redemption and to prevent its extinction by foreclosure. This second appeal cannot be supported and we dismiss it with costs.

AMMANNA v. GURUMURTHI.

APPELLATE CIVIL.

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

SAMINATHA (DEFENDANT), APPELLANT,

v.

PURUSHOTTAMA (PLAINTIFF), RESPONDENT.*

1892. March 21. April 6.

Religious institution—Debt contracted by one claiming to be in possession as head of the institution—"de facto" manager, power of—Cost of defending ejectment suit.

Suit on a bond in which the obligor was described as the head of a mutt and the debt thereby secured was stated to have been incurred "for the reasonable expenses of the suit which was being proceeded with, and for the good of the mutt and for the said mutt's own expenses." The debt had been contracted by one who was in possession of the mutt under a claim that he was the duly-constituted head of the institution, for the purposes of defending a suit brought by the head of another religious institution to eject him and to establish certain rights over the mutt. A decree for ejectment was obtained, but some of the pretensions of the plaintiff were successfully resisted. The present defendant was a receiver of the properties of the mutt appointed by the Court in the course of that litigation:

Held, that the bond was not enforceable against the property of the mutt.

APPEAL against the decree of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in original suit No. 44 of 1889.

Suit to recover principal and interest due on a bond, dated 7th December 1886, and executed by Kandasami Tambiran in favour of the plaintiff's uncle whom he had since succeeded as managing member of his family. When the loan secured by this bond was contracted, one Kumarasami Tambiran was in possession of the Tirupanandal mutt, of which he claimed to be the head. The money was borrowed by him for the purposes of a suit then pending, in which the Pandara Sannadhi of the Dharmapuram Adhinam, sought to eject him on the ground that he was not the rightful head of the mutt. The High Court on appeal passed a decree for ejectment as prayed, but certain rights which the plaintiff claimed to possess in respect of the mutt were negatived. The

* Appeal No. 108 of 1891.

SAMINATHA v. PURUSHOTTAMA.

defendant in that suit died during the course of that litigation, and Kandasami Tambiran, the executant of the bond sued on, succeeded him in the mutt and was brought on to the record in his place. The present defendant was a receiver of the properties of the mutt appointed by the Court in that litigation.

The Subordinate Judge held on the authority of *Hanooman-persaud's*(1) case and *Sammantha Pandara* v. *Sellappa Chetti*(2) that the debt was binding on the mutt and passed a decree as prayed.

The defendant preferred this appeal.

The Advocate-General (*Hon'ble Mr. Spring-Branson*), *Rama Rau* and *Krishnasami Ayyar* for appellant.

The executant of the bond was a mere trespasser and could in no way pledge the credit of the mutt. The judgment appealed against involves the proposition that one who has usurped authority over a mutt can make the mutt liable for the expenses of putting an end to his usurpation. No authority supports such a proposition. The true rule to be deduced from the cases cited by the Subordinate Judge and the other decisions is that the *de facto* manager is entitled to be reimbursed only for charges met by him when it is clearly established that the manager *de jure* would have had to meet them. Nor even if he could have bound the mutt by reason of his being a *de facto* manager of its properties, has it been shown that the loan was necessary in the sense that funds of the mutt were not available to the required amount.

They referred to Mayne's Hindu Law, § 397. *Hanooman-persaud Panday* v. *Mussamat Baboee*(1), *Ram Churn Pooree* v. *Nunhoo Mundul*(3), *Prosunno Kumari Debya* v. *Golab Chand Baboo*(4), *Konwur Doorganath Roy* v. *Ram Chunder Sen*(5), *Shri Ganesh Dharnidhar Maharajdev* v. *Keshavrav Govind Kulgavkar*(6), *Ambalavana* v. *Saminatha*(7).

Subramanya Ayyar and *Bashyam Ayyangar* for respondent.

In the ejectment suit the status of the Tirupanandal mutt as such was at issue by reason of the illegal pretensions of the plaintiff as to which the suit failed (see *Giyana Sambandha Pandara Sannadhi* v. *Kandasami Tambiran*(8), and, although Kumarasami was ejected because his appointment was defective, the mutt was

(1) 6 M.I.A., 393. (2) I.L.R., 2 Mad., 175. (3) 14 W.R., 147.
(4) L.R., 2 I.A., 161. (5) L.R., 4 I.A., 62. (6) I.L.R., 15 Bom., 637.
(7) Appeal No. 53 of 1891 unreported. (8) I.L.R., 10 Mad., 508.

substantially the successful party. Moreover Kumarasami was not a wrong doer in the ordinary sense of the word, although technically he was a trespasser, for he came in under the will of the last Tambiran. *Sammantha Pandara* v. *Sellappa Chetti*(1), governs the case; it is also covered by the principles laid down in *Prosunno Kumari Debya* v. *Golab Chand Baboo*(2), *Koweur Doorganath Roy* v. *Ram Chunder Sen*(3), *Shri Ganesh Dharnidhar Maharajdev* v. *Keshavrav Govind Kulgavkar*(4), though those cases proceeded on very different circumstances. See also *Chidambara Setti* v. *Kattamma Natchiyar*(5), where the rightful owner of the Sivaganga Zamindari was held bound by the acts of her predecessor who had been *de facto* manager of the estate though his possession was based on no title, and compare *Sudindra* v. *Budan*(6).

JUDGMENT.—The bond on which the present suit is brought was given in consolidation of three previous debts evidenced by exhibits C, D and E. The genuineness of these documents is not disputed, but it is alleged that the debts were not incurred for the benefit of the mutt. The receipt of the first Rs. 5,000 (exhibit C) has not been entered in the mutt accounts at all and though it may have been spent for the purposes of the litigation under which Kumaraswami Tambiran was endeavouring to support his title there is nothing to trace the money. The receipt of the other two sums, Rs. 3,000 (exhibit D) and Rs. 2,000 (exhibit E) are entered in the mutt accounts (exhibit IV).

It is pointed out that when the Rs. 3,000 was received there was a cash balance of Rs. 1,496-10-1, and when the Rs. 2,000 was received there was a balance of Rs. 928-15-8. It is not, however, seriously disputed that the income of the mutt was amply sufficient for its ordinary and legitimate expenses, such as paying kists, &c., and the real point argued before us is whether the expenses of the litigation in which Kumaraswami and afterwards Kundaswami were engaged were a legitimate charge upon the resources of the mutt. It is not denied by the Advocate-General that in some cases debts incurred by a *de facto* but not *de jure* manager would be binding; but the contention is that this litigation was brought about by a trespasser for his own private ends and was not for the interest of the mutt.

(1) I.L.R., 2 Mad., 175. (2) L.R., 2 I.A., 151. (3) L.R., 4 I.A., 62.
(4) I.L.R., 15 Bom., 637. (5) 3 M.H.C.R., 260. (6) I.L.R., 9 Mad., 80.

SAMINATHA v. PURUSHOTTAMA.

It is argued on the other side that though the defendants were found to be trespassers they resisted the suit in the interest of the adhinam for the maintenance of its independence and the establishment of the right of its head to nominate his successor, in which contentions the claims of the Dharmapuram mutt were successfully resisted. In the result, however, the defendant was ordered to pay his own costs and the High Court refused to make them a charge against the mutt. Though the head of a mutt has large powers (See *Sammantha Pandara* v. *Sellappa Chetti*(1) there is a wide distinction to be drawn between cases in which debts are incurred *bona fide* in furtherance of the objects of the institution and cases in which debts are incurred for private and personal purposes. Mere recitals in deeds are not sufficient (*Chidambara Setti* v. *Kattamma Natchiyar*(2) and it cannot seriously be contended that it is for the advantage of an institution that an unqualified person shall be able to establish himself as its head. It has already been held in *Ambalavana* v. *Saminatha*(3) that a similar debt is not binding upon the mutt.

As regards the contention that part of the money may have been used for the payment of kists it is pointed out that Rs. 3,000 out of the second Rs. 5,000 borrowed has been paid back, and it is clear that the lender must have known that the transaction was somewhat of a speculation as he delivered up without demur the Government paper which had been deposited with him as security for the loans.

We must reverse the decree of the Subordinate Court and dismiss the suit with costs throughout.

---

(1) I.L.R., 2 Mad., 175. (2) 3 M.H.C.R., 260.
(3) Appeal No. 53 of 1891 unreported.