which contains that section shall affect any rule of Hindu law. There is no doubt that the rule may work hardship in some cases by throwing upon the purchaser of a coparcener's share in some small portion of a large family estate the burden of a partition suit to ascertain his vendor's share in the whole estate, but those who deal with persons having the very limited power of alienation possessed by the members of an undivided Hindu family must take the consequences. The concession of any such power of alienation was to some extent a departure from the principles upon which the Hindu law of the undivided family rests, and there is no reason for extending that concession further than it has been already extended.

We must hold that the suit in its present form will not lie. The decrees of both the lower Courts will be reversed and the suit dismissed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

MAHOMED (DEFENDANT), APPELLANT,

v.

GANAPATI (PLAINTIFF), RESPONDENT. *

1889. October 15.

Religious Endowments Act—Act XX of 1863, s. 7—Regulation VII of 1817 (Madras), s. 12—Suit by a dharmakarta disaffirming the acts of his predecessor—Limitation.

The plaintiff, who had been appointed in 1886 by the Sub-Collector to be dharmakarta of a Hindu temple, for which no committee had been appointed under Religious Endowments Act, s. 7, sued in 1886 to recover possession of land demised to the defendant on a perpetual lease in or about 1856 by a previous dharmakarta, who died in 1885:

Held, (1) that Regulation VII of 1817 having been repealed as regards Hindu temples by Act XX of 1863, the appointment by the Sub-Collector gave the plaintiff no right to sue: accordingly it was necessary to determine the question whether he had such right apart from that appointment;

(2) that if the above question were answered in the affirmative, the plaintiff, since he did not derive title through his predecessor in office (the grantor of the lease), would be entitled to disaffirm his acts;

(3) that the period of limitation ran not from the date of the lease, but from the date of the accession of the plaintiff to his office.

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* Second Appeal No. 126 1889.

MAHOMED v. GANAPATI.

SECOND APPEAL against the decree of H. T. Ross, Acting District Judge of Madura, in appeal suit No. 141 of 1888, affirming the decree of M. A. Tirumalachariar, District Munsif of Dindigul, in original suit No. 643 of 1886.

Suit by the plaintiff as dharmakarta of a Hindu temple to recover certain land as part of the property of the temple. The defendant claimed to hold the land under a perpetual lease granted to him thirty years before suit by Raman Pujari, a former dharmakarta of the temple, who died in 1885.

The District Munsif passed a decree in favour of the plaintiff, which was affirmed on appeal by the District Judge, who observed with reference to the plaintiff's right to maintain the suit :—

"He was appointed by order of the Sub-Collector, communicated with exhibit C on the 5th August 1886; and the argument used in appeal is that the Sub-Collector's appointment had no effect, because section 12, Regulation VII of 1817, under which it was made, was repealed by section 1, Act XX of 1863.

"It appears to me that, notwithstanding the repeal of that section, the Collector (and equally the Sub-Collector) had the power to appoint as local agent of the Board of Revenue, until such power legally ceased and determined in the manner provided in section 12, Act XX of 1863, and there has been no such cessation or determination in this case, because, admittedly, no committee has been appointed under section 7 of the same Act to take the place of the Board of Revenue and the local agents in respect of the plaint temple. Reading sections 3, 7 and 12 of the Act together, the appointment of plaintiff was legal and his right to maintain the suit cannot be questioned."

The defendant preferred this second appeal.

Rama Rau and *Mahadeva Ayyar* for appellant.

Krishnasami Ayyar and *Subramanya Ayyar* for respondent.

SHEPHARD, J.—The defendant holds under a lease made thirty years ago by Raman Pujari, dharmakarta of the temple to which the lands belong. The plaintiff claims to recover the land as successor in office to Raman Pujari, who died in 1885. The first question is whether the plaintiff is entitled to the office of dharmakarta. I cannot agree with the Courts below in thinking that the Collector had in 1886 any statutory power to appoint dharmakartas. The Regulation VII of 1817 was, so far as concerned Hindu temples, unreservedly repealed by the Act of 1863, and it

cannot be contended that, owing to the neglect of Government to carry out the duties imposed upon them by section 7 of that Act, the Board of Revenue can be deemed to be still invested with the powers and duties which attached to the Board under the Regulation. Whether or not the plaintiff is trustee of the temple independently of the appointment by the Sub-Collector is a question on which there is no decision. We must ask the District Judge to return a finding on that question. If the plaintiff, being dharmakarta, is entitled to sue to recover temple property, the further question arises whether the lease under which the plaintiff holds was of a character prejudicial to the interests of the temple, so that the plaintiff, as trustee, is entitled to have it set aside. It is found that the lease was a perpetual one, but that circumstance is not conclusive to show that it was a transaction of an improvident nature calculated to prejudice the interests of the temple. We must, therefore, direct the District Judge to return a finding on that question.

It was contended on behalf of the appellant that, granted that the lease was one which the late dharmakarta ought not to have granted, the present dharmakarta was not entitled to maintain this suit, and, further that, if the suit was maintainable, it was barred by limitation. In support of the former contention, we were referred to the case of *Maniklal Atmaram* v. *Manchershi Dinsha Coachman*(1), where the opinion was expressed that it was not competent for a trustee to sue to undo the act of his predecessor, though that act might have been done in breach of trust. "A trustee, it is said, as between himself and one to "whom he has conveyed trust property, is, I apprehend, as much "concluded by his own completed act as any other vendor. So "again I apprehend the completed act of a former trustee, though "in itself a breach of trust, is as conclusive against a successor in "the trusteeship where it is the successor who in a suit against "one claiming under, and by virtue of such act is seeking to "disaffirm and annul it." In the case in which this language was used, the plaintiff was the son and heir of one to whom, on the revocation of the probate previously granted to the testator's widow, letters of administration with the will annexed were granted without prejudice to any act done in the due course of

(1) I.L.R., 1 Bom., 279.

MAHOMED v. GANAPATI.

administration by the widow. The plaintiff sued to set aside an alienation made by the widow in the defendant's favor of a house which under the will had been made the subject of a charitable trust. It was held that the plaintiff, not claiming any beneficial interest, but merely claiming to act as trustee under a will and seeking to undo an act of one who had also been a trustee under the same will, could not maintain the suit. From the language used it would seem that the plaintiff was treated as if he had derived title from the widow, as would be the case generally where one trustee under a will has succeeded another. And it is also to be observed that the learned Judge expressly refrained from deciding the question whether such a suit could be brought on behalf of the person for whose benefit the trust was created. In the present case, though the plaintiff may in point of time have succeeded the dharmakarta who made the alienation, he does not derive his title from that dharmakarta, and is, therefore, not bound by his acts. Subject to the law of limitation, the successive holders of an office, enjoying for life the property attached to it, are at liberty to question the dispositions made by their predecessors (*Papaya* v. *Ramana*(1), *Jamal Saheb* v. *Murgaya Swami*(2), *Modho Koocry* v. *Tekait Ram Chunder Singh*(3)), and it is equally clear that time runs against the successor who challenges his predecessor's disposition, not from the date of the disposition, but from the date of the predecessor's death, when only the successor became entitled to possession. Accordingly, Raman Pujari having died so recently as 1885, the plaintiff's suit cannot be barred by limitation.

It was finally contended on behalf of the appellant that he was entitled to notice before his lease could lawfully be determined by the plaintiff, and that it was not shown that any such notice had been given. No doubt, it has been held that, in a suit by a landlord to eject his tenant, not being a mere tenant-at-will, it is a part of the necessary proof of the plaintiff's title that he should prove notice to quit, and that it is competent to the defendant to take the objection of want of notice even on second appeal *Abdulla Rawutan* v. *Subbarayyar*(4). I do not think that ruling is applicable to the present case, for here the plaintiff has never admitted

(1) I.L.R., 7 Mad., 85.
(2) I.L.R., 10 Bom., 35.
(3) I.L.R., 9 Cal., 411.
(4) I.L.R., 2 Mad., 346.

the tenancy of the defendant, but is seeking to eject him as one holding under an invalid alienation. In the plaint, which was presented in November 1886, it is stated that the plaintiff came into office in July 1886, and in the following month called upon the defendant to relinquish the property. No issue was taken upon this allegation; and, in view of the allegations made on both sides in the pleadings, I think that it could not properly have been made the subject of an issue.

I think the District Judge should be asked to return findings on the two issues indicated above within six weeks from the date of the receipt of this order, when seven days, after the posting of the finding in this Court, will be allowed for filing objections.

Both parties to be at liberty to adduce fresh evidence.

MUTTUSAMI AYYAR, J.—I concur.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

LAKSHMAMMA (PLAINTIFF), APPELLANT,

v.

KAMESWARA AND ANOTHER (DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

1889. Dec. 2, 12.

Registration Act—Act III of 1877, *s.* 17 (*b*), (*h*).

Where a deed of partition between a mother and her son declared certain existing rights in her over moveable and immoveable property above the value Rs. 100:

Held, that, although the deed showed that the execution of another deed with reference to those rights was in contemplation, yet the deed was not admissible in evidence of the mother's title to either the moveable or immoveable property.

APPEAL against the decree of Venkata Rangayyar, Subordinate Judge of Ellore, in original suit No. 31 of 1886.

Suit by the plaintiff, who was the widow of one Venkatakrishnayya, to restrain the defendants from interfering with her enjoyment of certain jewels, to recover from the defendants cer-

* Appeal No. 116 of 1888.