

APPELLATE CIVIL.

Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

KASIM SAIBA AND OTHERS (PLAINTIFF AND HIS REPRESENTATIVES),
APPELLANTS,

1895.
March 7, 8.
April 4.

v.

SUDHINDRA THIRTHA SWAMI (DEFENDANT), RESPONDENT.*

Religious endowments—De facto manager—Debt binding on the institution.

In a suit on a mortgage, dated April 1880 and comprising lands forming part of the endowment of a mutt, it appeared that the mortgagor had been the rightful manager of the mutt until 1876 when he was outcasted and consequently forfeited his office. The present defendant was appointed in 1877 to succeed him in the office of manager, but the mortgagor remained nevertheless in possession, and a suit by the present defendant to eject him was pending at the date of the mortgage. The plaintiff now sought to enforce his rights under the mortgage against the defendant and the property, of which the defendant had been placed in possession as the result of the suit above referred to :

Per curiam : the mortgagor was not disentitled to incur expenses so as to bind the rightful manager by the mere fact that the former was not *de jure* manager at the time the expenses were incurred, provided they were incurred for the preservation of the trust property or other justifiable purposes.

On its appearing that the debt was incurred for the conduct of ceremonies in which the mortgagor, after his excommunication, was disqualified from taking part, and that all the circumstances of the case were known to the mortgagee :

Held, that the plaintiff was not entitled to recover the amount of the mortgage-debt.

APPEAL against the decree of O. Chandu Menon, Subordinate Judge of South Canara, in original suit No. 10 of 1892.

Suit against the swami of the Puttige mutt at Udipi to recover principal and interest due upon a mortgage of properties of the mutt, dated the 5th April 1880, and executed in favour of the father, deceased, of the plaintiff by the predecessor in office of the defendant to secure repayment of a sum borrowed for the expenses of certain ceremonies connected with the mutt. The defendant pleaded, *inter alia*, that the mortgage was not binding on the institution. The further facts of the case appear sufficiently for the purposes of this report from the judgment of the High Court.

The Subordinate Judge passed a decree dismissing the suit.

* Appeal No. 141 of 1893.

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This appeal was preferred by the plaintiff and, after his death, was proceeded with by his legal representatives.

Bhashyam Ayyangar and Narayana Rau for appellants.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—The plaintiff sues for the recovery of Rs. 6,599, alleging it to be due on a mortgage bond executed in 1880 to his father, since deceased, by the late Sumatindra Swami, formerly head of the Puttige mutt at Udipi.

The defendant, successor of Sumatindra and present swami of that mutt, contested the suit. The Subordinate Judge dismissed it, the chief grounds for the decision being (i) that the instrument sued on was invalid as a mortgage, as it was executed pending the litigation between the late Sumatindra and the defendant which terminated in favour of the latter; (ii) that the loan was not granted under circumstances rendering the debt binding on the mutt.

On behalf of the plaintiff (appellant) no attempt was made before us to impeach the Subordinate Judge's conclusion that the mortgage is invalid on the ground of *lis pendens*; and upon the admitted facts of the case, the correctness of the Subordinate Judge's view cannot be questioned.

The main point argued before us was whether the plaintiff is entitled to recover the whole or any portion of the amount sued for as moneys lent *bonâ fide* for justifiable purposes of the institution, of which the defendant (respondent) is the present manager.

For a proper understanding of the case a brief statement of the circumstances which resulted in the litigation alluded to above between the late Sumatindra and the defendant is necessary.

There are at Udipi eight mutts, which are closely associated with each other, of which the said Puttige mutt is one. They are presided over by Brahmin ascetics, bound to celibacy, who carry on in turn the worship of Krishna in the celebrated temple at that place. Against the late Sumatindra charges were preferred by persons interested in the temple and the mutts, the principal accusations being that he had violated the rules of his order and the duties of his office, as he was living in adultery with a woman called Akkayya, and, as he had illegally appointed her illegitimate son, an infant, as his successor in the Puttige mutt. After due investigation, the sabha, or committee constituted

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according to usage for the purpose of enquiring into the charges, found the late Sumatindra guilty and expelled him and the infant appointed by him from the caste. In consequence, Sumatindra forfeited his right and position as the swami of the Puttige mutt. This took place in 1876. The defendant was duly appointed in 1877 as the head of the Puttige mutt. Sumatindra, however, did not submit to the decision against him, but continued to hold possession notwithstanding such decision. Thereupon the defendant sued Sumatindra, his concubine Akkayya and her illegitimate son in original suit No. 3 of 1879 in the District Court of South Canara to recover the mutt and its properties and for other reliefs. Pending the litigation Sumatindra died, but the suit was carried on against the other defendants and was eventually decided in favour of the defendant on appeal to the High Court in 1883.

That Sumatindra was lawfully expelled from the caste, and that on such expulsion Sumatindra ceased to be legally entitled to hold or exercise the office, or retain the property or receive the emoluments appertaining to the office, cannot now be questioned and has not been questioned in this appeal. This being so, the point for determination is whether the money mentioned in the bond sued on, and which was lent after Sumatindra ceased to be entitled to hold the office, was lent under circumstances which render the same recoverable from the defendant, the rightful swami. Before we proceed to discuss the evidence on this question, we must notice a legal contention urged on behalf of the defendant, which if well founded, would render a consideration of the evidence unnecessary. The contention is that inasmuch as the money was lent to, and the bond in question was executed by, Sumatindra, whilst he was in unlawful possession of the office, the transaction is, in consequence of the absence of title in Sumatindra, absolutely void, however necessary and beneficial the loan might have been to the institution. But the cases relied on on behalf of the plaintiff against this contention preclude us from giving an unqualified assent to such a contention. In *Dakhina Mohan Roy v. Saroda Mohan Roy*(1), the latest case on the subject, decided in 1893, the Privy Council, after pointing out that the proposition that a person who is in wrongful possession is not entitled to recover sums spent on account of outgoings is not a

(1) I.L.R., 21 Calc., 142.

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proposition of law admitting of no exception, held that when a proprietor in good faith, pending litigation, makes the necessary payments for the preservation of the estate in dispute, and the estate is afterwards adjudged to his opponent, he should, in common justice, be recouped what he has so paid by the person who ultimately benefits by the payment, if he has failed through no fault of his own to reimburse himself out of the rents. No doubt there were special facts in the case in which the law was thus laid down, but the reference made by their Lordships in their judgment to the *Peruvian Guano Company v. Dreyfus Brothers* (1) decided by the House of Lords in 1892 shows that the Judicial Committee was dealing with the question as one of principle, and as such it was elaborately discussed in the House of Lords' case by Lord Macnaghten, who delivered the judgment in the Privy Council case. It seems, therefore, that it must now be taken as well established that Sumatindra was not disentitled to incur expenses so as to bind the rightful manager, by the mere fact that the former was not *de jure* manager at the time the expenses were incurred, provided they were incurred for the preservation of the trust property or other justifiable purposes. We must, therefore, consider the evidence adduced to show the circumstances in which the loan was granted to Sumatindra, and determine whether the plaintiff has discharged the *onus* which according to law lies upon him. In this connection the language of Kernan, J., in *Kotta Ramasami Chetti v. Bangari Seshamma Nayanivaru* (2) when dealing with the question of the validity of a charge created by a person who was in possession of a palayam, but without title, is peculiarly applicable to the present case; and borrowing his language, we think it may properly be stated that to entitle the plaintiff to recover the money in question from the defendant, "proof of imminent pressure or danger of loss, or of such close inquiries as to the position of the estate and the immediate circumstances of the pressure or apprehended danger as to satisfy a prudent and reasonable mind of the truth of the alleged pressure and impending danger should be given." In our opinion satisfactory proof of neither has been given.

The principal points spoken to in the evidence adduced on behalf of the plaintiff are these: each turn of worship, or *pariyaya*

(1) L.R., (1892), A.C., 166.

(2) I.L.R., 3 Mad., 145, 151.

as it is called, devolving on each of the associated mutts lasts two years. The total cost incurred by each swami during his turn amounts to between Rs. 25,000 to Rs. 40,000. In 1880 it was the turn of the Puttige mutt to undertake the worship and to carry it on for a couple of years according to custom and usage. Sumatindra as the swami in possession made the necessary preparations for the worship and commenced and carried it on until his death. He had to borrow moneys for that purpose, as every one of the swamis has to do more or less when his turn comes. It was even more necessary for Sumatindra to do so in 1880, because, in addition to the circumstance that the current income for that year was insufficient to meet the heavy outlay which had to be incurred at the beginning of the pariyaya, owing to the opposition of the defendant, some of the usual payments to the Puttige mutt, such as the contributions from the Mysore State, were withheld on that occasion. Consequently the loan in question was obtained to enable Sumatindra to discharge the amounts advanced by some ten individuals for the purchase of provisions required for the pariyaya ceremonies. Who these previous creditors were, and whether the amounts borrowed from them were applied for the purpose stated, there is little or no evidence to prove. But even assuming the statements made by the plaintiff's witnesses to be true, it is quite clear that the present case is totally different from those where money is lent to avert some pressure which, if not so averted, will result in danger to the estate, such as the discharge of Government revenue due thereon as in the Privy Council case referred to above. There is absolutely no ground in the present case for the application of the principle of salvage on which relief was given in that case (see *Dakhina Mohan Roy v. Saroda Mohan Roy*(1)). Not only was there an utter absence of any pressure, but it may even be doubted whether the performance of the pariyaya by Sumatindra was not, according to the notions of those interested in the temple, positively detrimental to the welfare of the institution. For it is quite plain that, after Sumatindra was lawfully excommunicated, he was disqualified from interfering with the religious concerns of the temple and the performance of worship by him after such excommunication cannot but have been looked upon by the persons interested in the temple as almost a desecration. It is therefore

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(1) I.L.R., 21 Calo., 142, 149.

KASIM SAIRA not easy to see how the doctrine of equity and good conscience
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 SUDHINDRA referred to in the cases relied on on behalf of the plaintiff is to be
 THIRTHA held applicable to a case like this where money was lent to carry
 SWAMI. on worship under those circumstances.

Moreover, there is no ground for thinking that plaintiff's father acted *bonâ fide* in lending the money. He resided at Udipi itself where the committee which investigated the charges against Sumatindra sat, the inquiry having been conducted openly and having lasted for several months. The excommunication, the consequent quarrels and riots, the arrest of Sumatindra, defendant and others by the authorities to preserve the peace, the institution and pendency of the suit by the defendant against Sumatindra, &c., were all clearly known to the lender at the date of the loan; and it is difficult to believe that the father of the plaintiff acted like a prudent and reasonable man in granting the loan under such circumstances. We think, therefore, that the plaintiff has not made out any real or accredited necessity such as is required by law to justify the loan, and we agree with the Subordinate Judge in holding that the claim fails on the merits also.

It is, therefore, unnecessary for us to consider the minor objections raised on behalf of the defendant.

We dismiss the appeal with costs.

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Before Mr. Justice Best and Mr. Justice Subramania Ayyar.

1895. NARASAMMA (PLAINTIFF'S LEGAL REPRESENTATIVE), APPELLANT,
 March 13, 14. v.
 April 19.

SUBBARAYUDU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Registration Act—Act III of 1877, ss. 21, 48, 49, 51—Defective description of property—Deed affecting land registered in book No. 4—Purchaser for value.

In a suit for land, forming part of the self-acquired property of a deceased Hindu, it appeared that in 1885 his widow and his cousin had (on the death without issue of his son) entered into an agreement whereby the latter relinquished in the widow's favour for consideration all his rights in the self-acquired property

* Second Appeal No. 1255 of 1894.