APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Handley.

1890. March 24. April 1.

VEDAPURATTI (DEFENDANT No. 1), APPELLANT,

v.

VALLABHA (PLAINTIFF), RESPONDENT.*

Limitation—Adverse possession—Suit by a trustee of a devasom disaffirming the act of his predecessor.

The trustee of a Malabar devasom, who had succeeded to his office in June 1883, sued in 1887 to recover for the devasom possession of land which had been demised on kanom by his predecessor in February 1881, on the ground that the demise was invalid as against the devasom. The defendant had been in possession of the land for more than twelve years, falsely asserting the title of kanomdar with the permission of the plaintiff's predecessor in office:

Held, (1) the suit was not barred by limitation;

(2) the plaintiff was entitled to maintain the suit for the purpose of recovering for the trusts of the devasom property improperly alienated by his predecessor. *Suppammal* v. *The Collector of Tanjore* (I.L.R., 12 Mad., 387) distinguished.

SECOND APPEAL against the decree of L. Moore, District Judge of South Malabar, in appeal suit No. 723 of 1888, confirming the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in original suit No. 11 of 1887.

Suit in 1887 by the *udama* of a devasom to recover possession of certain land with mesne profits.

The plaintiff's case was that the land in question was the jenm property of the devasom, which was attached to his stanom; that he succeeded to the stanom on 24th June 1883; that in December 1884 he first came to know of a demise on kanom of the land in question by his predecessor in office to defendant No. 1 and another dated 25th February 1881; that the demise was invalid as against the devasom; and that he had demanded possession of the land, but it had been refused.

The case for defendant No. 1 was that the demise of February 1881 was valid, being a consolidation of various other kanoms under which she had been in possession for more than twelve years: limitation was also pleaded.

* Second Appeal No. 1043 of 1889.

The District Munsif passed a decree for the plaintiff, which was confirmed on appeal by the District Judge.

Defendant No. 1 preferred this second appeal.

Subramanya Ayyar and *Sundara Ayyar* for appellant.

Sankaran Nayar for respondent.

JUDGMENT.—The contention first raised on behalf of the defendant (appellant) was that the suit, being a suit in ejectment, was barred by limitation, inasmuch as it was shown that for many years previously to the kanom of 1881, from the date of which only the plaint avers that the defendant was in possession, she was in possession asserting a kanom title to the same land.

The defendant's case was that the kanom of 1881 was given by the plaintiff's predecessor in the stanom by way of consolidation of previously existing kanoms, and it appears to have been found that for some years the defendant had been in possession by means of tenants to whom she had represented herself as kanomdar. Both Courts, however, find that there were no such prior kanoms and that the kanom of 1881 was therefore a mere fraud on the stanom. On this state of facts it is argued that the defendant is entitled to assert that her possession, based on an asserted, though groundless, title, was adverse to the plaintiff and his predecessor, and that the suit ought therefore to have been dismissed as barred by limitation, and we are referred to *Madhava* v. *Narayana*(1), to which also the District Judge refers. In our opinion that case is entirely distinguishable from the present. In that case there was an actual kanom granted by the plaintiff's father, which, however, was invalid against the plaintiff. It was held that the kanomdar's possession having remained unquestioned for more than twelve years was adverse, and that a suit for ejectment therefore would not lie. In the present case there was the mere assertion of a kanom which is found to have had no existence, and it does not appear that the defendant's possession as against the plaintiff's predecessor was referable to the alleged kanom. On the contrary, the finding is that the defendant, being a member of the kovilagom to which the stanis, with one exception, for a considerable time back have belonged, were allowed to occupy the land belonging to the stanom. Under these circumstances, the fact that in dealing with their tenants the defendants

(1) I.L.R., 9 Mad., 244.

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made a pretence of holding kanoms cannot alter the character of their possession. We see nothing inconsistent in the findings, and, on the other hand, it is consistent with probability that the plaintiff's predecessor should, after allowing the defendants to occupy the lands, have endeavoured to secure them in their possession by a kanom.

In this view of the facts it becomes unnecessary to consider the applicability of section 10 of the Indian Limitation Act, for which Mr. Sankaran Nayar argued on the strength of the decision of this Court in *Mundakkel Govinda Paniker* v. *Zamorin of Calicut*(1).

A further contention raised on behalf of the appellant was that the plaintiff, being the trustee of a devasom, was bound by the act of his predecessor, and therefore could not maintain the suit, and reliance was placed on a case decided in this Court, *Suppammal* v. *The Collector of Tanjore*(2). According to this contention, while it was conceded that the suit, if brought to recover stanom property, would be maintainable, it was urged that the plaintiff, being a mere trustee, could have no other or greater right than his predecessor in the trust, and that, if any action was maintainable, it should be at the suit of a beneficiary and not of the present plaintiff. There can be no doubt that the holder of a stanom has a life-interest only in the property attached to it, and that any alienation by him of that property, if not made under justifying necessity, may be set aside at the suit of his successor, subject, of course, to the rules of limitation, see *Mana Vikraman* v. *Sundaran Pattar*(3).

In our opinion it is equally clear that the present suit is maintainable if the property sought to be recovered is property dedicated to religious purposes. Such property is, as a general rule, inalienable, and although, for some purposes, the manager or trustee for the time being represents the estate, it has never been doubted that his successor in office may recover for the trust property improperly alienated by him. He may insist on the restoration of the property to its intended uses. The judgment in *Mundakkel Govinda Paniker* v. *Zamorin of Calicut*(1) is sufficient authority for this proposition.

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(1) S.A. No. 332 of 1881, unreported.
(2) I.L.R., 12 Mad., 387. (3) I.L.R., 4 Mad., 148.

In our opinion the decision in *Suppammal* v. *The Collector of Tanjore*(1) does not trench upon this principle. In that case the plaintiff, widow of one Ponnusami, sought to recover certain property alleged to be dedicated to charitable purposes, representing herself to be the person entitled to maintain the charities. The property was in the hands of purchasers who had acquired it on sales in execution of decrees obtained against the late Ponnusami and his brother. All that was decided was that the plaintiff, as heir of Ponnusami, was bound by those sales and could not be permitted to say that her interest in the property had not passed. There was no question in that case of recovering the property for the charity, for the defendants were holding it subject to the charges imposed upon it by Ponnusami. It was the right of management and the incidental right of enjoying the surplus profits, which, by the grant, had been reserved to Ponnusami and his heirs, that the plaintiff sought to recover, and it was never suggested on the plaintiff's behalf that the property had, by virtue of the declaration of trust, become inalienable as a religious endowment in the hands of Ponnusami. In our opinion the decision has no bearing on a case like the present, in which it is assumed, for the purpose of the defendant's case, that the property forms part of a religious endowment, and is, as such, sought to be recovered by the new trustee or manager.

Whether the property is of that character, or whether it is simply property of the stanom, we think the plaintiff can maintain the suit, and we therefore dismiss this second appeal with costs.

(1) I.L.R., 12 Mad., 387.