

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.*

1902.

DATTAGIRI  
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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manager of the temple, sued Hanmanna (the lessee) for enhanced rent, but the latter pleaded his lease and the suit was withdrawn.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.

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SECOND appeal from the decision of Mr. E. H. Leggatt, District Judge of Kánara, amending the decree of Mr. E. F. Rego, Subordinate Judge of Kumta.

Suit in ejectment. The plaintiff, who was the manager of the temple of Shri Ramchandra Devasthan, sued to eject the defendants from certain land, alleging it to belong to the temple. He also claimed rent from 1897 to 1900.

The plaint alleged that the defendants were yearly tenants, and on 28th March, 1898, had been served with a notice to terminate the tenancy on the 10th April, 1899. It further stated that the defendants claimed to hold under a lease granted to their grandfather (Hanmanna) by a former manager of the temple, viz., one Krishna Swami, but the plaintiff charged that the said lease was not for the benefit of the temple, and was not binding after the death of the parties to it.

The defendants pleaded that they held the land under a *mulgeni* (perpetual) lease granted to their grandfather (Hanmanna) by the then owner, Krishna Swami, who subsequently gave the land as an endowment to the temple subject to the lease.

It appeared that in 1854 the then manager of the temple had sued Hanmanna for enhanced rent, but the latter pleaded his lease and the manager withdrew his suit.

Again in 1885 the then manager sued the defendants for enhanced rent and they again set up the lease as a defence and the suit was withdrawn.

The Subordinate Judge dismissed the present suit. He held that the *mulgeni* lease was granted by Krishna Swami as owner of the land and not as manager, and that after the lease he gave the rents to the temple.

In appeal the Judge reversed the decision of the lower Court. He held that the land had belonged to the temple prior to the lease, and that it was as a trustee and manager of the temple that Krishna Swami had granted the *mulgeni* lease; that as manager he had no power to alienate except for a necessary purpose of which there was no evidence, or for the benefit of the temple; and that at most the lease would hold good only during his life.

As for the litigation of 1854 and 1885, he was of opinion that the fact that the then managers withdrew their suits would only have the effect of continuing the grant during their respective lives, and could not affect the right of the present plaintiff to sue for possession. It was not suggested that the present plaintiff had done anything to give the defendants a right to remain in possession during his life. The lower Appellate Court accordingly passed a decree for the plaintiff.

The defendants preferred a second appeal.

*Nilkant A. Shiveshwar* for the appellants (defendants):—The defendants have held the land since the *mulgeni* lease was granted in 1845. In 1854 and 1885 they successfully asserted their right under the lease against the plaintiff's predecessors, and they have thus had adverse possession of these rights in the land for fifty-eight years. Their possession has not been in any way disturbed for twelve years, and they are now, therefore, entitled to remain in possession as *mulgenidars*: *Budisab v. Hanmanta* <sup>(1)</sup>; *Dattagiri v. Dattatraya* <sup>(2)</sup>; *St. Mary Magdalen v. Attorney General* <sup>(3)</sup>; *Attorney General v. Davey* <sup>(4)</sup>; *Behari Lal v. Muhammad Muttakki*. <sup>(5)</sup>

*Mahadev B. Chaubal* for the respondents (plaintiffs):—To make the lease granted to the defendant's grandfather by Krishna Swami binding on his successors there must be evidence that it was granted for the benefit of the temple. The Judge says that there is no proof in the case to show that it was granted for such a purpose. The finding arrived at by the Judge is a finding of fact.

The transactions in the cases relied on, and especially in the case of *Dattagiri v. Dattatraya*, <sup>(2)</sup> were sales. The relation between the plaintiffs and the defendants in the present case is that of landlord and tenant. The possession of a tenant cannot be adverse to his landlord.

We contend that the lease is not binding on us because Krishna Swami had no power to alienate temple property except for

(1) (1896) 21 Bom. 509.

(2) (1902) 4 Bom. L. R. 743, see *ante* p. 363.

(5) (1898) 20 All. 482.

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

(4) (1859) 4 DeG. & J. 136

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a necessary purpose, of which there is no evidence: *Vadapuratti v. Vallabh*<sup>(1)</sup>; *Ramchandra v. Kashinath*<sup>(2)</sup>; *Narayan v. Chintaman*.<sup>(3)</sup>

JENKINS, C.J.:—The plaintiffs sue to recover possession of a piece of land and also rent, and they have been met with the plea that the land is held by the defendants under a *mulgeni* lease granted by Krishna Swami, and that all rent has been discharged.

It has, however, been held by the lower Appellate Court that the leased land belonged to the temple of which Krishna Swami was the manager, and that the lease is not now binding on the plaintiffs, the present managers. In so holding, the defendants' plea of limitation has been determined to be of no avail. Assuming, then, that the lease was invalid, the only question before us is whether the defendants' plea of limitation is sound.

The lease is dated 1845 and purports to create a *mulgeni* interest at a rent of 8 *mooras* of rice. In 1854 there was litigation regarding the rent of the leased land brought by the then manager against a predecessor of the defendant. The defendant in that litigation asserted the *mulgeni* character of the lease and in the end the suit was withdrawn.

Then in 1885 a further suit was brought. The *mulgeni* lease was again pleaded, and again the suit was withdrawn.

It is clear, then, that from 1854 the defendant and his predecessors have been in possession of the land in suit, and throughout that period have asserted to the knowledge of the temple managers their claims as *mulgenidars* under the lease of 1845, and have successfully resisted on that ground the manager's attempts to obtain enhanced rent. Why, then, should the present defendant be not entitled to invoke the aid of the Statute of Limitation? If the original lessor was not a trustee of the leased land for the temple, article 144 applies, with the result that there has been an adverse possession to the extent of the alienation contained in the *mulgeni* lease: *Badesab v. Hanmanta*.<sup>(4)</sup>

It is urged, however, that there is a trust, and that this makes a difference. But it has been already held by this Bench in *Dattagiri*

(1) (1890) 13 Mad. 20.

(2) (1894) 19 Bom. 271.

(3) (1881) 5 Bom. 393.

(4) (1896) 21 Bom. 509.

v. *Dattatraya*,<sup>(1)</sup> relying in part on the decision in *Attorney General v. Magdalen College*,<sup>(2)</sup> that where the head of a *math*, who holds *math* property as a trustee thereof, purports to alienate that *math's* property absolutely for valuable consideration, and the alienee holds under that title, a plea of limitation after the lapse of the prescribed period can be successfully urged.

Here no doubt we have a *mulgeni* lease, and not an absolute alienation, but in principle this involves no distinction, for even if article 134 be treated as the governing article, a *mulgeni* lease is a purchase *pro tanto* of the interest thereby assured: *Attorney General v. Payne*.<sup>(3)</sup> This last cited case and that of *Attorney General v. Davey*<sup>(4)</sup> furnish us with an instructive application of the decision in *Attorney General v. Magdalen College*<sup>(2)</sup> to a case where the lands had been leased and not aliened absolutely, and our application to the present case of our decision in *Dattagiri's case*<sup>(1)</sup> runs on parallel lines. In *Attorney General v. Payne*,<sup>(3)</sup> an improvident lease was granted by a charitable corporation to a trustee for the master, and yet it was held that after twenty years' enjoyment under it the right of the Attorney General to question its validity was barred by the Statute of Limitation. Lord Romilly in his judgment, after referring to *Attorney General v. Magdalen College*,<sup>(2)</sup> says: "I compare that case with the present, and what is the difference? Here the alienation was a lease, but what difference can that possibly make? A lease is an alienation *pro tanto*. . . . I cannot distinguish this case from *Attorney General v. Magdalen College*,<sup>(2)</sup> and I think that as soon as the lease was granted the lessee held adversely to the rights of the charity to the extent of the alienation contained in the lease."

In *Attorney General v. Davey*<sup>(4)</sup> it was held that the decision in *Attorney General v. Magdalen College*<sup>(2)</sup> governed a case where charity land had not been aliened in fee, but had been held under a lease for five hundred years, granted by trustees at a rent which had been regularly paid. The Lord Chancellor, Lord Chelmsford, in delivering judgment, said: "Is there, then, any distinction between the present case and that of *Magdalen College*<sup>(2)</sup>?"

(1) (1902) 4 Bom. L. R. 743, see *ante* p. 263.

(2) (1857) 6 H. L. C. 189.

(3) (1859) 27 Beavan 168.

(4) (1859) 4 DeG. & J. 136.

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Mr. Lloyd says that the lease was void, but that by the acceptance of rent a tenancy from year to year had been created. He was pressed to give an authority for the proposition, that possession taken under a lease of this kind has ever been dealt with in equity as a lease from year to year, and he has been unable to produce any such authority. I think that there has been adverse possession, and that the statute would run according to the decision in the House of Lords by which we are bound." Knight Bruce and Turner, L.JJ., agreed in holding that the case before them could not be distinguished from that of *Maydalen College*.<sup>(1)</sup>

In these cases adverse possession was regarded as running from the date of the lease, and it has been suggested before us that to apply such a doctrine in this country would be a dangerous innovation. It is, however, unnecessary to decide this point, for, even if, for the sake of argument, it be conceded that time should not run during the lifetime of the person who granted the lease, it clearly would run from his death, and starting from that point even sufficient time has elapsed to bar the suit either under the 144th or the 134th article. For these reasons we hold that the District Judge wrongly decided that the Statute of Limitation was not a bar to the claim for possession.

The District Judge's decree as to rent is, we think, also wrong. In the first place Rs. 54-3-0 has been paid into Court during the suit; then we think the items of Rs. 10 and Rs. 4-8-0 for interest should have been disallowed, so that Rs. 18-10-0 will be awarded for past rent. No decree can be passed as to future rent. Appellants must get their costs throughout.

*Decree reversed.*

(1) (1857) 6 H. L. C. 189.