefit was derived by the Mutt by entering into the perpetual lease.

25. As far as the recitals of the deed of lease are concerned, we are of the view that the recitals also do not establish that there was some actual pressure on the estate. The document merely says that the Mutt was indebted, but there is nothing to show that the extent of indebtedness of the Mutt which necessitated the Mutt to alienate the property. In so far as the next recital is concerned, it merely says that the permanent lease was for the benefit of the Mutt, but such a vague statement does not carry any further. The third recital is that if the property was sold, it would have fetched higher price than the premium amount and hence, the Power Agents had agreed to let out the property on perpetual lease. Further, there is no evidence regarding the circumstances which led the previous Mutt Head to lease out the property on a perpetual lease for a monthly rent of Re.1/-. All these three recitals, whether considered individually or cumulatively, do not establish that there was some necessity for the Mutt to enter into the permanent lease of the suit property for a sum of Re.1/- per month as rent, nor the recitals establish that it was for the benefit of the Mutt.

It is true that the lease was not questioned by two previous Matadhipathis, and when it was not questioned, it would have the binding force during their tenure only. Further, the fact that earlier two Matadhipathis have not questioned the lease is not a ground to hold that the third Matadhipathi has no right to question the deed of lease. We hold that the alienation by way of perpetual lease was not for the benefit of the Mutt, nor it can be said that there was some legal necessity which forced the previous Matadhipathi to alienate the property by way of perpetual lease.

26. We have gone through the judgment of the trial Court. The trial Court has proceeded on the basis of promissory estoppel and adverse possession. The trial Court distinguished the decision of this Court in RAMASWAMY,P. v. SRI-LA-SRI SOMASUNDARA SRI

GNANASAMBANDA DESIKA PARAMACHARIA SWAMIGAL 99 L.W.9. We find that in Ramaswamy case the lease made in the year

1916 was sought to be questioned by the subsequent Mutt Head and it was a case of grant of perpetual lease of the property on payment of lease

amount of Rs.12/- per annum besides a premium of Rs.650/-. This Court held that the lease was not for the benefit of the Mutt. Here also, though

the recitals state that the Mutt was indebted, we hold that that would not be sufficient and there must be some evidence to show that there was

some pressure on the Mutt due to the indebtedness to alienate the property. As far as the payment of premium is concerned, that would not justify

the test that it was for the benefit of the Mutt. We are of the view that there must be some evidence to show that the value of the property on the

date of lease, which the defendant would have produced to show that there was not much difference between the value of the property on the date

of grant of lease and the amount of premium paid. Further, there must be evidence to show that the Mutt was benefited by the transaction. We also

hold that no adverse inference could be drawn against the plaintiff as the plaintiff has admitted the receipt of the amount of the premium. It is well

settled that there must be actual pressure on the estate and there must be danger which sought to be averted by the alienation and there must be

benefit to the Mutt. We hold that on the facts of the case, the defendant has not discharged the onus cast upon him to validate the deed of lease

dated 16.2.1946, Ex.A-3.

27. There is also another reason for not upholding the deed of lease dated 16.2.1946. The plaintiff in the plaint, in paragraph-4, has stated that if a

Matadhipathi wants to create lease for a period more than five years, he should get permission from the Commissioner to grant such a lease and in

the instant case, there was no permission obtained from the Commissioner for the grant of perpetual lease and on that account, the lease is void.

The defendant in the written statement has not denied the averment made in paragraph-4 of the plaint that prior permission of the Commissioner

should be obtained for the grant of perpetual lease. The lease was made on 16.2.1946 and the during relevant period, the Madras Hindu Religious

Endowments Act, 1927 was in force. Section 76 of the said Act required the trustee of a temple to obtain prior sanction of the Board for

alienation of the temple property. The said section reads as under:

76. Alienation of immovable trust property: (1) No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable

property belonging to any math, temple or specific endowment shall be valid or operative unless it is necessary or beneficial to the math, temple or

specific endowment and is sanctioned by the Board.

The expression "Board" is defined in the section 9(1) of the said Act and it reads as under:

"Board" means the Board as constituted u/s 10.

28. The trial Court proceeded on the basis that Ex.A-7 is a document entered into on 16.5.1930 and the lease was for a period of five years and

hence, it must be presumed that prior approval of the Commissioner of Hindu Religious Endowments Board might have been obtained as P.W.1

has stated that the deed would have been executed after consulting the legal advisor of the Mutt. We are of the view that there cannot be any

presumption in the matter of grant of sanction by the Board in view of the specific averment that no such prior approval was obtained from the

Board. Learned trial Judge also proceeded on the basis that the provision of section 34 of the H.R. & C.E. Act, 1959 would apply as the said

section refers to the sanction by the Commissioner. The trial Court has overlooked that sanction should be obtained from the Board under the

Madras Hindu Religious Endowments Act, 1927 and the Board is defined in section 9 of the said Act to mean a Board as constituted u/s 10 of the

Act. We are of the view that in spite of specific plea raised by the plaintiff that sanction of the Board was not obtained for entering into the lease,

the defendant has not denied the averment that the sanction was obtained before entering into the lease and in the absence of any demur or any

evidence on the side of the defendant, we hold that it should be taken that sanction of the Board was not obtained for entering into the lease.

Section 76 of the Madras Hindu Religious Endowments Act provides that if sanction was not obtained and if the transaction was not for the benefit

of the Mutt, the lease would not be valid and operative. Section 76 provides that the fulfilment of both the conditions is a pre-requisite for the grant

of lease of the Mutt property. If the sanction of the Board was not obtained for the grant of lease of the property belonging to the Mutt for a term

exceeding five years, the lease is not valid or operative at all. Section 34 of the H.R. & C.E. Act treats such a transaction as null and void. In

MILNER v. STAFFS. CONGREGATIONAL UNION 1956) All E L R 494 the Chancery Division held that in the absence of consent of the

Charity Commissioner, the transaction is not lawful and not enforceable. In BAYOUMI v. WOMEN'S TOTAL ABSTINENCE (2004) 3 All ER

110 the Court of Appeal held that without the sanction the transfer would be void. As far as section 76 of the Madras Religious Endowments Act

is concerned, such a sale is not valid and operative. In other words, it is not enforceable and inoperative and we hold that the transaction is void for

want of sanction by the Board.

29. The next submission of Mr.T.R.Rajagopalan, learned senior counsel for the respondent is that the defendant has been singled out as the Power

of Attorney Agents had difference of opinion with the defendant and hence, the suit has been instituted against the defendant also. He also

submitted that the fact that the plaintiff Mutt has not instituted suits against other lessees of nearly 60 in number would show that the action against

the defendant is not bona fide. However, we are unable to accept the submission of the learned senior counsel for the respondent as we are sitting

in appeal over the judgment of the trial Court in a civil suit. Further, it is stated by learned senior counsel for the appellant that depending upon the

outcome of litigation in the case against the defendant, the proceedings against other lessees also would be taken. Therefore we hold that the fact

that the suit has been instituted against the defendant alone is not material which would validate the lease or the plaintiff should be non-suited for not

instituting proceedings against other lessees.

30. The next point argued by Mr.Chandra Mouli, learned senior counsel for the appellant is that there is violation of terms of the lease. He referred

to clause-8 of the deed which stipulates that the lessee is prevented from alienating the property as vacant site and if it is done, under clause-10 of

the lease, the lessor is given the right of forfeiture of the lease. Learned senior counsel referred to the made over document executed in favour of

one Seetha Prabhakar by one C.S.Krishnamoorthi and C.S.Ramamoorthi on 3.12.1984 (Ex.B-2) where in the description of property leased is

given as vacant site. He also referred to Ex.B-4 executed by one Palanimuthu,

Chellamuthu, Muthu and Ramasamy in favour of Seetha Prabhakar

on 20.2.1986 wherein they surrendered the temporary shed and handed over the vacant site in favour of Seetha Prabhakar. He also referred to

the made over document in favour of the defendant by Seetha Prabhakar dated 12.7.1989 (Ex.B-1) wherein the property assigned is described as

vacant site along with compound wall. He submitted that when the plaintiff filed the suit, the plaintiff also filed a petition for interim injunction

restraining the defendant from putting up any construction in the suit property and interim injunction was also granted by the trial Court which was

later vacated. He referred to the evidence of D.W.1 wherein he has stated that only up to lintel level the building was constructed when he received

notice from the Court which clearly shows that there was no existing building on the date of assignment in favour of the defendant. He also referred

to the judgment of M.Srinivasan,J. (as His Lordship then was) in A.A.O.No.421 of 1991 dated 14.6.1991 wherein the learned Judge, holding that

the defendant has completed the construction after the dismissal of petition for injunction by the trial Court, dismissed the appeal as having become

infructuous. He also submitted that the order in I.A.No.474 of 1980 was passed on 8.1.1991 and only after that date but before 14.6.1991 the

construction of the building was completed. He therefore submitted that there is violation of clause-8 of the deed of lease as the lessee was

prevented from assigning vacant site. Mr.T.R.Rajagopalan, learned senior counsel submitted that what was transferred was not a vacant site, but it

was a site along with building. He referred to paragraph-11 of the judgment of trial Court wherein it was held that Srirangam Municipality levied

property tax. He referred to property tax receipts, Exs.B-10 and B-11 and according to him, these receipts show that what was made over was

not vacant site, but it was a site with building. We are unable to accept the submission of Mr.T.R.Rajagopalan, learned senior counsel for the

respondent as the documentary evidence clearly establish that the property made over was vacant site. In Ex.B-2 dated 3.12.1984 in which lease

was made over in favour of Seetha Prabhakar by C.S.Krishnamoorthi and C.S.Ramamoorthi, the property was described only as vacant site. In

Ex.B-4 dated 20.2.1986 which is a deed of surrender the executants have stated in clear terms that they had put up only a temporary thatched

shed which they agreed to remove. In the said deed it is also stated that the executants agreed to hand over vacant site in favour of Seetha

Prabhakar. Seetha Prabhakar made over the lease in favour of the defendant on 12.7.1989 and in the document the description of the property is

given as vacant site and there was only compound wall existing. In THE OFFICIAL TRUSTEE OF MADRAS v. UNITED COMMERCIAL

SYNDICATE BY PROPRIETOR, K.APPA RAO 1955 (1) MLJ 220 this Court has held that the existence of compound wall does not make a

vacant site as a building within the meaning of the Madras Buildings (Lease and Rent Control) Act. The Court noticed earlier decisions of this

Court and the Calcutta High Court and held that the compound wall is not a structure or a building and that would not constitute by itself a building.

Moreover, the defendant himself has admitted in his examination in chief that he has not put up the building above the lintel stage when he received

notice from the Court in the application filed for interim injunction by the plaintiff. The said injunction petition was closed and when the matter was

taken in appeal before this Court it was stated that after the dismissal of the injunction petition, the defendant has completed the construction. The

documentary evidence clearly establish that there was no building when Seetha Prabhakar made over the lease in favour of the defendant.

31. As far as property tax receipts are concerned, we are of the view that they are not relevant as one receipt relates to 1983 (Ex.B-10).

Probably, it was on the basis that there was a temporary structure existing in the property Srirangam Municipality levied property tax. However,

other documentary evidence and oral evidence and orders of this Court clearly establish that what was made over by Seetha Prabhakar to the

defendant was a vacant site and not with a building thereon. Hence, we hold that there was violation of clause-8 of the lease which enables the

plaintiff to foreclose the lease with a right to enter into the property. Further, there was violation of clause-9 of the deed of lease and when the

lease was made over to the defendant, it is the case of the plaintiff that the Mutt was not informed about the transfer of lease in favour of the

defendant. The defendant has not produced any evidence to show that his vendor or the defendant has informed the plaintiff Mutt about the

transfer of lease in favour of the defendant and hence, there was violation of clause-9 also. Clause-10 of the deed of lease is clear that any violation

of terms of the lease would result in forfeiture of the lease. Since there was violation of clauses 8 and 9 of the terms of lease when the defendant took over the lease, the lease in favour of the defendant was liable to be forfeited and the plaintiff also exercised the right of forfeiture. We hold that the trial Court was not correct in holding that the property leased out in favour of the defendant was not a vacant site, but it was a site with building thereon and in dismissing the suit. We hold that the plaintiff is entitled to the decree as prayed for. Consequently, the judgment and decree of the trial Court is set aside and there will be a decree as prayed for. However, in the circumstances, there will be no order as to costs.