

## APPELLATE CIVIL.

Before Sir L. H. Jenkins, Chief Justice, and Mr. Justice Batty.

DATTAGIRI GURU SHANKARGIRI GOSAVI (ORIGINAL PLAINTIFF),  
APPELLANT, v. DATTATRAYA KRISHNA SINDE (ORIGINAL DEFENDANT), RESPONDENT.\*

1902.

August 21.

*Limitation Act (XV of 1877), schedule II, article 134—Alienation of trust property by guru of a math for valuable consideration—Suit by his successor to recover possession—Trustee, alienation by a—Adverse possession—Limitation.*

The guru or manager of a certain *math*, who, as trustee, held certain property belonging to the *math*, sold it for value to the defendant in 1871. In 1898 his successor sued to recover it, contending that the vendor had no power to alienate the trust property.

*Held*, that the suit was barred by limitation under article 134 of the Limitation Act (XV of 1877).

SECOND appeal from the decision of R. Knight, District Judge of Sátára, confirming the decree of Ráo Sáheb G. A. Bhat, Subordinate Judge of Islámpur.

The plaintiff was the *guru* (preceptor and manager) of a certain *gosávi math* situate in the village of Shivni in the Sátára District. He filed this suit in 1893 to recover from the defendant certain land, which he (plaintiff) alleged belonged to the *math* and had been improperly alienated by a previous *guru* of the *math* to the defendant's father. He contended that the alienation was invalid inasmuch as the land had been given to the *math* in charity and was inalienable.

It appeared that in the seventeenth century the village of Shivni had been granted by the then Government in *indm* to a certain *gosávi* (ascetic) named Ramchandragiri for the maintenance of a *saddárvat*,<sup>(1)</sup> which was attached to the *math*. The village was to be held by the *guru* of the *math* for his life. On his death it passed to his *chela* (disciple), who became his successor. This grant was subsequently confirmed by the Peishwa's Government in 1791.

\* Second Appeal No. 647 of 1900.

(1) A place for the distribution of food and alms.

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In 1863 the Summary Settlement Act (Bombay Act II of 1863) was passed. No *sanad* under the Act in respect of the village in question was then issued.

In 1871 the village was divided between two disciples, viz., Shankargiri and Shivgiri, of a *guru* named Gulabgiri. They each took a moiety of the village.

In 1871 Shankargiri sold the land in suit which was situate in his moiety to the defendant's father, who thereupon entered into possession.

In April, 1897, a *sanad* of the village under the Summary Settlement Act (Bombay Act II of 1863) was issued. The material portion of the *sanad* was as follows :

It is hereby declared that the said village shall be continued for ever by the British Government under section 11 and section 16, clause B, of Act II of 1863 of the Bombay Legislative Council as the private property of the persons who from time to time shall be its lawful holders.

On the 24th August, 1897, Shankargiri died having appointed the plaintiff to be his disciple, and the plaintiff thereupon succeeded to Shankargiri's moiety of the village in which the land in question was situate. In 1898 he brought this suit to recover the land, contending that Shankargiri had no right to alienate it and that his alienation was not binding on the plaintiff.

The defendant answered that under the Summary Settlement Act (Bombay Act II of 1863) and the *sanad* issued under it in 1897, Shankargiri became the owner of the land; that he had enjoyed the land as owner and had sold it to the defendant's father; that even if the land was originally granted in charity, its character had been changed by the *sanad* of 1897.

The Subordinate Judge dismissed the suit.

On appeal by the plaintiff the Judge framed two issues, namely :

1. Whether it is competent to the Court to go behind the *sanad* and ascertain on what terms or for what purpose the land was originally granted?
2. Whether the land is now alienable?

He found on the first issue in the negative and on the second in the affirmative, and confirmed the decree.

The plaintiff having preferred a second appeal, it came on for hearing before Jenkins, C.J., and Aston, J., on the 2nd October, 1902. After hearing argument the Court sent down the case for findings on the following issues :

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1. Whether at the date of the sale in 1871 the lands in suit were held by Shivgiri and Shankargiri (a) as heads of *maths*, and (b) as trustees thereof, or in what capacity were they held by them ?

2. Is the right to recover the lands barred by the adverse possession of the defendant and his predecessor in title ?

On the first issue the Subordinate Judge found that the lands in dispute were at the date of the sale in 1871 held by Shankargiri and Shivgiri as their private alienable property. His finding on the second issue was in the affirmative.

Against the above findings the plaintiff appealed to the District Judge, which he, however, confirmed.

*Ratanlal R. Desai* for the appellant (plaintiff) :—The lower Courts have found on the strength of the *sanad* issued in 1897 and revenue records that, though the lands in dispute were once endowment property, they have been treated as private and alienable property since 1862 ; therefore they have held them to be private alienable property. But this view is erroneous. If the lands were once the property of the temple, they could not become private alienable property simply because the plaintiff's predecessors, the holders for the time being, allowed them to be treated by Government as private property. The principle laid down in *Keech v. Sandford*<sup>(1)</sup> applies. The *sanad* was issued under the Summary Settlement Act (Bombay, Act II of 1863) in 1897. That Act merely provides for an agreement with the holders of lands for the time being. Though the holder cannot dispute the settlement made with Government, he is not debarred from showing the real nature of the property : sections 12 and 13 of the Act ; *Puju bin Kadan v. Malhari Rama*<sup>(2)</sup> ; *Ravji Raghunath v. Kazi Sayad Gulamudin*<sup>(3)</sup> ; *Sayad Ahmed v. Venkaji Subrav*.<sup>(4)</sup> The lands being thus the property of the endowment, the alienation in favour of the defendant is void : *Prosunno Kumari*

(1) (1726) 1 W. and T. L. C. 693 (7 Ed.). (3) (1878) P. J. p. 179.

(2) (1864) 1 Bom. H. C. R. 171.

(4) (1885) P. J. p. 75.

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*Debya v. Golab Chand Baboo*<sup>(1)</sup>; *Konwar Doorganath v. Ram Chunder*.<sup>(2)</sup>

As to limitation, we contend that the plaintiff's claim is not time-barred. The cause of action accrued on the death of the plaintiff's *guru* Shankargiri on the 24th August, 1897, and the plaintiff filed the present suit in 1898, that is, within twelve years from the accrual of the cause of action: *Jamal Saheb v. Murgaya Swami*<sup>(3)</sup>; *Venkatesh v. Timapa*.<sup>(4)</sup>

*Scott* (Advocate General) (with *Daji A. Khare* and *Krishnaji H. Kelkar*) for the respondent (defendant):—This suit is barred by limitation. The defendants have been in adverse possession from the date of the purchase, that is, more than twelve years prior to the institution of the suit, and article 134, schedule II of the Limitation Act, applies. The point is covered by the ruling of the Privy Council in *Gnansambanda Pandara Sannadhi v. Velu Pandoram*.<sup>(5)</sup> The law of succession and inheritance applies to *math* property: *Malhar Sakharam v. Udegir*.<sup>(6)</sup>

[JENKINS, C.J., referred to *Collector of Dacca v. Jagat Chunder Goswami*.<sup>(7)</sup>]

That case supports our contention. The present suit is a suit by a person claiming title under a trustee. The case is on all fours with *Ramchandra v. Sheikh Mehidin*<sup>(8)</sup>; see also the ruling of the Full Bench in *Behari Lal v. Muhammad*.<sup>(9)</sup>

[JENKINS, C. J., referred to *President, &c., of the College of St. Mary Magdalen, Oxford v. The Attorney General*<sup>(10)</sup> and *Bobbelt v. The South Eastern Railway Company*.<sup>(11)</sup>]

*Desai* in reply cited *Jamal Saheb v. Murgaya Swami*<sup>(3)</sup> and *Venkatesh v. Timapa*.<sup>(4)</sup>

JENKINS, C.J.:—The sole question on this appeal is whether the plaintiff's right to recover possession of the plaint lands is barred by limitation.

(1) (1875) L. R. 2 I. A. 145.

(6) (1881) P. J. p. 108.

(2) (1876) 2 Cal. 341.

(7) (1901) 28 Cal. 608, 611.

(3) (1885) 10 Bom. 34.

(8) (1899) 23 Bom. 614.

(4) (1897) P. J. p. 146.

(9) (1898) 20 All. 482.

(5) (1899) L. R. 27 I. A. 69.

(10) (1857) 6 H. L. C. 189.

(11) (1882) 9 Q. B. D. 424.

The allegations in the plaint are that the village, of which the lands are a part, was granted in *inám* for maintaining a *sadávart* to a *gosavi's math*: that it is to be enjoyed by a *guru* of the *math* during his lifetime and on his death passes to his appointed disciple, who becomes the *guru* of the *math*: that the village has been divided between the two *Inámdárs*, of whom Shankargiri, the *guru* of the plaintiff, enjoyed one-half: that Shankargiri appointed the plaintiff as his disciple and died on the 24th August, 1897, and that the plaintiff thereupon, as the appointed disciple, became owner of the one-half of the village which included the plaint land: and that Shankargiri had no right to make any transfer binding on the plaintiff.

The defence is that the lands were enjoyed by Shankargiri as his private property: that it was sold by him to the defendant in 1871: and that in any event the plaintiff's claim is barred by limitation.

The case first came on appeal to this Court on the 2nd October, 1901, but it was then found impossible to proceed with it, as the District Judge had omitted to record findings on issues that were material, and so it was remanded for findings on the following issues:

1. Whether at the date of the sale in 1871 the lands in suit were held by Shivgiri and Shankargiri (a) as heads of the *maths*, and (b) as trustees thereof, or in what capacity were they held by them?
2. Is the right to recover the lands barred by the adverse possession of the defendant and his predecessor in title?

On these issues it has been found (a) that the lands in suit were, at the date of the sale in 1871, held by Shankargiri and Shivgiri as their private alienable property, and (b) that the right to recover the land is barred by the adverse possession of the defendant and his predecessor in title.

Mr. Desai for the appellant has attacked the first finding, and, in our opinion, there is considerable force in his arguments. The Advocate General, however, maintains that he is entitled to succeed on the plea of adverse possession, even without the other finding. We will, therefore, deal with the case on the hypothesis that the lands in suit were held by Shivgiri and Shankargiri as heads of the *math* and as trustees thereof.

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Now, in cases of this class one first has to see how the claim is framed, whether it is made by the plaintiff on his own account, or on behalf of the institution he represents, for that governs the question, which article of the Limitation Act should be applied. The Advocate General before us has principally relied on the recent Privy Council decision in *Gnanasambanda v. Velu Pandaram*,<sup>(1)</sup> where it was held that article 124 applied. There the plaintiff sought to establish his right to the management of an endowment connected with a certain temple and to the possession of lands forming its endowment, the hereditary right of management having been conveyed away by two prior documents of sale. It is manifest, then, that in that suit the plaintiff really sought to establish his own right, and not the right of the endowment, and hence it was that their Lordships did not apply article 134. In this case the right of management does not come in question; all that is sought is the recovery of a piece of land, and we think we ought, under the circumstances, to treat the suit as one brought to vindicate the rights of the *math*. Therefore, as it seems to us, *Gnanasamba's case*<sup>(1)</sup> does not assist us, and we must look elsewhere for guidance.

Treating this, then, as a suit by one to recover for the *math* lands in relation to which he is its head and trustee, we start with the proposition that property given for the maintenance of a *math* is, as a general rule, inalienable in the absence of special circumstances: *Prosunno Kumari Debya v. Golab Chand Baboo*<sup>(2)</sup>; *Konwar v. Ram Chunder*.<sup>(3)</sup> But it by no means follows from this that such property cannot be lost by the operation of the Statute of Limitations: *President, &c., of the College of St. Mary Magdalen, Oxford, v. The Attorney-General*<sup>(4)</sup> and *Bobbett v. The South Eastern Railway Co.*<sup>(5)</sup> The case made by the plaintiff is that the property under the original grant from the Peishwa was vested in the *gurus* for the time being in trust for the *math*, and that, notwithstanding the terms of the more recent *sanads*, it still is, on the principle enunciated

(1) (1899) L. R. 27 I. A. 69; S. C.  
23 Mad. 271.

(2) (1876) 2 Cal. 34.

(3) (1857) 6 H. L. C. 189.

(4) (1875) L. R. 2 I. A. 145.

(5) (1882) 9 Q. B. D. 424.

in *Keech v. Sandford*,<sup>(1)</sup> held on this trust. We will, for the sake of argument, assume this to be so. We have then here a suit to recover possession of immoveable property, conveyed in trust and afterwards purchased from the trustee for a valuable consideration. But this is the class of suit to which article 134 in the second schedule to the Limitation Act in terms relates, and the time thereby limited for such a suit is twelve years from the purchase. Here far more than twelve years had passed from the purchase at the institution of the suit, and during that period possession had been with the purchaser. We see no reason for not applying the provision of article 134 to this case, more especially when we find a warrant for this view in the judgment of Mr. Justice Gurudas Banerjee in *Nilmony v. Jagabandhu*,<sup>(2)</sup> and of a Full Bench decision of the Allahabad High Court in *Behari Lal v. Muhammad*.<sup>(3)</sup>

In further support of this conclusion we would also refer to the already cited case of *St. Mary Magdalen, Oxford, v. The Attorney-General*,<sup>(4)</sup> for though it is a decision on the English statute, still it contains many points of resemblance to the present, and furnishes us with the clearest exposition of the law applicable to cases of this class. We propose to refer to that case in some detail, as it probably is not within the reach of most of our Courts in this Presidency.

On the division of the parish of St. Olave, Southwark, it has been provided by statute that all charities and donations that had been granted to, and for the benefit of, the parish of St. Olave, Southwark, should be divided between that parish and the parish of St. John, Horsleydown, in the following manner: that three-fifths should be for the sole use and benefit of St. Olave, and that out of the revenue of the other two-fifths there should be paid to the churchwardens of the parish of St. Olave the annual sum of £29 for the benefit of the poor of St. Olave, and the residue of the two-fifths was to be for the benefit of St. John's. It was further provided that the rector or senior churchwarden of each of the parishes should jointly collect the charities, donations, &c., and should and might, with the consent of the

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(1) 1 W. &amp; T. L. C., 7th Ed., p. 693.

(3) (1898) 20 All. 482.

(2) (1896) 23 Cal. 536.

(4) (1857) 6 H. L. C. 189.

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vestry of each parish, make leases of the lands, &c., so given for charitable purposes and should do, perform and execute all and every such acts and things relating to the management of the said charity in such manner as the churchwardens of St. Olave might have done before the division of the parishes and the passing of the Act. In pursuance of resolutions of the vestries, an agreement was made to lease a piece of land to the president and scholars of Magdalen College at a rent of £15 per annum secured by a rent-charge on the land.

To carry out this agreement, a fine *sur consuance de droit* was levied on the 3rd March, 1790, and a deed of feoffment was made on the same day between the rector, the two churchwardens and two of the principal inhabitants of the parish of St. Olave of the first part, the rector, the churchwardens and two of the principal inhabitants of St. John's of the second part, and the president and scholars of St. Mary Magdalen of the third part, whereby, in consideration of a perpetual rent-charge of £15 per annum, there was granted to the president and scholars and their successors the land in question to hold the same to the president and scholars, their successors and assigns for ever.

On the 31st January, 1852, an information was filed by the Attorney-General at the relation of some and on behalf of all the inhabitants of the two parishes, praying, among other things, for possession of the land. The defendants, in addition to other defences, relied on the bar of limitation and in particular on sections 2, 24 and 25 of 3 & 4 Will. IV, c. 27, which provide as follows:

2. No person shall . . . . bring an action to recover any land . . . . but within twenty years next after the time at which the right to . . . . bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to . . . . bring such action shall have first accrued to the person bringing the same.

24. No person claiming any land . . . . in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have . . . . brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he shall claim therein in equity.

25. When any land . . . . shall be vested in a trustee upon any express trust, the right of the *cestui que trust* to bring a suit against the trustee or any person

claiming through him to recover such land shall be deemed to have first accrued according to the meaning of this Act at, and not before, the time at which such land shall have been conveyed to a purchaser for a valuable consideration and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

The section, it will be seen, corresponds more or less with our articles 134 and 144 and section 10 of the Limitation Act.

The Lord Chancellor, Lord Cranworth, in dealing with these facts says: "Though there certainly is, not, as far as I am aware, any positive law which forbids the sale of charity lands, yet it is obvious that such a sale can very rarely be justified." So he had to deal with a position very similar to that which confronts us.

Then after expressing the inclination of his opinion to be that there were no circumstances showing the sale to have been expedient, he proceeds to consider the question whether the Statute of Limitation presents a bar, and in this connection he says: "Are charities within those two sections 24 and 25, or are they not? I have come to the conclusion that they are. These sections apply in terms to all trusts. Charities are trusts—a favoured sort of trust no doubt, but still a charity is a trust and nothing more. Lord St. Leonards remarked truly that charities, *eo nomine*, are not mentioned in the statute, and expressed his surprise that that omission had occurred; but that is not material, for trusts generally are mentioned, and that includes charitable trusts, unless they are expressly excepted, and there certainly is no such exception. The right is barred by section 24 unless in a case where section 25 prevents its operation; and in this case it could only prevent the operation of section 24 if the College had held the land on an express trust for the charity, which it certainly did not."

Then later, in answer to the argument that it made a difference that the Attorney General was a party, the Lord Chancellor says:

The Attorney General is only a part of the machinery by which the rights of others are sought to be enforced. He is no more a party claiming a right than, in an ordinary action at law, the attorney on the record is such a person. We must look at the real litigants in this case, and not at those by whose intervention the rights in disputes are endeavoured to be sustained . . . . The parties

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really seeking relief in this suit are the poor of the two parishes of St. Olave and St. John. I am clearly of opinion that they are a class of persons within the true intent and meaning of the interpretation of that phrase given in the first clause of the statute. Section 24 creates an equitable bar against any "person" asserting an equitable right to land; and in the interpretation clause we are told that the word "person" shall extend to a body politic, corporate or collegiate and to a class of creditors and other persons as well as an individual, and I am of opinion that the poor of the parish constitute a class of persons within the meaning of that interpretation clause. I think so because the second section enacts that no "*person*" shall bring an action to recover land but within twenty years next after the time at which the right to bring such action shall have first accrued, that is, adopting the interpretation in the first section, the poor of the parish shall not bring an action but within twenty years. This, therefore, would prevent the poor of the parish from bringing an action after the prescribed time. But here there is no question as to an action. This is a suit in equity by or on behalf of the poor of the parish. How does the statute apply to such a proceeding? Section 24 enacts that no person shall bring any suit in equity to recover any land but within the same period within which he might have brought an action at law, if his right had been a legal right. This section, therefore, bars the equitable, just as section 2 had barred the legal remedy. The right of the poor of the parish must be either a legal or an equitable right. There is no third class of rights known to our law, and by one or other of these sections the right, whether legal or equitable, is barred, unless indeed the right, treating it as equitable, is saved by the 25th section. The effect of this clause is to save the right of the *cestui que trust*, that is, in this case, the right of the poor, against the trustee, but not against purchasers for value from the trustees. Here the defendants were certainly not the trustees; they were purchasers for value from the trustees. . . . It was indeed argued at your Lordship's bar that the parish officers from whom the appellants purchased were not really the trustees, and, consequently, that the appellants were not purchasers for value within the true intent and meaning of the 25th section. But this is a mere fallacy. The parish officers were in fact the trustees; for they were the persons in legal possession, not for the benefit of themselves, but for the benefit of the charity; and they sold to the appellants for value, and made to them a good legal title. The defendants were thus clearly brought within the express words of section 25.

Lord Wensleydale delivered a judgment to the same effect and the plea of limitation was upheld.

Applying the same principles to this case, we hold that, treating the suit as one brought for and on behalf of the *math*, it is barred against the present defendant, inasmuch as he holds under a purchase for valuable consideration dated more than twelve years prior to the commencement of the suit, and it is

answer to the bar created by article 134 that the plaintiff succeeded to the office of *guru* within twelve years from the institution of the suit.

The result is that, in our opinion, the decree of the lower Appellate Court must be confirmed with costs.

*Decree confirmed.*

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## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Aston.*

NARAYAN MANJAYA AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS,  
v. SHRI RAMCHANDRA DEVASTHAN, MOKTESARS GANPAYA  
GOVIND SHETTI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

1903.

February 18.

*Limitation Act (XV of 1877), schedule II, articles 134 and 144—Temple property—Manager—Trustee—Lease by manager—Suit by subsequent manager to recover the property—Adverse possession.*

In 1845, one Krishna Swami granted a *mulgeni* (perpetual) lease of the land in question to the defendants' grandfather, Hanmanna. The lower Appellate Court held that at the date of the grant Krishna Swami was manager of the temple Shri Ramchandra Devasthan, and that the land at that time belonged to the temple. In 1854 Krishna Swami's successor, the then manager of the temple, sued Hanmanna (the lessee) for enhanced rent, but the latter pleaded his lease and the suit was withdrawn. In 1885 the then manager brought a similar suit against the defendants with a similar result. In April, 1900, the present plaintiff, as manager of the temple, filed this suit to eject the defendants, alleging that they were yearly tenants and that he had given them notice to quit. He contended that his predecessor, Krishna Swami, had no power to alienate the property of the temple.

*Held*, that the suit was barred by limitation. If the original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred under article 144 of the Limitation Act (XV of 1877). If the original lessor was a trustee, he had, as such, alienated the land for valuable consideration and the suit was barred by article 134 of the Limitation Act. The fact that there was a lease to the defendants, and not an absolute alienation, made no difference. A *mulgeni* lease is a purchase *pro tanto* of the interest thereby assured.

\* Second Appeal No. 551 of 1902.