

(1972) 06 KAR CK 0008

In the Karnataka High Court

Case No : First Appeal No's. 12 and 50 of 1969

Veerbasavaradhya and Others

APPELLANT

Vs

Devotees of Lingadagudi Mutt and Others

RESPONDENT

Date of Decision : 19-06-1972

Acts Referred:

Evidence Act, 1872 — Section 145, 21
Limitation Act, 1908 — Section 142, 144
Mysore Town Municipalities Act, 1933 — Section 64

Citation : AIR 1973 Kar 280 : AIR 1972 Kar 280

Hon'ble Judges : M.S. Nesargi, J;E.S. Venkataramiah, J

Bench : Division Bench

Advocate : V. Krishna Murty, for G.V. Thimmappaiah and K.N. Chandrasekhara, for S.G. Sundaraswamy, for the Appellant; S.C. Javali, N.K. Subbaraya and M. Rama Bhat, for the Respondent

Judgement

1. The above appeals arise out of the decree passed in Original Suit No. 463 of 1964 on the file of the Second Additional Civil Judge, Bangalore City. It was instituted originally on 12-4-1962 in Original Suit No. 22 of 1962 on the file of the District Judge, Bangalore, by ten plaintiffs in a representative capacity with the leave of the court under Order 1, Rule 8 of the Code of Civil Procedure. On the reorganisation of the jurisdiction of the Civil Courts in 1964, it was transferred to the file of the Second Additional Civil Judge, Bangalore City.

2. The suit relates to a property bearing municipal Nos. 9, 9/A and 10 situated in Jumma Musjid Road, Bangalore City. The suit was instituted for a declaration that the suit property belongs to a public trust called "Lingadagudi Mutt" and that the defendants have no manner of rights or interest in it; that the alienations effected by defendant-1 in favour of the other defendants were null and void; for possession of the same after removing all or any of the structures put up thereon by any of the defendants, and for other consequential reliefs. The plaintiffs belong to the community of Lingayats. Their case as disclosed in the plaint was that the suit property which was situated in Ramannapete, Jumma Musjid Road

(also known as Rama Shettypete) had been dedicated and endowed for the purpose of carrying on the worship of the deity Sri Veerabadrashwamy installed in one portion of the suit property; that in the said building idols of Iswara and Basava had also been installed; for over 70 years the devotees of the mutt more particularly the residents of the locality had been treating the suit property as a holy temple and were offering prayer and worship; that one Nanjappa Sastry the father of defendant-1 had been appointed and engaged to look after the deities installed in the suit property, to offer worship and prayer and to attend to the devotees who came to worship the deities; that in order to enable the said Nanjappa Sastry to do the said work satisfactorily, he was permitted to reside in a portion of the suit property; from out of the offerings received, the said Nanjappa Sastry was required to pay the assessment and other taxes payable to the municipality on the said building and the balance was allowed to be utilised by him for his maintenance; that Nanjappa Sastry died in 1924 leaving behind him his son B. N. Rudraradhya, defendant-1, who continued to perform the duties of a poojary under the same terms and conditions; that neither Nanjappa Sastry nor defendant-1 had any right or title to the suit property, but still sometime prior to the date of the suit two portions of the suit property had been alienated by defendant-1 and that defendants 2 and 4 were in possession of the said two portions. It was claimed by the plaintiffs that the said alienations were not binding on the trust and the defendants who were in unauthorised possession of the said portions, were liable to surrender possession of the same in favour of the trust. Defendant-5 is the son of defendant-1. He was impleaded on 10-9-1964 since he appears to have asserted hostile title to the suit property. Defendant-1 in his written statement denied that the suit property belonged to a public trust as claimed by the plaintiffs. He claimed that he and his ancestors, namely, his father Nanjappa Sastry and before him his grand-father Basappa Devaru, were in possession of the suit property in their own right and that the temple situated in the suit property was his joint family property. He claimed absolute right over the suit property and urged that he had right to alienate the same. Defendant-2 is one Y.H. Venkataramanappa. He contended in his written statement that the suit was not maintainable as the plaintiffs had not obtained the consent of the Advocate General to file the suit, so required by Section 92 of the CPC and that defendant-1 was the absolute owner of the same. In so far as one portion of the suit property which was in his possession as one of the trustees of a trust known as "Yajman Hanumanthappa Venkatalakshamma Trust" constituted under a deed of trust dated 24-9-1954, he pleaded as follows:--

"That the suit property was the joint family property of Nanjappa Sastry and his son defendant-1 and after the death of Nanjappa Sastry, it was the joint family property in the hands of defendant-1 and defendant-5. By a deed of partition dated 20-9-1946, defendants 1 and 5 effected a partition between them of their joint family properties including the suit property and at that partition, a portion of the suit premises which had been assigned municipal No. 6 fell to the share of defendant-1 absolutely. Thereafter defendant-1 sold the said portion to one

Rangamma alias Akkayamma and her son C.R. Venkataramanappa alias Appaji under a sale deed dated 21-11-1946. By a deed of sale dated 25-3-1954 the said Rangamma and C.R. Venkataramanappa sold the said portion to the trustees of Yajman Hanumanthappa Venkatalakshamma Trust referred to above. The said trust was in occupation of the said portion of the suit property in its own right."

It was further pleaded that the suit was barred by time since the members of the public or the public trust on whose behalf the suit was instituted were not in possession and enjoyment of the suit property for over 12 years prior to the date of suit. Hence the suit was barred by Article 142 of the Indian Limitation Act, 1908. In the alternative it was pleaded that Yajman Hanumanthappa Venkatalakshamma Trust had acquired title to the said portion of the suit property by adverse possession for over 12 years as prescribed by Article 144 of the Limitation Act.

3. The claim of defendants 3 and 4 relates to the suit property which has been assigned municipal No. 9. While reiterating the pleas raised by defendant-2, defendants 3 and 4 stated that by a deed of sale dated 4-11-1948 defendant-1 sold the said portion of the suit property with the concurrence of his son Veerabasavaradhya to G.V. Ramachar defendant-3, and that defendant-3 in his turn sold the same to one C. Yellappa Shetty under a sale deed dated 6-11-1946. After the death of the said Yellappa Shetty, his sons and legal heirs sold the said portion of the suit property to defendant-4 under a sale deed dated 19-11-1960. Defendant-4 further stated that after the sale in favour of defendant-3, a notice dated 12-2-1944 was issued to defendant-3 through an advocate by one Yajman G. Gurubasappa acting as the Yajman of the community questioning the validity of the alienation in favour of defendant-3 and that notice was replied by defendant-3 on 29-3-1944 denying the claim put forward on behalf of the community. He, therefore, claimed that whatever right, title and interest the community had in the suit property was extinguished by virtue of Articles 142 and 144 of the Limitation Act, 1908.

4. Defendant-5 in his written statement claimed that at a partition between defendants 1 and 2, a portion of the suit property had fallen to his share and that the members of the public had no interest in it. He adopted the pleas of defendant-1 in other respects.

5. On the basis of the above pleadings, the trial Court framed as many as twenty-five issues and on a consideration of the material placed before it, it came to the conclusion that the suit property had been endowed to Lingadagudi Mutt; that the defendants had no manner of right over it; that the alienations effected by defendant-1 were void; that the defendants were liable to put the plaintiffs in possession of property in their possession, and that defendant-2 was entitled to a sum of Rs. 5,000/- only being the cost of improvements made by him on that portion of the property which was in his possession.

6. Aggrieved by the judgment and decree of the Court below, defendant-5 has

filed R. F. A. No. 12 of 1969 and defendants 2 and 4 have filed R. F. A. No. 50 of 1969. It may be mentioned here that after the judgment was pronounced by the court below defendant-1 died, and, therefore, defendant-5 has filed R. F. A. No. 12 of 1969 as the legal representative of defendant-1 also. Defendant-2 died during the pendency of R. F. A. No. 50 of 1969. His legal representatives have been brought on record.

7. On behalf of the appellants, the following contentions were urged:--

- (1) the suit property did not belong to a public trust;
- (2) that the suit property was the joint family property of defendants 1 and 5; and
- (3) that even granting that the suit property belonged to a public trust, defendants 2, 4 and 5 had acquired title of the same by adverse possession;
- (4) that the suit was not maintainable as the plaintiffs had not obtained consent of the Advocate-General; and
- (5) that the suit as against defendants 2 and 4 had to fail on the ground of estoppel.

8. Points 1 and 2 referred to above may conveniently be disposed of together. It is not disputed that the suit property before the alienations in favour of defendant-3 and the vendors of defendant-2, constituted one single unit. It is also not disputed that the vigra has of Iswara, Basava and Veerabhadraswamy are installed in the said building and that members of the public offered worship to the said deities. It is admitted on all hands that Basappa Devaru and Nanjappa Sastry, the grandfather and father of defendant 1, were living in a portion of the suit property and defendants 1 and 5 have also been living in the said portion along with the members of their family. That Basappa Devaru, Nanjappa Sastry, defendants 1 and 5 have been performing the duties of archak or poojary of the said deities is also not disputed. The point which requires to be examined in this case is whether defendants 1 and 5 and their ancestors have been living in the suit property as poojaries or archaks only without any right, title or interest over the suit property or whether they have been in occupation of the same in their own right. Nextly, it has also to be considered whether the properties in question if they are held to be endowed to the deities installed in the suit property, are those belonging to a public trust or not

9. A Hindu Idol, according to long established authority founded upon the religion and customs of the Hindus recognised by courts of law, is a juristic entity. It has juridical status; it can own property; it has the power to sue and of being sued. In order to establish that a certain property belongs to a Hindu Idol, it is necessary to prove that the property has been dedicated to the idol. As it happens in a large number of cases, it may not be possible to prove such dedication by direct evidence on account of lapse of time and death of parties who had personal knowledge of the dedication. When direct evidence regarding

dedication is not available, it is permissible to prove that a property has been endowed to a deity or to any other Hindu religious trust by adducing evidence regarding matters which would conclusively establish that there was such a dedication in the past. It is not necessary that there should be a document in support of such dedication for it is permissible for a Hindu to endow property in favour of a Public religious or charitable trust by making unequivocal declaration that he was giving away his property in favour of the trust. It may be that in certain cases such as the endowment of a property by means of a trust deed or a will, a document in writing would be necessary. It is also necessary that when an immovable property worth more than Rs. 100/- is given to a Public trust by means of a deed, the deed has to be registered. But the absence of a document would not come in the way of establishing that a certain immovable property is endowed to a public trust.

10. When direct evidence of the endowment of a certain property in favour of a temple is not forthcoming, it may be possible to establish the same by establishing the following:--

- (1) the existence of an Idol to which the property could have been endowed;
- (2) that members of the public visit the place where the idol is installed and offer worship as of right and without any sort of obstruction except when it becomes necessary to regulate the admission of the worshippers in the interests of the public.
- (3) that the Kattales and poojas which ordinarily take place in several Hindu temples are celebrated or performed regularly;
- (4) that members of the Public are associated with the management or administration of the place of worship;
- (5) the architecture and situation of the building; and
- (6) by proving the statements or admissions of parties, if any, made earlier. The above list is by no means exhaustive of the matters regarding which evidence could be adduced in support of the case that there has been an endowment in favour of a Hindu Public religious or charitable trust. It is only illustrative. The Court will have to take into account the cumulative effect of the entire evidence adduced by the parties while deciding whether there is a public trust and whether any property has been endowed to the said trust. In the instant case as already stated, in the suit property the vigra has of Linga, Basava and Veerabhadraswamy are installed and the people of the locality offer worship. Defendants 1 and 5 and formerly the father and grand-father of defendant 1 were discharging the duties of archaks and that all along they have been residing in one portion of" the suit property.

11. Sri V. Krishnamurthy, the learned counsel for defendant 5, contended that there was no direct evidence of dedication of the suit property to the idol and that whatever other evidence had been let in by the plaintiffs in this case was

insufficient to hold that the suit property had been endowed to the deity. He urged that defendant 5 and his ancestors had been in possession of the suit property in their own right by paying the Municipal assessment all along and that the property was standing in the name of defendant 5 and his ancestors in the Municipal registers. He relied upon the extract from the Khirdi register of the Municipality (Ex. D1), encumbrance certificates (Exs. D-2 and D-3), house tax assessment list (Exs. D-6 and D-7), Corporation notices (Exs. D-8 and D-9) to show that in the Municipal registers the name of defendant 1 and his ancestors had been mentioned all along and that they alone had been paying the assessment in respect of the suit property. It was also urged that if the property was really trust property, there would not have been any municipal assessment in view of the provisions of Section 64 of the Mysore City Municipalities Act and because assessment was being recovered in respect of the suit property, he urged that it must be held that it was the private property of defendant 1 and defendant 5. He relied upon the sale deed executed by defendant 1 in favour of defendant 3 as per Ex. D-11 dated 4-11-1943 and the sale deed dated 6-11-1946 in favour of Ranganna and C.R. Venkataramanappa and argued that the members of the family of defendant 1 had been exercising acts of ownership in respect of the suit property and it was indicative of the fact that the property belonged to them absolutely and not to any trust. Apart from the documentary evidence, to which reference will be made at a later stage, we have in this case the oral evidence adduced by the parties on the question whether the property belongs to a Public trust or not.

12. The case of the plaintiffs is that the suit property was dedicated more than 70 years prior to the date of suit. None of the witnesses examined in this case can therefore, be considered as a direct witness in proof of the same. (After considering the evidence of plaintiff's witnesses their Lordships proceeded).

13. It is significant that even though all the witnesses who have been examined on behalf of the plaintiffs have stated that the idols of the above deities have been installed in the suit property and members of the Public used to visit in large numbers to offer worship at that place, no suggestion has been made in the course of cross-examination on behalf of the defendants that the members of the Public were visiting the suit property with the permission or consent of defendant 1 or defendant 5 or any of the members of their family. It is to be seen from the evidence of these witnesses that the suit property was built of stone and that there were number of pillars inside and even its roof was constructed with stone slabs.

14. On the side of the defendants, defendant 1 has been examined as D. W. 1. He has stated in the course of his evidence that the deity in the suit property has been there from his grand-father's time and that the members of the public were not visiting the temple and that they were not offering worship. He claims that the deity in the temple was the private deity belonging to his family and that they were worshipping the same daily. He has spoken to the fact that he and his

father were paying assessment to the Municipal authorities in respect of the suit property. In cross-examination he has stated that his father Nanjappa Sastry was a purohit, that the suit property was called Lingadagudi Mutt, that it was built of stone and that there were stone pillars and it had stone terrace; there was a garbagudi (sanctum sanctorum) inside the suit property, Lingamurthy and Veerabhadraswamy, had been installed there; that three or four main festivals of the mutt were taking place on Ugadi, Shivaratri, Gouri-Habba and Krithke days and that even though people were assembling for these festivals, they used to come only at the time of mangalarathi. He admits that he knew Gurubasappa and his father Chikkaveerappa and that Chikkaveerappa was the Yajman, that Chikkaveerappa and Gumbasappa used to visit the mutt sometimes, and that when he was asked whether they used to visit as Yajmans, he stated that he could not say whether they used to do so as Yajmans. He denied that his ancestors had been appointed as Poojaris of the mutt. He stated that his father was feeding the visitors of the temple. In the course of cross-examination defendant 1 was confronted with some of the documents which are marked in this case as Exts. P-1 to P-6.

15. Exhibit P-1 is a licence issued on 23-8-1921 by the City Magistrate of Bangalore in favour of Yajman G. Chikkaveerappa for the purpose of taking the procession of Veerabhadraswamy. In the application for the said licence it is stated that the licence was required for taking out the procession of Veerabhadraswamy Vigra has which was in Lingadagudi mutt attached to Ramashettypete on 26-8-1921 in a palanquin as usual. The application is made by Yajman G. Chikkaveerappa to the City Magistrate. The licence was accordingly issued by the City Magistrate for the said purpose. Ex. P-2 is another licence issued by the City Magistrate for taking Veerabhadraswamy on 23-2-1920 in procession. The application is made for the said purpose on 17-2-1920. In Ex. P-2 also it is stated that Veerabhadraswamy was in Lingadagudi which was attached to Ramashetty pete. Exhibit P-2 is issued again on the application of Yajman, G. Chikkaveerappa. D. W. 1 has admitted in the course of cross-examination that Yajman G. Chikkaveerappa was the Yajman of the community. Exhibit P-3 is a money bond executed by Nanjappa Sastry the father of defendant 1 and his brother-in-law Gangaiah in favour of Yajman G. Chikkaveerappa on 16-8-1970 (sic). In that Nanjappa describes himself as Nanjappaiah son of Basappa Devaru residing in Lingadagudi mutt belonging to Ramashetty pete. Exhibit P-4 is an instalment bond dated 24-5-1919 executed by defendant 1 and three others namely Subba Rao, B. Srinivasaiah and Laxminarayana Sastry in favour of Yajman G. Chikkaveerappa. In that defendant 1 has described himself as the son of Nanjappa Sastry residing in Lingadagudi mutt belonging to Rama-settypete and which had been given by Yajman G. Chikkaveerappa to Nanjappa Sastry for the purpose of resident. The relevant portion of that which is in Kannada reads as follows:

"B.N. Rudraradhya son of Nanjappa Sastry residing at Lingada Mutt in Ramasetty Pete belonging to you and given for our living."

Exhibit P-5 is a registered monty bond executed in favour of Yajman Chikkaveerappa and his son Gurubasappa on 14-12-1919 by defendant 1 and B. Shivaramaiah. In that document also defendant 1 has described himself in the same way in which he has done in Exhibit P-4. It is stated that he was residing at Lingadagudi mutt which had been given to Nanjappa Sastry by Yajman G. Chikkaveerappa and that Lingadagudi mutt belonged to Ramannapete.

16. Exhibit P-6 is a copy of a letter written to the office of the Municipal Board, Bangalore. It is not signed. Defendant 1 in his cross-examination has admitted that the said document appeared to be in the handwriting of his father Nanjappa Sastry. It is dated 11-1-1909. A reading of that document would show that it is written by Nanjappa Sastry to the office of the Municipal Board in connection with a certain action which the Municipal Board contemplated to take against him for not effecting repairs to the latrine situated in Lingadagudi mutt i.e. the suit property. He has described himself in Exhibit P-6 as Nanjappa Sastry residing in Lingadagudi mutt belonging to Rama Setty pete. He has stated in that document that he was in receipt of notice bearing No. 192 issued by the Municipal Office calling upon him to effect repairs to the latrine and he has explained that the work of repair of latrine could not be attended to immediately because he was out of station for sometime and because the mutt in question was under the control of Yejman G. Chikkaveerappa and it belonged to him, and, therefore, the repairs had to be got effected by Chikkaveerappa. It is stated that even before the above reply could be sent that he was in receipt of another notice bearing No. 816. In the circumstances narrated in Exhibit P-6, Nanjappa Sastry prayed that there was no case for prosecuting him for not effecting the repairs to the latrine in the suit property.

17. A reading of Exhibits P-1 to P-6 and Jn particular Exhibit P-6, clearly shows that defendant 1 and his father Nanjappa Sastry were there in the suit property with the permission of Yajman Chikkaveerappa and that they had no title to the same and that it was Yajman Chikkaveerappa who was taking out licences from time to time for taking the Vigra has of Veerabhadraswamy in procession. Sri V. Krishnamurthy contended that no reliance could be placed on the recitals In Exhibits P-3 to P-6 for the following reasons (i) that Exhibits P-3, P-4 and P-5 were only money bonds executed by Nanjappa Sastry and defendant 1 in which it was not necessary for them to say anything about ownership of the property in which they were residing and therefore much importance should not be given to the description of Nanjappa Sastry and defendant 1; (ii) in so far as Exhibit P-6 was concerned, it had not been established that the writing of Exhibit P-6 was only a copy and that there was no evidence to show that the original of the same was sent to the Municipal Board; (iii) that the attention of defendant 1 was not drawn specifically to the contents of Exhibit P-6; and (iv) that even granting that Exhibit P-6 was a genuine document, in view of the circumstances under which it was written, the document could not have much probative value. We do not find any substance in any of the above submissions.

18. Defendant 1 has stated in the course of his cross-examination that Ex. P-6 appears to be in the hand-writing of his father. He did not deny the handwriting. It is no doubt true that it is not signed. But that may not be of much significance. It may also be mentioned at this stage that before the lower Court it was not urged on behalf of the defendants that Exhibit P-6 was not proved to have been written by Nanjappa Sastry and that even in the appeal memoranda filed before this Court, it is not stated that Exhibit P-6 should not have been acted upon on the ground that it had not been proved to be in the handwriting of Nanjappa Sastry. We are of the opinion that it has been proved that Ex. P-6 is in the handwriting of Nanjappa Sastry and what is stated therein is in conformity with what is stated in Exs. P-3, P-4 and P-5. On the second point it is to be observed that the plaintiffs have tried to get at the original file in which the original of Ex. P-6 could be found, but they were given an endorsement by the corporation of the City of Bangalore as per Ex. P-8 that the copies of the documents could not be given since they were old records. Exhibit P-6 is dated 11-1-1909 and the file containing the original of Exhibit P-6 was probably not traceable. Exhibit P-6 has been marked as an exhibit in the trial Court and it is not open to defendant I to question the mode of proof in the appeal for no objection was taken for marking the copy in the trial Court as an exhibit. Sri Krishnamurthy contended that unless there was proof that the said document was communicated to the person to whom it was addressed, no reliance could be placed on it. It was contended that it was only a statement which amounted to an admission that could be used against a party and a document which was not proved to have been sent to the addressee could not amount to contain a statement of the writer of the document. We do not find much substance in the above submission. In *Bhogilal Chunilal Pandya Vs. The State of Bombay*, the Supreme Court while dealing with the expression "Statement" appearing in Section 157 of the Indian Evidence Act, observed as follows:--

"The first group of Sections in the Act in which the word "statement" occurs, are Sections 17 to 21, which deal with admissions. Section 17 defines the word "Admission" Sections 18 to 20 lay down what statements are admissions, and Section 21 deals with the proof of admissions against persons making them. The words used in Sections 18 to 21 in this connection are "statements made by" -- It is not disputed that statements made by persons may be used as admissions against them even though they may not have been communicated to any other person. For example, statements in the account-books of a person showing that he was indebted to another person are admissions which can be used against him even though these statements were never communicated to any other person. Illustration (b) of Section 21 also shows that the word "statement" used in these sections does not necessarily imply that they must have been communicated to any other person. In the illustration in question entries made in the book kept by a ship's captain in the ordinary course of business are called statements, though these entries are not communicated to any other person. An examination, therefore, of these sections shows that in this part of the Act the

word "Statement" has been used in its primary meaning, namely, "something that is stated" and communication is not necessary in order that it may be a statement.

The next section to which reference may be made is Section 32 of the Act. It deals with statement made by persons who are dead, or cannot be found or who become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which appears to the Court unreasonable. Sub-section (2) in particular shows that any entry or memorandum made in books kept in the ordinary course of business or in the discharge of professional duty is a statement, though there is no question of communicating it to another person. Similarly, Sub-section (8) shows that statements relating to the existence of any relationship made in any will or deed relating to the affairs of the family, or in any family pedigree, or upon any tombstone, or family portrait are statements though there is no question of their communication to another person."

According to the above decision, Ex. P-6 is a statement of Nanjappa Sastry and it can be used as an admission under Sections 17 and 21 of the Evidence Act even though it has not been communicated to the office of the Municipal Board. It can also be used u/s 32(3) of the Evidence Act as it contains a statement which is against the pecuniary or proprietary interest of Nanjappa Sastry. It is no doubt true that the attention of defendant 1 was not drawn in great detail to the contents of Exhibit P-6 as it would ordinarily be done in the case of previous statements which are admitted in evidence u/s 145 of the Indian Evidence Act. In this connection reliance was placed by Shri Krishnamurthy, on a decision of the High Court of Lahore in *Firm Malik Des Raj Faqir Chand v. Firm Piara Lal Aya Ram* AIR 1946 Lah 65 (FB). In that case it was observed as follows:--

"A party's previous admission is relevant u/s 21 and can be used as evidence against him if that party has not appeared in the witness box at all. The value of that admission as a piece of evidence depends on the circumstances of each case but ordinarily an admission is a valuable piece of evidence.

An admission is a relevant piece of evidence and can be used as legal evidence against a party even in cases where the party appears in the witness box but makes no statement inconsistent or contradictory to that admission and a denial of that admission is not involved in the statement made by the party in the witness-box by considering the statement as whole. In this case there is no conflict between the sworn word in Court and the previous admission and the case is, therefore, outside the ambit of Section 145, Evidence Act, and therefore it follows that it is outside the rule laid down by their Lordships of the Privy Council in ILR 39 Bom 441 : AIR 1915 PC 7.

A previous admission of a party who has gone into the witness box on the point in issue and in the witness box has made a statement inconsistent with the admission of the statement made in the witness-box is such which involves a

denial of the previous admission or runs counter to that admission then the previous admission cannot be used as legal evidence in the case against that party unless the attention of the witness during cross-examination was drawn to that statement and he was confronted with specific portions of that statement which were sought to be used as admissions. Without complying with the procedure laid in Section 145, the admission contained in the previous statement cannot be used as legal evidence against that party."

With great respect to the learned judges who decided the above case, we have to disagree with the above conclusion. The above decision does not give due weight to the difference between the language of Sections 17 and 32 on the one hand and of Section 145 on the other. Section 145 specifically requires that a previous statement made by a witness in writing or reduced into writing, could be used in cross-examination if it is intended to contradict him by the writing by drawing his attention to those portions of the writing which are to be used for the purpose of contradicting him. We do not find a similar provision with regard to statements which are admissible under Sections 17 to 21 and 32 of the Evidence Act. Our view receives support from a Full Bench decision of the Allahabad High Court in *Ajodhya Prasad Bhargava Vs. Bhawani Shanker Bhargava and Another*, in which it was observed that when admissions made by parties were to be proved in a case, it was not obligatory on the party who produced those documents to draw in cross-examination the attention of the opponent to the said admissions before he could be permitted to use them for purpose of contradicting the opponent provided that the admissions were clear and unambiguous. It was also held that the party producing such document containing such admissions could use them as substantive evidence in the case without drawing in cross-examination the attention of the opponent to those admissions.

19. It was lastly argued that Ex. P-6 contained statements which were exculpatory in nature, and, therefore, its probative value was very little. We are of the opinion that Exhibit P-6 contains statements which are against the proprietary interest of Nanjappa Sastry and we are not satisfied that because he was trying to avoid a prosecution by making the statements, no value should be attached to them. It is no doubt true that the evidentiary value of admissions depends upon the circumstances of the case, but ordinarily an admission is a valuable piece of evidence and it cannot be easily rejected. Defendant 1 who had an opportunity to explain the contents of the documents while he gave evidence did not make any attempt to show that the relevant portions of Exhibits P-3 to P-6 referred to above, did not represent the truth. We are aware of the fact that an admission is not conclusive, but unless it is explained suitably by a party who has made such an admission or who is bound by such an admission, it will have to be used against him. In the instant case, having regard to the oral evidence to which reference has already been made, we do not find any difficulty in accepting the evidence contained in Exhibits P-3 to P-6 and acting upon them. The admissions contained in Exs. P-3 to P-6 taken along with Exhibits P-1 and P-2 and other evidence in the case, outweigh the evidence relied upon by the

defendants. The payment of Kandayam by defendants 1 and 5 is in conformity with the case of plaintiffs also. If defendants 1 and 5 have dealt with the property stealthily as their own, their acts would not defeat the trust. In Exhibits D-6 and P-7 extracts of the Municipal Registers, we find at some stage that the name of Lingadagudi Mutt also is entered along with the name of Nanjappa Sastry against the suit property. The suit property would not cease to be public trust by payment of kandayam only because no steps had been taken to claim exemption from payment when it was available. The oral evidence however supports the case of the plaintiffs that the public were entitled to enter the suit property as of right to offer Worship.

20. On a careful consideration of all the circumstances, we reject the case of defendants 1 to 5 and hold that the suit property belongs to a public trust of Lingayat community and that defendants 1 and 5 or any of the members of their family are not the owners of the same. They have been there only as archaks or poojaries. An archak or poojary in a temple is not a shebait as the said expression is understood in Northern India or a dharmadarshi as those expressions are understood in Southern India. A Poojary is always appointed by the she-bait or dharmadarshi or dharmadhikari for the purpose of conducting the worship. Such appointment would not have the effect of conferring any right on the poojary. He is ordinarily not entitled to be continued as a mailer of right in his office as Poojary. Poojaries and archaks are liable to be removed for any act of misconduct or indiscipline which would be inconsistent with the duties of the office which they hold. The above view of ours is fortified by the decision of the Calcutta High Court in Ananda Chandra Chakravarti Vs. Broja Lal Singh and Others, Defendant 1 could not, therefore, alienate the properties belonging to the trust.

21. After the case was heard for sometime, defendant 5 and respondents 1 and 3 to 10 filed a joint memo stating that the suit property may be treated as belonging to the public trust and that defendant 5 may be permitted to reside in the temple as usual and to perform the worship. It is also stated that defendant 5 may be permitted to collect the rent in respect of the shops constructed by him on a portion of the suit property and utilise the same for his own benefit. We shall deal with the memo in the concluding part of this judgment.

22. It was however next contended by Sri Sundara Swamy that the suit was not maintainable since the consent of the Advocate General had not been obtained as required by Section 92 of the CPC before it was instituted and that the plaintiffs had no right to institute the suit under Order 1, Rule 8 of the Code of Civil Procedure. The present suit is one for possession instituted by some of the devotees in a representative capacity for possession of the properties belonging to the trust. Section 92 is applicable only to those suits under which the reliefs claimed are those enumerated in Section 92. A suit for possession against a person who is not a trustee is not one enumerated in Section 92. Vide the decision in Harendra Nath Bhattacharya and Others Vs. Kaliram Das (Dead) by

his Heirs and Lrs. and Others, . Hence the consent of the Advocate General was not necessary. It is no doubt true that the she-bait or manager who is in charge of the administration of the properties belonging to a deity can institute a suit for recovery of possession of the same. That however does not disentitle the devotees or worshippers who are interested in the deity in maintaining a suit on behalf of the entire body of devotees with the leave of the Court under Order I, Rule 8 of the CPC against an alliance of temple property alleging that the alienation is not binding on the deity. The principle that such a right is in the body of worshippers is recognised by Indian Courts. In *Sri Veerabhadraswami v. Maya Kone* AIR 1940 Mad 81 such a suit was held to be maintainable. In another decision of this Court in *Poona Setty v. B.N. Aradhya* a suit filed in a representative capacity of persons interested in a religious or charitable trust for a similar relief was decreed by this Court. In *Mukaremdas Mannudas and Others Vs. Chhagan Kisan Bhawasar and Others*, a suit against the transferees from the head of a math belonging to vaishnava Bairagi community for declaration that property in their hands is trust property and for possession was held to be outside the scope of Section 92 of the CPC and that the suit filed by the members of the Bairagi community who were interested in the math in a representative capacity under Order 1, Rule 8 of the CPC was held to be maintainable. We, therefore, reject the contention that the present suit was not maintainable for the reasons mentioned above.

23. The next question which arises for consideration in this case is whether the suit is barred by time as against defendant 2 and 4 and whether they have acquired title to the portion of the suit property in their possession by adverse possession. Relying upon the decisions in (1) *S.K. Venkatasubramania Ayyar and Others Vs. S. Sivagurunatha Chettiar and Others*, (2) *V. Rajaram Vs. Ramanujam Iyengar and Others*, (3) *Padmanabha Pillai Raman Pillai v. Secy. Travancore Devaswom Board* AIR 1957 trav Co 269; (4) *Jibon Chandra Sarma Doloi v. Naren Kalita* AIR 1955 Gau 23 and (5) *Smt. Hemantha Kumari Bose v. Sree Sree Iswar Sridhar Jiu* AIR 1946 Cal 473. Sri Sundaraswamy argued that when a property endowed to a Public trust is alienated by a manager claiming that the property is his own, the possession of the alienee would become adverse immediately for the transfer in such a case would be void ab initio and in such a case Article 144 of the Indian Limitation Act, 1908, would apply. He contended that to such a case no other article would be applicable. It is true that in the decisions referred to above, the High Courts of Madras, Travancore-Cochin, Assam and Calcutta have taken that view. Sri S. C. Javali, the learned counsel for the respondents submitted that the view expressed in the above decisions is no longer good law in view of the decision of the Supreme Court in *Srinivasa Reddiar and Others Vs. N. Ramaswamy Reddiar and Another*, . In that case the Supreme Court was dealing with a casa to which Article 134-B of the Indian Limitation Act, 1908 was applicable. The Supreme Court while doing so observed:---

"Mr. Tatachari also argues that in applying Article 144, we must assume that the possession of the alienees was adverse to the temple from the respective dates

of the alienations when they were put in possession of the properties covered by the transactions in question. In support of this argument, Mr. Tatachari has relied on the statement of the law made by Mr. Justice Mukherjee in his lectures on the Hindu Law of Religious and Charitable Trust. Says Mr. Justice Mukherjea.

"If the transfer (of debutter property) is not of particular items of property, but of the entire endowment with all its properties. the possession of the transferee is unlawful from the very beginning. The decisions in *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1900) 27 Ind App 69 (PC) and *Damodar Das v. Adhikari Lakhan Das* (1910) 37 Ind App 147 (PC), are illustrations of this type of cases."

He also added that transfer would similarly be void and limitation would run from the date of the transfer, if the manager transfers the property as his own property and not as the property of the deity. The same statement has been made by the learned author in two other places in the course of his lectures.

It would thus be seen that the observations made by Mr. Justice Mukherjea on which Mr. Tatachari relies, really purport to extend the principle which has apparently been mentioned by the Privy Council in *Gnanasambanda's* case (1900) 27 Ind App 69 (PC). It does not appear that Mr. Justice Mukherjea had expressed this view as a judge of the Calcutta High Court. In the case of *Hemanta Kumari v. Sree Iswar Sridhar Jiu* ILR (1946) 2 Cal 38 : AIR 1946 Cal 473 the attention of Mukherjea, J. was drawn to the fact that in an earlier decision of the Calcutta High Court in *Ronald Duncan Cromartie v. Iswar Radha Damodar Jew* (1935) 62 Cal LJ 10, D.N. Mitter, J. had made observations which were inconsistent with the view which Mukherjea, J. was disposed to take; but the learned Judge commented on the said observations by saying that they were open to criticism.

Thus, on the question raised by Mr. Tatachari before us, there does appear to be some divergence of opinion in the Calcutta High Court itself. No other decision has been cited before us which has accepted the proposition that if any part of the property belonging to a Hindu Religious endowment is transferred by its manager, the transfer is void and the possession of the transferee becomes adverse to the endowments from the very beginning. In fact, as we have already indicated, in the case of *Gnanasambanda* (1900) 27 Ind App 69 (PC) what had been transferred unauthorisedly was the religious office itself and all the properties appertaining thereto. It is open to doubt whether the said decision could lead to the inference that if a part of the property is transferred by the manager of a religious endowment on the basis that it belongs to him and not to the religious endowment the transfer is void ab initio, with the result that the possession of the transferee is adverse to the religious endowment from the very beginning and the succeeding manager's right to challenge the said transfer would be lost if his predecessor who made the transfer lives for more than 12 years after effecting the transfer."

By the above decision the Supreme Court reversed the decision of the Madras High Court in Second Appeal No. 774 of 1957. The decision in Second Appeal No. 774 of 1957 was relied upon by the Madras High Court in V. Rajaram Vs. Ramanujam Iyengar and Others, Since the decision in Second Appeal No. 774 of 1957 has been reversed by the Supreme Court by its above decision, the judgment of the Madras High Court in V. Rajaram Vs. Ramanujam Iyengar and Others, which followed the decision in Hemanta Kumar's case AIR 1946 Cat 473 and R.M.A.R.A.R.R.M. Arunachalam Chettiar Vs. Official Assignee and Another, also must be held to have been overruled. The decision of the Supreme Court in Srinivasa Reddiar and Others Vs. N. Ramaswamy Reddiar and Another, is followed by Narayana Pai, J. (as he then was) in Poona Setty's case while construing Article 134-A of the Indian Limitation Act. In that case it was held that for invoking Article 134-A it was not a condition precedent that the transfer should have been made by the manager of a religious or charitable trust as manager or describing himself as manager; it would be sufficient if the plaintiffs prove that the property was the property belonging to a religious or charitable endowment and that the transfer thereof was by a manager of that endowed property. In the said case, an alienation by a manager of property belonging to a Hindu Charitable trust was set aside in a suit instituted within 12 years from the date on which the plaintiffs had knowledge of the alienation although the alienation had taken place more than 12 years prior to the date of the suit. It was held that Article 144 was not applicable to such a case. It is however to be seen that either the plaintiffs or the defendants in the instant case, apparently for the reason that the views of some of the High Courts prevailing at the time the suit was instituted, did not proceed on the basis that the suit was governed by Article 134-A of the Limitation Act, 1908, but proceeded on the basis that it was governed by Article 144 of the Limitation Act. In this appeal Sri Javali submitted that the benefit of Article 134-A should be extended to the plaintiffs and that since the suit has been filed within 12 years from the date on which the plaintiffs came to know of the alienations, it should be held that the suit was not barred by time. Sri Sundaraswamy argued that the plaintiffs have not made the necessary allegations in the plaint to claim the benefit of Article 134-A, and, therefore, they should not be allowed to urge that the suit is one governed by Article 134-A of the Limitation Act. In this connection he relied upon the decision of the Supreme Court in K.S. Nanji and Company Vs. Jatashankar Dossa and Others, . In that case the Supreme Court was concerned with Article 48 of the Limitation Act in respect of specific movable property lost, or acquired by theft, or dishonest misappropriation, or conversion, or for compensation for wrongful taking or detaining the same. The period of limitation prescribed by that Article was three years from the date when the person having right to the possession of the property first learnt in whose possession it was. The Supreme Court observed as follows:--

"Obviously where a person has a right to sue within three years from the date of his coming to know of a certain fact, it is for him to prove that he had the

knowledge of the said fact on particular date, for the said fact would be within his peculiar knowledge. It is the duty of a plaintiff to establish, at any rate, prima facie, that the suit is within time and is not barred by lapse of time. Under the Evidence Act there is an essential distinction between the phrase, burden of proof as a matter of law and pleading and as a matter of adducing evidence. u/s 101 of the Evidence Act, the burden in the former sense is upon the party who comes to Court to get a decision on the existence of certain facts which he asserts. That burden is constant throughout the trial; but burden to prove in the sense of adducing evidence shifts from time to time having regard to the evidence adduced by one party or the other or the presumption of fact or law raised in favour of one or the other. The burden of proof, is on a plaintiff who asserts a right, and it may be, having regard to the circumstances of each case, that the onus of proof may shift to the defendant. But to say that no duty is cast upon the plaintiff even to allege the date when he had knowledge of the defendant's possession of the converted property and that the entire burden is on the defendant is contrary to the tenor of the article in the Limitation Act and also to the rules of evidence."

Depending upon the above observations of the Supreme Court, Sri Sundaraswamy argued that the plaintiff should not be given any opportunity to rely upon Article 134-A of the Limitation Act. We are of the opinion that having regard to the view expressed by a large number of High Courts on the above question which was prevailing at the time when the suit was instituted, this is a fit case in which we should permit the plaintiffs to amend the plaint by making necessary allegations bearing on the question of limitation, as requested by Sri Javali, and the lower Court should be directed to try the issue arising out of the same after receiving additional written statement if any. But it has to be stated that if Article 134-A is held to be applicable then Article 144 should necessarily be held to be inapplicable. The question which of the two articles will apply is however a matter to be decided by the Court below on the basis of the pleadings. Similarly the question raised on behalf of defendant 2 that the plaintiff's suit was barred by the principles of estoppel for the reason that they had allowed defendant 2 to build on the property after he purchased it, also has got to be considered by the Court below. We do not want to express any opinion on that question at this stage. We however set aside the finding on issue No. 13, since we are not satisfied with the manner in which it is disposed of by the Court below.

24. In the result, we make the following order:--

(1) It is hereby declared that the suit property had been endowed to the religious trust belonging to Lingayat community residing in the locality where the suit property is situated;

(2) In view of the joint memo filed by the appellant and respondents in R. F. A. No. 12 of 1969, the decree for possession passed against defendants I and 5 is set aside, and defendant 5 is permitted to withdraw the amount which he has

deposited pursuant to the stay order passed by this Court, as stated in the joint memo;

(3) The decree passed against defendants 2, 3 and 4 for possession is set aside and the matter is remanded to the lower Court with the following directions :--

(a) the lower Court shall permit the plaintiffs to amend the plaint by making necessary allegations on the question of limitation and the defendants to file additional written statement in reply to the same. The Court below shall thereafter frame the necessary issues and decide whether the suit is barred by time and whether defendants 2, 3 and 4 have acquired title by adverse possession to the portion of the suit property in their possession;

(b) The court below will also consider afresh issue No. 13, namely, are the plaintiffs estopped from setting up title that they have done in this suit for the reasons mentioned in para 13 of the second defendant's written statement.

(c) The Court below will also consider the question whether the plaintiffs can claim possession of the property even though the suit is governed by Article 134-A. In the event of the Court below coming to the conclusion that the plaintiffs are entitled to possession, it will examine afresh the question whether defendant 2 is entitled to compensation in respect of the improvements made by him on the property which he has purchased for the benefit of Yajman Hanumanthappa, Venkatalakshamma Trust. The finding of the Court below that defendant 2 is entitled to a sum of Rs. 5,000/- is set aside and the Court below is directed to decide it afresh; and

(d) We also direct the lower Court to permit the parties to lead additional evidence which they may choose to adduce on the issue to be tried thereafter.

25. The appeals are accordingly disposed of. There will be no order as to costs in these appeals. Parties will bear their own costs in the trial Court upto this stage.