
(1939) 08 BOM CK 0014

In the Bombay High Court

Case No : Appeal Under Letter Patent No. 45 of 1936

Sri Sachidanand Vidya Narasinha Bharati Shankaracharya of Sankeshwar Math APPELLANT

Vs

Chanmalappa Gurusidh Malappa RESPONDENT

Date of Decision : 02-08-1939

Acts Referred:

Limitation Act, 1908 — Section 10

Citation : AIR 1940 Bom 112 : (1939) 41 BOMLR 1317

Hon'ble Judges : Wassoodew, J;N.J. Wadia, J

Bench : Division Bench

Judgement

N.J. Wadia, J.—These three appeals arise out of three suits Nos. 291 of 1932, 667 of 1932 and 253 of 1934 which were filed by different plaintiffs against the same defendant, the Shankaracharya of the Sankeshwar Math.

2. The contentions raised in suits Nos. 291 and 667 of 1932 were the same and both the suits were heard together and decided by the same judgment. The appeals against both these suits were also heard together by the Assistant Judge of Satara and decided by the same judgment. Suit No. 253 of 1934 was heard separately by another Subordinate Judge and the appeal against it was also decided by a different Judge. The result in all the three cases was the same. The plaintiffs' claims were decreed. Against the decisions of the Assistant Judge in suits Nos. 291 and 667 of 1932 second appeals were filed in this Court which were summarily dismissed by the Honourable Mr. Justice Macklin. Leave to appeal was subsequently given. All the three appeals involve the same question and have, therefore, been heard together by us.

3. The appellant in all the three appeals, who was the defendant in the trial Courts, is the Shankaracharya of the Sankeshwar Math. The village of Hatnur was granted in inam by the Mogul Emperor Mahomed Shah either to the predecessor-in-title of the present Shankaracharya or to the Math itself. That grant was confirmed by the Maratha King Shambhu Chhatrapati Swami in the

year 1760. In the year 1803 the Shankaracharya of the Sankeshwar Math granted in inam three lands in the village to the Ayya or priest of the Lingayat Math at Hatnur, the predecessor-in-title of the plaintiff in suit No. 291 of 1932, the respondent in Letters Patent Appeal No. 45 Of 1936. In the year 1821 a similar grant of two lands in the same village was made by the Shankaracharya of the Sankeshwar Math to certain ancestors of the plaintiffs in suit No. 667 of 1932, respondents in Letters Patent Appeal No. 46 of 1936 ; and in the year 1735 one land in the same village was given in inam to an ancestor of the plaintiffs in suit No. 253 of 1934, respondents in Second Appeal No. 190 of 1938, by the Shankaracharya of the Sankeshwar Math.

4. In the year 1928 the defendant Shankaracharya claimed assessment on the lands in all the three suits from the present holders, the plaintiffs in the three suits, and on their refusing to pay he recovered it from them through the revenue authorities by filing assistance suits. The plaintiffs in all the three suits prayed for a declaration that the defendant was not entitled to recover any amount from them by way of rent or assessment for the suit lands, for a perpetual injunction restraining him from recovering anything from them in future, and for refund of the amounts which he had already recovered from them through the revenue authorities. In the suits from which Letters Patent Appeals Nos. 45 and 46 arise, the trial Judge held that by the terms of the original grant made to the predecessors-in-title of the plaintiffs in the two suits no exemption from payment of assessment had been granted to them. He further held that the grant made by the predecessor-in-title of the present Shankaracharya was not binding on his successor, the present defendant, and that the defendant's right to recover assessment had not been extinguished by lapse of time. He, therefore, dismissed the plaintiffs' suits. In appeal the learned Assistant Judge of Satara held that by the terms of the grants made to the predecessors-in-title of the plaintiffs in the two suits the plaintiffs were entitled to hold the lands free of rent and assessment. He further held that the grant of the village to the Shankaracharya of the Sankeshwar Math was a personal and not a devasthan inam and that therefore the alienations made by the Shankaracharya in 1803 and 1821 to the predecessors-in-title of the plaintiffs in the two suits were binding on the defendant. He also held that the plaintiffs' claims were not barred by limitation. He, therefore, reversed the decrees of the trial Judge in both the suits and granted the declarations and injunctions prayed for. In the third suit No. 253 of 1934 both the trial Judge and the; appellate Judge came to the conclusion that under the terms of the grant made to the predecessor-in-title of the plaintiffs in that suit in the year 1735 the grantees were entitled to hold the land free from assessment or rent, that the inam to the defendant was a personal inam and not devasthan and that the alienation made in 1735 was binding on the present defendant. Both the Courts therefore decided in favour of the plaintiffs. Against all the three decrees the defendant, the Shankaracharya of the Sankeshwar Math, has appealed.

5. The first question that arises for consideration in the appeals is what is the

nature of the inam, granted to the defendant and whether that inam was granted to the Shankaracharya of the Math personally or to the Math itself. The sanad granted by the Mogul Emperor has been produced in the case. It is exhibit 61 in Letters Patent Appeal No. 45 of 1936. The exact year of the grant cannot be ascertained but the document states that it was granted in the ninth year of the reign of the Emperor Mahomed Shah. The document, which is in the form of an order to the subordinate officers, is as follows:

Now the maiuza of Hatnur on the side of Tasgaon in paraganah Haveli of the said circuit has been settled upon and made over to Shankarachari Math Shankeshwar by way of inam. It behoves that the revenue payable in respect of the said mauza should be given in the charge and possession of the said gentleman and his word should not be disobeyed, in order that he may spend the same on the maintenance of fakeers (i.e. religious mendicants) and engage himself in praying for the continued safety of the everlasting kingdom,. They should consider him to be exempted from all civil dues and official taxes. No one should under any circumstances come in the way of the said gentleman for the purpose of recovering the revenue etc.

In the year 1760, by which time the country had come under the rule of the Maratha Sovereigns a fresh sanad was granted by the then Maratha King Shambhu Chhatrapati Swami. The document, which is also in the form of an order to Balaji Babajirao Pandit Pradhan (Prime Minister), runs as follows:

Shrimant Shankaracharya ordered the Swami at Karavir that there are inam villages for the maintenance of the Sansthan of Maths at Karavir and Sankeshwar by way of serva inam. But to continue the annachattra, and other religious performances in the Sansthan continuously, the Maharaja should agree to continue the same in inam and should give his sanction and the order be sent to the Ministers that the income should be continued. Taking this into mind that those villages which are inam to Shri's Math should be continued permanently as before. By maintaining the annachattra and other religious duties of the Maths and performing of the festivals of the anniversary days, would bring welfare to the Maharaja and. his kingdom, the said villages with kulbab, kul-kanun, hali-patti, pestai patti and with all trees, water, stones and all other incidents are granted in inam to Shri's Math, excepting previous hakdars and inamdars.

Then follows a description of the eight villages among which is mouje Hatnur Karyat Tasgaon. The document continues:

In all the said eight villages with their previous boundaries are given in inam to Shri's Math, So you should send orders to all the villages concerned and should send annually all the income from the same to Shri's Math permanently and should continue in the line of disciple of Shri's Math. You should not ask for a fresh order every year and a copy of this be taken and the original should be given to Shri's Math for possession and the said villages should be continued as inam with Tijai, Chouthai and Ghasdana, Sahottra and Panchotia and Dulani,

Vadhava etc.... You should send orders to all the villagers concerned so that the income of the said inam should go yearly for the maintenance of the Samsthan.

6. If the terms of the sanad granted by the Mogul Emperor be looked at by themselves it is arguable that the grant was personally to the Shankaracharya of the Math for the time being and not to the Math itself. The document refers to the revenue being given to the "said gentleman" personally and contains a direction that his word should not be disobeyed and mentions that the grant was in order that he may spend it for the maintenance of fakeers and engage himself in praying for the continued safety of the kingdom. There can, however, be no doubt whatever that the subsequent Maratha sanad, which purported to continue and confirm the inam which had been granted by the Mogul Emperor, was a grant not to the Shankaracharya personally but to the Math, and for the maintenance of the Math. In the preamble of this document the original Mogul grant is mentioned as having also been a grant for the maintenance of the Math, and the language of the Marathai grant shows clearly that the inam was granted to the Math for the maintenance of the Math, the continuance of the annachatra (feeding of the poor) and other religious objects of the Math, and the performance of the festivals of the Math, The grant mentions that "those villages which are inam to Shri's Math should be continued permanently as before." Reading the two documents together we are of opinion that the Mogul grant must also be taken to have been a grant to the Math. There can be no question that the Maratha document undoubtedly was a grant to the Math for the maintenance and religious purposes of the institution.

7. The next question to be considered is what were the terms on which the inam was continued by the British Government. For some years prior to 1863 an inquiry was conducted by the Inam Commission in connection with inams, and the decision with regard to the village of Hatnur arrived at in 1863 by the alienation settlement officer, which is exhibit 47 in Letters Patent Appeal No. 45, was that the village of Hatnur was to be continued as surva inam continuously to the Math of the Swami of Sankeshwar so long as the jahagirs attached to the said Math are continued, subject to such nazarana as Government may think fit to levy. From the language of the Maratha grant as well as from the terms of the decision of the Inam Commission, of 1863 it would appear that the inam was a devasthan inam granted to the Math, but in the alienation register of the village of Hatnur, exhibit 57 in Letters Patent Appeal No. 45, the village is classed as jat inam, and it is stated that "it is to be claimed till the Sankeshwar Math is in existence," the authority for this being given as Government Resolution No. 1980 of March 22, 1849. It is contended for the respondents in all the three appeals that the entry in the alienation register showing the village as jat or personal inam shows that it is not devasthan inam or inam to the Math but an inam personally to the Shankaracharya for the time being. We are unable to accept this contention. The description of the village in the alienation register as a jat or personal inam cannot be regarded as conclusively determining the nature of the inam. That must be taken as determined by the decision of the Inam

Commissioner (exhibit 47) which was that the inam was to the Math of the Sankeshwar Swami, and not to the Swami personally, and that it was to be continued so long as the Math remained in existence. It is clear, therefore, that the British Government continued the inam as an inam to the Math. It is difficult to understand why the inam continues to be classed as jat or personal inam. But whether that entry in the alienation register is correct or not, it cannot alter the real nature of the inam, which must be taken to be an inam to the Math, and therefore in the nature of devasthan inam. In this connection it may be pertinent to observe that with regard to certain other villages in the district of Belgaum which were also given in inam to the Sankeshwar Math an order was made by the Government in the year 1918 that the inams should be converted from personal inams to devasthan inams. There is nothing before us to show whether the omission of the village of Hatnur from this order was deliberate or accidental. From the terms of the decision of the Inam Commissioner (exhibit 47) it is clear that the inam was continued by the British Government as an inam to the Math and not to the Shankaracharya personally. The fact that for some reason or other the inam is entered in the alienation register as a jat or personal inam does not make it any the less an inam to the Math, and it must be held that, being an inam to the Math, it is subject to all the conditions which attach to such inams.

8. The next question is what was the nature of the grant made by the Math or the Shankaracharya for the time being to the predecessors-in-title of the present plaintiffs in the years 1803, 1821 and 1735. The terms of the grants in all the three cases are the same. The only difference is that while in the case of the plaintiffs in Letters Patent Appeal No. 45 the grantee was a Lingayat Math and the grant was to the Ayya or priest of the Math for the maintenance of the Math, in the case of the plaintiffs in Letters Patent Appeal No. 46 the grantees were private persons, the ancestors of the plaintiffs, to whom the grant was made for the maintenance of their family and in consideration of the fact that they had served the Sankeshwar Math loyally for a long time and had been very useful. In the third case. Second Appeal No. 190, the grant was made to a Brahmin who had been performing his daily religious duties in the Math and who was well-versed in the Shastras and Vedas, In all cases the deeds of grant mention that the land had been granted in inam. The document of grant in the case of the plaintiffs in Letters Patent Appeal No. 45, which is in the form of an order to the village officers of Hatnur, is as follows:

The Ayya (Lingayat priest) of Charanti Math in the said village (Hatur) came to Sankeshwar Math personally and made a request through all of you that there is a Math in the said village and that there is no property for the said Math. So Shri be pleased to give some inam land on karar (agreement) so that he should live in the said Math in the village. Taking this into consideration and the fact that the Math of Ayya is old and it must be maintained, the land adjoining the Math on the western side measuring 5 bighas, the khata of which stands in the name of Devaji Bava is given in inam ; so the land within the said boundaries should be continued in the line of the disciples of the Ayya.

The plaintiffs' contention in all the three cases is that the terms of the grant implied that the land was granted in inam free of the liability to pay assessment, while the defendant contends that the grant was merely of the soil and not of the royal share of the revenue which had been reserved by the grantor to himself. There is admittedly nothing in the terms of the grants to show any express reservation of the right to recover assessment or rent. The grantor, who had himself been given an inam of both the soil of the village and of the royal share of the revenue, made a grant to the predecessors-in-title of the plaintiffs as sub-inamdars of certain lands in the village. The grants in these three cases are not grants from the Crown and they must, therefore, be construed in favour of the grantees. Unless, therefore, the right to recover assessment or rent is expressly reserved the presumption would be that that right was also granted. The ordinary meaning of inam according to Molesworth's Marathi-English dictionary is "a grant in perpetuity without conditions," and the ordinary interpretation of the grants in these cases would, therefore, be that they included the right to assessment, that is to say, that the lands were given free from the liability to pay rent or assessment. If that liability was reserved that should have been expressly stated in the documents of grants. This interpretation derives strong support from the fact that in all these three cases, in one of which the grant was made as far back as 200 years ago, and in the other two cases as far back as 100 to 125 years ago, there is no evidence adduced on behalf of the defendant to show that assessment had ever been demanded or recovered till the year 1928. It is difficult to believe that if the grants had not been intended by the grantors to be free from the liability to pay assessment, they and their successors for several generations would have allowed the lands to continue with the grantees without any demand of assessment. We, therefore, agree with the view which the learned appellate Judge has taken in the two Letters Patent appeals, and the view which both the trial and the appellate Judges have taken in second appeal No. 190, that under the terms of the grants made to the predecessors-in-title of the plaintiffs in all the three cases the lands had been granted free from the liability to pay assessment.

9. The question, however, still remains whether the present Shankaracharya of the Sankeshwar Math is bound by the alienations made by his predecessors-in-title in 1735, 1803 and 1821, and it is in connection with this question that the nature of the grant made to the defendant-Math assumes great importance. If the grant was, as contended by the plaintiffs, a personal grant to the Shankaracharya of the Math, and not to the Math itself or in the nature of a devasthan grant, the alienations made by the previous Shankaracharyas would be binding on their successors. But if the inam was an inam of the nature of a devasthan inam, the Shankaracharya for the time being would have no power to alienate the property of the Math, whether by way of sale or a permanent lease so as to bind his successors, except in the case of alienations for legal necessity. In the three cases before us there is no question of the alienations having been made for any legal necessity. The alienations in all the three cases were without

consideration. In the case of Letters Patent Appeal No. 45 the alienation was made by the Shankaracharya of the Sankeshwar Math to the priest or Ayya of a Lingayat Math, i.e., a Math not subordinate to the Shankaracharya's Math nor belonging to the same sect of Hinduism.

10. The law dealing with the power of the head of a Math as regards alienations of Math property has been laid down by the Privy Council in several cases. In *Abhiram v. Shyama Charon* (1909) 11 Bom. L.R. 1234 : L.R. 36 IndAp 148 it was held that

The power of the Mohunt of the endowment for the time being to alienate debottar property is, like the power of the manager of an infant heir, limited to cases of unavoidable necessity, and apart from such necessity to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in the Mohunt..[and that such a] permanent lease granted by the Mohunt of the endowment for the time being, on the most favourable construction, enures only for the life-time of the grantor.

In the well-known case of *Vidya Varuthi Thirtha v. Balusami Ayyar* it was held that

Except for unavoidable necessity, the head of a math cannot create any interest in the math property to endure beyond his life. A lessee, however, has not adverse possession under Article 144 of the schedule [to the Limitation Act]. until the death of the head who granted the lease. If the lessee's possession is consented to by the; succeeding head, that consent can be referable only to a new tenancy created by him, and there is no adverse possession until his death.

The same principle was followed by their Lordships of the Privy Council in the subsequent case of *Mahanth Ram Charan Das Vs. Munshi Naurangi Lal*, in which it was held that

Where a Mahant alienates property appertaining to the Math without any-legal necessity, the alienation is not void, but is good, though good only to the extent of creating an interest in the Math property which endures during his tenure of office of Mahant of the Math, with the result that the alienee's adverse possession of the property alienated only commences when the alienating Mahant ceases to be Mahant by death or otherwise. In this respect, there is no distinction in principle between a disposition purporting to be a grant of a permanent lease and a purported out and out grant by way of absolute sale. In each case, the disposition by the; Mahant is good and effective so long as he continues to be a Mahant.

11. The Mahant therefore who made the inam grants in the three cases before us had no power to alienate permanently the right of the Math to recover assessment from the lands, or in other words to grant the lands permanently free of assessment. The grant would in each case endure only during the lifetime of the Mahant who made it, and succeeding Mahants would be entitled to

repudiate the grants and to recover assessment. It is admitted that the present Shankaracharya of the Sankeshwar Math became the head of the Math sometime after 1925, when his predecessor-in-office died, and he asserted his right to recover assessment, and actually recovered it in all the three cases with the assistance of the revenue authorities, in 1928. No question of limitation, therefore, would arise. Section 10 of the Indian Limitation Act provides that:

Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any" length of time.

And the amendment made in that section by Act I of 1929 provides that:

For the purposes of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof.

12. The defendant's inam being in the nature of a devasthan, that is, an inam to a religious institution, each succeeding head of the institution would not be bound by any alienations not for legal necessity made by his predecessor, and would be entitled to repudiate them within twelve years of his becoming Mahant. The defendant in the present case did so.

13. It was contended by the learned advocate on behalf of the respondents in Letters Patent Appeal No. 46 and Second Appeal No. 190 that the defendant Shankaracharya of the Sankeshwar Math had, by his conduct in filing assistance suits in which he described the position of the plaintiffs as that of inferior holders, accepted the grants made by the previous Shankaracharyas, and that it was not, therefore, open to him now to repudiate those grants, which on the view taken by us as well as by the Courts below were grants of the assessment also. We see no reason why the defendant should not be able to take up this position. It was his contention at the time he claimed and recovered the assessment that the original grant was not a grant of the assessment at all but only of the soil. Even on the view which we have taken that it was a grant of the assessment also, it was perfectly open to the present Shankaracharya to say that he had no desire to resume the grant so far as it related to the soil and that he desired to repudiate the grant only so far as it related to the payment of assessment. His act in demanding and recovering the assessment was in itself a clear indication that he was prepared to continue the grants, as each succeeding Mahant has a right to do if he chooses, so far as the lands themselves were concerned.

14. The fact that in the case of Second Appeal No. 190 the alienation was made in 1735, at a time when the property was presumably held by the

Shankaracharya of the Sankeshwar Math under the terms of the Mogul grant, does not, in our opinion, make any difference. In discussing the terms of that grant we have held that although taken by itself that document might suggest that the grant was to the Shankaracharya of the Math personally, reading that document along with the subsequent Maratha document which refers to it and purports to continue the inam, it may be inferred that the grant was from the beginning a grant to the Math and not to the individual. In any case, we have to consider the position as it is at present. The property which was alienated was property held in trust for a religious institution, and under the law as it now stands the present head of the Math would be entitled to repudiate the alienation made by his predecessor-in-office. On this ground, therefore, the plaintiffs in all the three cases must fail.

15. The appeals will, therefore, be allowed and the plaintiffs' suits dismissed with costs throughout.