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July 6  
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*Special Appeal No. 329 of 1868.*

Tvatat Svami Guru Tvatat Svami. ... *Appellant.*

Andanya Charanti Guru Tvatat Svami  
and Patri Muri Guru Tvatat Svami... *Respondents.*

*Prescription—Office held by successive appointees—Reg. V. of  
1827, Sec. 1, cl. 1.*

When a religious office with lands attached thereto is held by several *gurus* in succession, each holding such office by virtue of an appointment made on his accession, no proprietary right can be acquired by such *gurus*, in the office or lands against the patron or owner, by prescription as such a case does not come within the meaning of cl. 1 of Sec. of Reg. V. of 1827.

This was a Special Appeal from the decision of Chas. F. H. Shaw Judge of the District of Dharwar, in Appeal Suit, No. 360 of 1867, confirming the decree of the Principal Sadr Amin of Dharwar.

This suit was instituted by Dod Shidling Mari Guru, the agent of Tvatat Svami, who claimed a *math* with certain lands and gardens attached to it. He alleged that the full management of the *math* had been entrusted to one Andanya Svami, now deceased; that he resigned the trust and thereupon the plaintiff sent two other disciples, the defendants, to take charge of the *math*, and that they, falsely pretending that they had been entrusted with full powers, assumed the entire management, and, on the 6th of June 1853, refused to acknowledge the plaintiff.

The defendants answered *inter alia* that the claim was barred by the provisions of Reg. V. of 1827, Sec. 1 cl. 1; that the plaintiff was not the proprietor of the *math*, and had never managed it; and that it had been in the possession of themselves and previous *gurus* for many years (more than thirty).

The Principal Sadr Amin threw out the plaintiff's claim, and the Judge, in appeal, confirmed the decree.

"The Court," he said, "has to consider: (1) whether the claim is barred by the law relating to limitations, (2) if it

is not, whether the appellant has proved his claims to the Mundargi *math* and the lands attached thereto situated in Mundargi and Halikeri. No other issues are asked for by either side.

“The Court has carefully considered the arguments of counsel, and has endeavoured to understand the evidence to be collected from the mass of useless information recorded, and the following appears to be the real state of the case.

“The Mundargi *math* under a Svami called Andanya because, as one witness says, it is his duty to dispence *an* and *dhanya* (grain), is subordinate to a higher *math* presided over by a Svami called Tvatat, because he resides or resided in a *tota*, or garden.

The subordination is shown by the numerous records in which Andanya is registered as the Vahivatdar of Tvatat Svami, and, by Exhibits Nos. 66, 67, 98, 69, which prove that other rent-free lands held by Andanya Svami are to be resumed by the State on the death of the then Tvatat Svami; and, therefore, there can be no doubt but that at one time the Mundargi *math* was completely under the control of the Svami at Copul, called Tvatat. But it is shown that in 1770 A. D. the Svami Andanya had usurped some of the powers of the Tvatat Svami (see Exhibit No. 48), and there is no evidence to show that the Tvatat Svami ever regained his lost position. Exhibit No. 44, dated 1797, is an arrangement to pay certain monies by the Tvatat Svami, Shri Andanya, and another, to other parties, and the position of Shri Andanya Svami herein is certainly that of an equal of the Tvatat Svami. Exhibit No. 60 is a mere acknowledgment of spiritual superiority, which is not denied even now.

“It is not very clear how the parties to this suit treated each other until 1853; but the Andanya Svami, who in that year presided over the Mundargi *math*, seems to have become insane, and the *math* was left to the care of the Muri Shidling. The Tvatat Svami, taking advantage of the interregnum, came down upon the *math*, and he may have gained over this man; but as soon as the respondent

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SvamiAndanya Cha-  
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No. 1 was appointed Andanya Svami, he resisted the authority of the Tvatat Svami, and the dispute was carried into the police courts, and there was prolonged until 1857, nearly four years ; during the whole of this time the *karar* Exhibit No. 1, was not produced, and that document and Exhibit No. 48 are not trustworthy : the word *gumasta* is a plain alteration of the word *guru*, and it is on these two unreliable documents that the claim is mainly based.

"The Court cannot find that Tvatat Svami has since 1770 up to date of plaint 1860, ever directly managed the *math* and lands attached thereto, as set forth in the plaint ; and even during the period of Andanya's insanity, when there was no Svami, Tvatat Svami did not take the proceedings of these lands, but was obliged to leave them in custody of Shidling Muri. Whether Tvatat Svami or the Ayas of different village *maths* selected the present Svami to be Andanya is of little moment ; it is evident that the Tvatat Svami had no more real control over the selected nominee than a dean and chapter possess, when a conge d'elire is issued recommending a persen as bishop. Andanya Svami, respondent No. 1, and Tvatat Svami, the appellant, are merely representatives of their respective orders, and both are equally bound by the acts of their predecessors. Tvatat Svami, therefore, has no right to bring this claim, and it is declared barred by the law relating to limitation, Reg. V. of 1827, Sec. 1, cl. 1."

The Appeal was argued on the 3rd February 1869 before Couch, C. J., and Gibbs, J.

*White* (with him *Dhirajlal Mathuradas* and *Shantaram Narayan*) for the appellant.

*McCulloch* (with him *Fakirapa Lingapa* and *Bahirath Mangesh*) for the respondents.

*Cur. adv. vult.*

6th July—Couch, C. J. :—In this case the District Judge, finding that the appellant's predecessors had not

since 1770 ever directly managed the *math*, held that the suit was barred by Sec. 1 of Reg. V. of 1827.

As it was doubtful whether that Regulation applied to such a case, judgment was deferred to see whether the Regulation had ever been so applied, and a very careful search has been made for a precedent, with the assistance of Mr. Justice Gibbs, but none has been found. The question is, therefore, for the first time before the Court. I am of opinion that the present case does not come within the first section of the Regulation, since I think that the holding of the respondents and their predecessors by virtue of appointments made on each occasion when a vacancy occurs is not a holding as proprietor so as to give the holder a right of property, but that it is a holding not contemplated by the Regulation. We, therefore reverse the decree of the Lower Appellate Court, and remand the case for retrial on the following and any other issues the District Judge may think right.

1. Whether the tenure upon which the *math* was held by the defendant, Andanya Svami, was such that the plaintiff was entitled to resume the possession of it at his pleasure.

2. Whether the appointment of the defendant was complete, and he was entitled by virtue of his office to the possession of the *math*.

If the first issue is found in the affirmative, the plaintiff will succeed; and if the second is found in the negative, then the plaintiff will equally succeed.

*Decree reversed and suit remanded.*

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Tvavat Svami  
Guru Tvavat  
Svami

Andanya  
Charanti Guru  
Tvavat Svami  
*et al.*