matters are ascertained, and neither with nor without the consent of parties can they be reserved for execution. Before passing a final decree, therefore, it will be necessary to send the case back for an inquiry as to improvements."

**NOTES.**

[*See* the remarks of Wigraw on the nature of Kanom in Moore's Malabar Law and Custom (3rd Edition), p. 197-199.]

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**[3 Mad. 384.]**

## PRIVY COUNCIL.

*The 17th March and 18th June, 1881.*

PRESENT:

SIR B. PEACOCK, SIR M. E. SMITH, SIR R. COUCH AND SIR A. HOBHOUSE.

Venkateswara Iyan and another.....(Defendants) Appellants

and

Shekhari Varma.....(Plaintiff) Respondent.

*Sthanam lands: Evidence.**

A raja having made a perpetual lease of sthanam lands appertaining to the raj, one of his successors sought to set it aside on the ground that the property was devaswam, or the endowment of temples. That it was devaswam was denied; and after questions of the admissibility of evidence, the construction of documents and the effect to be given to judgments had arisen, the fact was found in the affirmative by two Courts concurrently. Upon an examination of the evidence by the Judicial Committee it was, however, found that the plaintiff had not proved his case.

APPEAL against a decree of the High Court (22nd July 1878) confirming, as to the questions raised in these proceedings, a decree of the Subordinate Judge of *South Malabar* (1st September 1877).

**[385]** The question raised on this appeal was whether a sasvatham, or perpetual lease of sthanam lands made by one of the predecessors of the Valiya Raja of *Palghat*, who now sought to have it set aside, was a valid assignment or not. The perpetual lease, which was admitted to be a genuine document, was made on the 15th June 1851 in favour of *Sivarama Iyan*, son of *Chitambara Iyan* and cousin of the appellants, whose family for some years had money dealings with the successive Valiya Rajas. *Chitambara Iyan* had obtained possession previously of part of the sthanam lands to which the lease related on a kanom executed in 1832 by the then raja, and on another kanom executed in 1843 by the raja of that day, those kanoms being executed by way of consolidating previous mortgages. The permanent lease of 15th June 1851 was of sthanam lands of the raj, and reserved a rent of 200 paras of paddy by the year for the performance of worship in one temple and 64 paras for another temple. The document was registered as a kanom, in the kanom registry of the Subordinate Court of *Calicut*, on the 12th July following.

In 1874 the raja who had succeeded to the sthanam in 1863, and who in 1877 brought the present suit, sued for the recovery of the lands comprised in the kanoms of 1832 and 1843. On its appearing that the lands were held, not under the kanoms, but under the perpetual lease of June 1851, that suit was

* As to Malabar law relating to the alienability of sthanam lands, *see* I.L.R. 1 Mad. 88.

dismissed. In dismissing it the Officiating District Judge gave a judgment showing the circumstances under which the present suit was afterwards brought. He gave Judgment as follows, referring to the perpetual lease of 1851, Exhibit I:—

"It seems to me that it is sufficient for the disposal of this case to have found that defendants have in fact held under Exhibit I since June 1851. The raja who executed Exhibit I died in 1854. Two other rajas have since deceased; and plaintiff acquired the sthanam in 1862. He has waited almost for twelve years before bringing this suit, and then he does not sue to set aside the deed of permanent lease, of the existence of which I feel convinced he was fully aware, but he claims one-half of the lands, included in it, on a demise of 1832. It seems to me that it is quite clear that defendants no longer hold under that demise, but that it is merged in a right of greater value from which it cannot be separated, and that plaintiff must sue to have the whole lease set aside as not binding on his sthanam. The **[386]** question will then arise whether it was executed in such circumstances as to bind the successors. It may be said that plaintiff is now barred from bringing such a suit; but it seems to me that under No. 141 of Schedule II of Act IX of 1871 he would have twelve years from the time he acquired the sthanam, and it may be that he can claim the benefit of Section 15* of the *Limitation Act*. At all events in this suit when once it is found that Exhibit I was duly executed and has been in force for twenty-five years, plaintiff's case fails."

That suit having been dismissed for those reasons, the same raja commenced the present suit in the Court of the Subordinate Judge of *South Malabar* on the 9th of January 1877 against *Sivarama*, son of *Chitambara*, and the present appellants. The plaint showed grounds for invalidating the perpetual lease of 1851, *viz.*, that the lands comprised in it belonged to devaswams and were dedicated to religious purposes. For the defence it was denied that the lands sued for were subject to any religious trust, and Limitation was set up.

The Subordinate Judge decreed in favour of the plaintiff, and on appeal this decision was supported by the High Court.

On this appeal Mr. *J. D. Mayne* appeared for the Appellants. The Respondents did not appear.

Their Lordships having taken time to consider the case, their Judgment was delivered on the 18th June by

**Sir Arthur Hobhouse.**—This appeal is presented in a suit (No. 1 of 1877) instituted by the Valiya Raja of *Palghat* in the Subordinate Court of *South Malabar*. The plaintiff in that suit died after obtaining his decree; his immediate successor has also died, and the existing raja has been substituted as respondent by order of the High Court of *Madras*. He has not thought fit to appear, and the case has been argued by the appellant alone. It appears that in the families of the *Malabar* Rajas it is customary to have a number of palaces, to each of which there is attached an establishment with lands for maintaining it, called by the name of a sthanam. The *Palghat* family have no less than nine sthanams. Each sthanam has a raja as its head or Sthanamdar. The Sthanamdar represents the *corpus* of his sthanam much in the same way

*[Sec. 15:—In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.]

Exclusion of time during which commencement of suit is stayed by injunction or order.]

as a Hindu widow represents the estates which have devolved upon her, and he may alienate the property for the benefit or proper expenses of the sthanam. The Valiya Raja [387] appears to be the first in rank of the nine Sthanamdars, and to be the head of the *Palghat* family.

The appellants who represent the defendants in the suit are a branch of the *Iyan* family, and claim certain interests in land granted to members of that family by former rajas of *Palghat* at intervals of time ranging from the year 1832 to the year 1851.

Inasmuch as between the year 1832 and the present time there have been eight successive rajas, all apparently bearing the same name, it will be convenient to distinguish them by numbers, beginning with Raja I in 1832. It will also be convenient to state the previous dealings between the appellants or their predecessors in title on the one hand and the rajas on the other before coming to the present suit, which is hardly intelligible without a knowledge of antecedent events.

In the year 1832 Raga I executed to *Chitambara Iyan* a kanom of certain lands to secure the sum of Rs. 4,000. A kanom is a species of mortgage, and it has been stated at the Bar that it is usually made to endure for a term of twelve years, at the end of which time the parties would enforce their remedies or make a new contract. On these lands there were prior encumbrances which were paid off out of the Rs. 4,000 by *Chitambara*.

In the year 1833 *Chidambara* instituted a suit (No. 214 of 1833) against Raja I and a number of other persons for recovery of the lands included in the kanom of 1832. Of the frame and effect of this suit it will be necessary to say more hereafter. At present it is sufficient to say that the plaintiff substantially obtained the decree he asked.

In the year 1843 Raja II executed to a trustee for *Chitambara* another kanom of other lands to secure another advance of Rs. 4,000.

The two kanoms in question comprise the whole of the lands which the raja seeks in the present suit to recover from the appellants. The documents themselves are not forthcoming, but their purport, at least to the foregoing extent, is shown partly by the allegations of both parties in the litigations prior to the present suit, and partly by the register of *Palghat* Kacheri. The land has been held by the appellants or their predecessors in title in conformity with the title so conferred. Whether the advances were made to the rajas for the expenses of the sthanam is a [388] question which does not appear to have been decided or precisely raised.

On the 15th June 1851 Raja III executed to *Sivarama*, the son of *Chitambara*, an instrument, the validity of which has been the main question in the suit. It commences by stating that, including the transactions of 1832 and 1843, the sum of Rs. 12,000 (called 42,000 fanams) has been received. For this sum *Sivarama* is to hold for ever the lands described. The instrument continues thus:—

"We executed to you a document on the 15th June 1851, ordering you and your anandravans to hold and enjoy the above lands . . . . forever, without being called on to surrender and without surrendering the same. Deducting out of the rent payable the interest due on your money and the Government revenue, you should pay annually 200 paras of paddy for the pooja services of our *Simhanada Bhagavathi* (pagoda) and 64 paras of paddy on account of Annabishekam in the *Neerathi-kulangara* Siva temple. In addition to what has been ordered above, we have also given our consent to water being taken as required for purposes of cultivation from our *Simhanada Bhagavati's* tank."

It is not disputed that the lands comprised in this instrument are the same as those comprised in the two kanoms.

The precise nature of this instrument, whether it is to be called a kanom or by some other name, whether it confers upon *Sivarama* a redeemable or an irredeemable interest, has been a good deal discussed, and in some views of the case the discussion would be very material. For the view now taken it is not material. The material points are: that on the 12th July 1851 the instrument was registered as a kanom in the Kanom Registry of the Subordinate Court of the Zilla of *Calicut*; that the *Calicut* Court gave notice of that fact to the District Munsif of *Palghat*; and that on the 20th August 1851 the Munsif registered the instrument thus:—

"Kanom document, dated 15th April 1851, creating a kanom of 42,000 new fanams over the *Mangattiri Patama* and other lands in the *Pathoma* amsam of *Palghat* Taluk to be enjoyed without being caused to surrender and without surrendering."

The possession of the *Iyan* family in accordance with the prior kanoms is also in accordance with the grant of 1851. The rent of 200 paras of paddy has without doubt been regu-**[389]**larly paid to the *Simhanada Bhagavati* Pagoda. There is dispute about the rent of 64 paras, which the appellants allege to have been regularly paid to a pagoda called the *Tharakat* Siva Pagoda.

Raja III died at some time not exactly ascertained, but it was not later than the year 1854. In the time of his two successors, Raja IV and V, nothing took place to affect the title. Raja VI acceded to the sthanam in the year 1862, and it is during his reign that the present disputes arose.

On the 1st April 1874 Raja VI filed a plaint in the Court of the District Munsiff of *Palghat* against the *Iyan* family and several other defendants, tenants of the *Iyans*. He sued for recovery of the lands comprised in the kanom of 1852 on payment of the Rs. 4,000 thereby secured, and of Rs. 50 for improvements. He took notice that the *Iyans* claimed what he calls "an irredeemable right for a large amount," and he sought to set that claim aside. The lands he alleged to appertain to *Managttiri* (the name of a district or estate), which again, in his words, "belonged to our Swarupam or 'Royal Family'." He complained that since his coming to the sthanam, and since 1038 (A.D. 1862-63) no rent had been paid. He alleged as the legal foundation of his case that "no one is entitled to assign lands belonging to the sthanam on large rights. Even if such rights have been given, they cannot be valid; they cannot also bind us."

The *Iyans* objected to the jurisdiction of the Munsif on the ground of value, contending that the suit, though in form only to redeem the kanom of 1832, was necessarily and in substance one to set aside the grant of 1851. They said that the raja having been inactive for twelve years, though aware of that grant, was barred by limitation and that possession had been held and the reserved rents paid in accordance with the terms of the grant.

The issues framed by the Munsif did not raise any question as to the precise nature of the grant. It is there called a perpetual lease, and one of the issues was whether it is valid and binding on the plaintiff.

The Munsif dismissed the suit on the first ground of defence, *viz.*, that it was beyond his jurisdiction, but the Subordinate Judge reversed that decision and remanded the suit.

On the 29th March 1876 the Munsif passed a decree to the **[390]** effect that the raja should redeem on payment of the Rupees 4,000 and the value of certain improvements. The ground of his decision was that the absolute alienation by

a sthanam holder of sthanam property in such a way that it could not be redeemed is highly prejudicial to the sthanam. It appeared, he said, by the defendant's evidence that the Rs. 4,000 advanced in 1851 was for the purpose of paying off debts contracted for performing the late raja's funeral ceremony, but that he held was not a special necessity and could not be permitted.

On the 1st of July 1876 Mr. *Wigram*, the District Judge of *South Malabar*, reversed the Munsif's decree. He refused to reopen the question of jurisdiction. The only question argued before him was whether the grant of 1851 was binding on the sthanam. It was not necessary to decide that. It was sufficient for the disposal of the case that the defendant had in fact held under the grant ever since June 1851. Instead of suing to set aside the grant of 1851, of which Mr. *Wigram* held that the raja was fully aware, the raja sued to redeem only half the lands comprised in it. Mr. *Wigram* held that the whole lands were held under one title, and that they could not be recovered piece-meal without first setting aside the grant of 1851.

The raja appealed to the High Court, but on the 8th December 1876 his appeal was dismissed. No written reasons appear to have been given on that occasion.

The suit of 1874 having thus failed the raja instituted the present suit on the 9th January 1877. In it he changes his point of attack, and prays for a wholly new kind of relief. He now alleges that the lands in question belong to four devaswams or religious endowments, belonging to the sthanam, *viz.*, *Simhanada Bhagavathi*, *Mangattri*, *Ayappen*, *Neerat*, *Ganapathi*, and *Shekharipuram*, *Emur Bhagavathi*. He contends that the Sthanamdar cannot assign in perpetuity or for an irredeemable interest the lands of the devaswam, and that the grant of 1851 was not for devaswam purposes. He accounts for his inaction by saying that the grant was collusively obtained and fraudulently concealed, and that it did not come to his knowledge till January or February 1874. He prays to recover the lands on payment of a small sum for improvements, and without paying what is due on the kanoms of 1832 and 1843. The defendants named in the plaint are the *Iyans* and their tenants.

**[391]** In answer to the raja's new case the *Iyans* deny fraud and concealment, and challenge the raja's allegation of ignorance. They contend that the cause of action arose on the death of Raja III, which is there stated to have taken place in October or November 1853, and they plead the *Statutes of Limitations*. They deny that the lands are devaswam property at all.

Among the issues framed by the Subordinate Judge are two to the following effect: Whether the plaintiff was by the fraud of the defendants kept from the knowledge of the grant of 1851, and whether the land belongs to the devaswams or to the sthanam.

On the 1st of September 1877 the Subordinate Judge decreed that the grant of 1851 should be set aside and the lands recovered on payment of the amount secured by the two kanoms and of the value of certain improvements. Shortly stated, the grounds of this judgment are that the land is devaswam property, and that the grant of 1851 was fraudulently obtained and concealed so as to exclude the *Statute of Limitations*.

From this decree both sides appealed, and after some intermediate proceedings, among which was an order for the production of some further evidence, the appeals were heard by the High Court of *Madras* on the 22nd July 1878. The raja's claim to have the land without redeeming the kanoms seems to have been given up, and on the appeal of the *Iyans* the decree of the

Subordinate Judge was substantially affirmed, but modified in favour of the *Iyans* on some points of detail. Again, no written reasons were given, but the views of the High Court are to be gathered from a memorandum made by Mr. Justice KINDERSLEY on the 30th November 1879. From that it would seem that the High Court agreed with the Subordinate Judge that the land was devaswam property, that they did not agree that the grant of 1851 had been fraudulently concealed, but thought that the *Statute of Limitations* would not apply because the *Iyans* were not purchasers *bona fide* for value. From this decree the present appeal is brought.

The first question—and in the opinion of their Lordships the governing question—on this appeal is whether or no the lands in dispute are devaswam property. The object of the raja in contending that they are so is clear. In the suit of 1874, when all parties treated them as sthanam property, the kanoms and the grant of 1851 were defended on the ground that the **[392]** advances were made for sthanam purposes. But if the land is devaswam property, the clearest proof of an advance for legitimate sthanam purposes would not avail to support the alienation. By the showing of the *Iyans* themselves the transactions would be void in their inception and could only now stand so far as each is protected by the lapse of time. On the other hand the raja, having elected to rest his case upon the character of the land as devaswam property, must stand or fall by that election. If the land is not devaswam property, the groundwork of his suit is cut away, and he cannot have any decree at all.

It is true that upon this question there are concurrent decisions of the Courts below. But though the question may be called in its result one of fact, its decision turns upon the admissibility or value of many subordinate facts, and involves the construction of documents and other questions of law. Such was the view taken by the High Court of *Madras* when it granted leave to present this appeal. It is now necessary to examine the principal grounds on which the Subordinate Judge came to the conclusion that the property belongs to the devaswam. Whether or no they are the same grounds on which the High Court rested its opinion their Lordships cannot tell for want of a written judgment.

He first says that the very old public documents, being certain paimash accounts of the years 1798-99 and 1805-6, most satisfactorily show that the lands are the jenm property of the four devaswams named in the plaint. But on looking at these accounts two observations at once occur. The first is that, putting them at the highest, they are only evidence of possession, having been rendered to Government for the purpose of informing them from whom they were to demand the revenue. The second is that they can hardly be said to be public documents at all, for on the face of them it is stated that they were never confirmed and never acted on. The person who made these returns may have believed that the lands were devaswam property, but his statement to that effect is a mere private opinion, unless and until it is affirmed or acted on in some public way. It is remarkable that in the suit of 1833 a copy of one of these accounts was refused to one of the litigant parties on the very ground that the acount had never been confirmed, and was only granted on its being discovered that a copy had **[393]** already been given to his opponent. These documents should not have been treated as evidence.

The Subordinate Judge then goes on to say that in the suit of 1833 *Chitambara Iyan* admitted, and indeed maintained, that the land belonged to some devaswam. Now this suit was brought by *Chitambara* against a prior

mortgagee and his tenants for redemption and recovery of the land comprised in the kanom of 1832. Raja I was afterwards added as a party, and he supported the plaintiff. At a subsequent stage of the proceedings three other defendants were brought before the Court. They represented the *Simhanada Bhagavathi* devaswam, and in the year 1834 they brought a suit against the raja and *Chitambara* to enforce the claim of their devaswam to the lands. In the record are inserted the answer of the raja and of *Chitambara* in the suit of 1834. It does not appear what was decided in that suit upon the devaswam question. Possibly the parties were satisfied with the issue of the suit of 1833, where the same question was raised after the representatives of the devaswam were made parties. It is clear that the two suits were considered, and must now be considered, in combination with one another.

Nothing can be plainer than that in both suits the raja and *Chitambara* were in the same interest, and were opposing the claim of the devaswam. On the part of the devaswam it is alleged that the raja "has no connection with the land." He, on the other hand, says that "the devaswam does not own lands sowing even one para," and that its expenses are met by his own family funds. He sets forth several acts of ownership by the rajas, including the kanom of 1832 and previous kanoms. *Chitambara* alleges that the devaswam itself belongs to the raja, and that the lands are not jenm of the devaswam. Admitting that the devaswam is entitled to the rent of 200 paras of paddy under arrangements which the raja made with a prior mortgagee, he contends that no claim whatever has thereby been created on the land itself.

Such being the tenor of the pleadings, it is difficult to understand how the Subordinate Judge comes to his conclusion that *Chitambara* maintained the title of the devaswam.

On the 30th January 1837 the Pundit Sadr Ameen passed a decree in the suit of 1833 in favour of *Chitambara*. On the **[394]** question raised by the devaswam, his view was that the devaswam itself belonged to the raja, and that the defendants specially claiming to represent it had no title to the land.

The result of these two suits is certainly not in favour of the raja's present contention. It may not precisely decide that the land is not devaswam property. But it decides at least this that as between the raja's grantee on the one hand and the devaswam claiming independently of the raja on the other, the raja's grantee is entitled to hold the land. Its effect in binding the raja is enhanced by the fact that in the year 1835 Raja I died, and that Raja II was then made a party, but did not suggest that his predecessor had done wrong, or raise any fresh case at all.

The Subordinate Judge next says that the admitted fact of the rent of these lands having been always made payable to the devaswam, and not to the sthanams, is a piece of very cogent evidence in favour of the devaswams. The kanoms not being in evidence, their precise terms cannot be known. But what is made payable to the devaswams by the grant of 1851 is not *the rent*, but only the specified and comparatively small portion of it reserved by the raja for the benefit of a family idol and an idol of a neighbouring village.

Then it is said that in the suit of 1874 the raja did not claim the land as belonging to his sthanam, but that, inasmuch as he styled it property belonging to '*Mangattiri* of my royal family,' and as *Mangattiri* is one of the four devaswams as whose trustee he now sues, he really claimed for those devaswams. Now the pleadings in that suit have been stated above, and, except that the grant of 1851 produced by the *Iyans* shows the payments reserved to

the pagoda, they say nothing about any devaswam. In the issues and the two judgments of the Courts not a word is said about any devaswam. The property is treated as sthanam property throughout. *Mangattiri* is not a devaswam at all, but the name of a locality in which there appears to be a pagoda of the idol *Ayappan*, called in the plaint of 1874 the *Mangatiri Ayyappan* Devaswam.

The foregoing is the whole of the raja's case, and it certainly does not bear or nearly bear the burden of proof which lies upon him. It is indeed suggested by the Subordinate Judge that if the kanoms were produced they would show something in the raja's favour, **[395]** and he draws very damaging inferences against the *Iyans* for not producing them. They excuse themselves by saying that the documents were given up to Raja III when the grant of 1851 was executed. That seems a very unlikely proceeding. There is nothing to show why the owner of lands should not in *Malabar* as well as in *England* keep all documents of title. And if there were reason to suspect that these kanoms would disclose anything material in favour of the devaswams, there might be some justification for making presumption against the *Iyans*.

But there is no reason for any such suspicion. As regards the kanom of 1832 it is out of the question, for that document was the basis of the suit of 1833 when the *Iyans* got a decree against the claim of the devaswam. As regards the kanom of 1843, there is the notice of it in the *Palghat* Kacheri and the recital of it in the instrument of 1851, which simply point to it as a kanom or bond executed by Raja II to *Chitambara's* trustee. It is to the last degree improbable that this kanom should be materially different from the several other kanoms affecting the same lands and exhibited in this suit, or should show anything more favourable to the devaswams than the payments of paddy secured by the grant of 1851.

Moreover, the rajas have not themselves been free from blame in destroying this evidence. Counterparts of the kanoms were executed to be kept by them, and Raja VI is fain to excuse himself for not producing his counterpart in the suit of 1874, by alleging that when Raja V died the documents of the sthanam were taken away by his nephews who had not given them back to him.

Even then if this were all, the raja's case must fail, because the burthen of proof lies on him. But there is a considerable amount of evidence, though principally of a negative kind, bearing in favour of the appellant's contention that the land is sthanam and not devaswam property.

Their positive evidence besides the suits of 1833, 1834 and 1874 consists of two sets of documents, one set showing that the rajas have freely dealt with portions of the lands in dispute as sthanam property, the other set showing in the case of other undisputed sthanam lands that the rajas have been in the habit of demising or granting them, with reservations o specific and limited payments to family pagodas. The Subordinate Judge **[396]** seems not to have rightly apprehended the purposes for which these exhibits were produced.

Moreover, in the year 1864 *Sivarama Iyan's* tenants were obstructed in taking water from the *Simhanada Bhagavathi* tank, a right granted by the instrument of 1851. *Sivarama* prosecuted the obstructors and succeeded in his prosecution. He could hardly have done so without interference by the persons who represented that devaswam if he was without title. It may be that the obstructors represented the devaswam ; but, if so, *Sivarama* appears to have prevailed against it.

The negative side of the evidence is perhaps of more importance. The claim is made on behalf of four devaswams, But no attempt is made to show when, by whom, or in what way the land was dedicated to them, nor at what time they have had actual enjoyment of it; nor is there even so much as a statement by the raja of the shares or proportions in which they are entitled.

Above all, it is clear that the *Iyans* were in possession of all the lands, at least from the month of June 1851 up to the suit of 1877, and that they paid nothing to the raja and nothing to the devaswams more than the specified quantities of paddy. During that period there were three descents of the sthanam. Even if Raja III had colluded with the *Iyans* to alienate the property of the devaswams, it is inconceivable that Rajas IV and V and up to 1877 Raja VI should do so too, or that they and all the managers and priests of the devaswams should keep silence if they were entitled to land sowing 575½ paras. out of which they were only receiving 200 or, at most, 264 paras of paddy. According to the only calculation on this point appearing in the record, the sowing para of land is said to yield rent at 7 paras of produce.

The foregoing reasons are sufficient to dispose of the case upon the first step in it. But if the view of the Courts below had prevailed here, it would have been necessary to decide whether the *Iyans* had fraudulently kept from the rajas all knowledge of the grant of 1851, so that time should not run in its favour. Accordingly this question has, as regards both evidence and argument, been treated as fully as any other point in the case, and their Lordships have full materials for a judicial decision upon it. And they think it right to pronounce one, because they [397] find that the Subordinate Judge has pronounced upon this point against the appellants' family, with a great deal of severity which appears to them to be undeserved; and because from the silence of the High Court it is by no means clear what view was there taken of the matter. They will not, however, travel so much into detail as would have been desirable if they decided that the property belonged to the devaswams, and that the appellants could only keep it by help of the *Statute of Limitations*.

The main point relied on by the Subordinate Judge, if it suggests any fraud at all, points rather to fraud in the inception of the grant than in its concealment. He says that whereas by the grant 64 paras of paddy are made payable to the *Neerattu-Kulangara* Siva temple, no such temple can be found to exist. The temple, he says, is described in the grant as the raja's own temple, *viz.*, "*my* temple." The raja's family temple connected with *Neerat* is a Ganapathi temple, not a Siva temple. And though the *Iyans* gave evidence that they have regularly paid the 64 paras for the Annabishekam ceremony to a Siva temple in the village of *Tharakat*, situated some 200 yards from the raja's *Neerattu Kulam* (tank), it is not to be believed because receipts are not produced. The Subordinate Judge holds that the whole introduction of this temple into the grant is a fraud concocted between the *Iyans* and the raja's agent, which continued up to the time when Raja VI discovered the grant, which, according to his statement, was in January or February 1874.

It is exceedingly difficult to understand what could be the object of such a fraud as the insertion of a non-existent temple in the grant. But, object or none, there is not in this record sufficient evidence to support a proposition requiring clear proof. In the first place the grant of 1851, as translated for the record which must be the guide here does not correspond with the quotation by the Subordinate Judge. It refers to the *Simhanada* temple as the raja's "my"

temple, but when it speaks of the other temple, it is only called "the" temple. If any inference can be drawn from such language, it is that the second temple was not the raja's. It seems clear that the *Tharakat* Siva temple was generally known by that name and by no other. The payments of 64 paras for the Annabishekam ceremony in the *Tharakat* Siva temple are deposed to by the appellant *Venkateswara Iyan* himself who was examined for the raja, [398] by *Viswanta Pattar*, one of the raja's *karyastas* or agents, and by one *Javanthi*, an inhabitant of *Tharakat*, who was examined for the *Iyans*, and says that he himself received and gave receipts for the paddy for the Annabishekam ceremony performed for his house's sake in the *Tharakat* Siva temple. Since the decree some documents purporting to be *Javanthi's* receipts have been produced. But *Javanthi* cannot tell what position or authority he had to entitle him to receive the paddy. No one is called from the *Tharakat* temple to deny receipt of the paddy. One of the raja's witnesses, a priest in the *Neerat* Ganapathi Pagoda for nine years, says that 64 paras of paddy were paid yearly to him by *Venkateswara Iyan*. Upon this state of the evidence the difficulties felt by the Subordinate Judge are far from being cleared away; but it is too much to say that they stamp the transaction as fraudulent.

Whatever obscurity may hang over this portion of the case, the true question is not whether everything connected with the grant can be explained, but whether the grant itself has been so fraudulently concealed as to exclude the effect of time. Upon that point the Subordinate Judge thinks that the mention and registration of it as a kanom has been the means of concealment. But even if a kanom is a wrong appellation, it is not easy to see how that affects the raja's knowledge of his right to sue. Whatever interest may be conferred upon the *Iyans* by the grant of 1851, if the land was devaswam land and was wrongfully alienated, the raja had a right to set that grant aside.

The fact of registration seems to their Lordships to displace the theory of concealment. Registration at this period was not compulsory, and it is very difficult to suppose that a person desiring to conceal an instrument should lodge it in a public office within two months of its execution. The Subordinate Judge says that the registration amounts to nothing, because the place of registry was in *Calicut*, 100 miles from *Palghat*. But the fact is, as above stated, that on the 28th August 1851 it was registered in the Court of the District Munsif of *Palghat*, in pursuance of a notice from the Subordinate Court of *Calicut*.

Again, in the month of July 1864, a question arose whether or no some lands claimed by the Government under an escheat were really lands included in the grant of 1851. Both the raja, who [399] was Raja VI, and the *Iyans* appeared by their vakils before the Escheat Officer to maintain their claim. The instrument of 1851 was produced, and a copy taken to be kept in the Escheat Office. The Subordinate Judge says that there is no evidence that either the raja or the *Iyans* had notice of the claims preferred by the other, and he thinks that each was acting behind the other's back. That is possible, though not probable. But if it were the case, it does not do away with the fact that the *Iyans* openly claimed under the grant of 1851 in a public Court.

The same course was pursued by the *Iyans* in the dispute about the tank, which has been before mentioned. The instrument of 1851 was then produced in Court and initialled by the Magistrate.

It is observable that in both these cases it would have answered the purpose of the *Iyans* equally well to claim under the previous kanoms, instead of claiming under the grant of 1851. If they had, as suggested, wished to

appear to others as claiming only under kanoms while keeping a more absolute title in the background, it is incredible that they should have produced in public the evidences of that more absolute title.

Moreover, the raja has never given any evidence. In his plaint of 1877 he says that he discovered the grant of 1851 in January or February 1874. But he does not say, what in such a case is extremely important to know, what was the occasion of such discovery, or the circumstances which led to it. Nor in his plaint filed in April 1874 does he say a word about his then recent discovery or about any fraudulent concealment.

It is clear that ever since June 1851 at the latest the raja or the devaswams or both have been kept out of a valuable property. Why did they not make inquiries about the cause of so disagreeable an occurrence? It is shown that they had only to step into the District Munsif's Court at *Palghat* in order to find notice amply sufficient to guide them to the exact truth. But no word of explanation is given of this extraordinary inaction.

The result is that their Lordships agree with Mr. *Wigram* and apparently with the High Court in thinking that there was not only no fraudulent concealment of the grant of 1851, but no concealment at all. They are of opinion that on this issue, as well as on the issue respecting the nature of the property, judgment should go for the appellants. They will humbly recommend to **[400]** Her Majesty that the decrees should be reversed, and the suit dismissed with costs in both the Courts below. And the respondent must pay the costs of this appeal. Appeal allowed with costs. Suit dismissed with costs.

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**NOTES.**

**[I. THE EVIDENTIARY VALUE OF PEIMASH ACCOUNTS—**

*See* in addition 7 Mad. 297, Moore's Malabar Law and Custom (3rd Edn., 1905), p. 336-338 where extracts from a recent unreported judgment are given.

**II. STANOMDAR—**

The position of a stanomdar in 4 Mad. 148 was likened to that of the holder of an impartible Zamindari (who was, at that period, believed to have life interest).

*See* also 21 Mad. 144; 11 Mad. 106; and Moore's Malabar Law and Custom (3rd Edn. 1905), pp. 353, 354.]