MUNISAMI REDDI v. ARUNACHALA REDDI.

The Lower Courts both held that the present suit was barred under Limitation Act, schedule II, article 11, as having been instituted more than one year from the last-mentioned date.

The plaintiff preferred this appeal.

Jivaji for appellant.

Krishnamachariar for respondent No. 4.

JUDGMENT.—The question is whether there was any order under section 281 of the Code. When a claim is preferred under section 278 and duly prosecuted, it is incumbent on the Court after investigation of the fact to satisfy itself either that the facts are as stated in section 280 or as stated in section 281. Without being satisfied either way, no order can properly be passed (*Chandra Bhusan Gangopadhya* v. *Ram Kanth Banerji* (1)). In this case the claim was practically withdrawn and there was no investigation.

There being no order within the meaning of section 281, the one year's rule does not apply.

We reverse the decree and remand the suit for trial by the District Munsif. The respondents must pay costs of this appeal, other costs to be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar, and Mr. Justice Best.

SATHIANAMA BHARATI (PLAINTIFF No. 2), APPELLANT,

v.

1893. September 5. 1894. May 1.

SARAVANABAGI AMMAL AND OTHERS, (DEFENDANTS), RESPONDENTS.*

Religious endowments—Gosami mutt—Grant by the head of the mutt to his brother for his maintenance—Suit by a successor to recover the land—Limitation Act—Act XV of 1877, s. 10—Evidence—Yadasts from revenue officials.

In 1544 a village was granted to the head of a Gosami mutt to be enjoyed from generation to generation and the deed of grant provided that the grantee was "to improve the mutt, maintain the charity and be happy." The office of head of the mutt was hereditary in the grantee's family. In 1866 an inam title-deed was issued to the then head of the mutt, whereby the village was confirmed to him and

(1) I.L.R., 12 Calc., 108. * Appeal No. 109 of 1892.

his successors tax-free, to be held without interference so long as the conditions of the grant are duly fulfilled. Yadasts addressed by Tahsildars to the then head of the mutt in 1872 and 1882 were put in evidence to show what the object of the grant was. It was found regard being had to usage, that the trusts of the institution were the upkeep of the mutt, the feeding of pilgrims, the performance of worship, the maintenance of a watershed and the support of the descendants of the grantee. From before 1840 it had been usual for the head of the mutt for the time being to make grants to his brothers or younger sons for their maintenance. In 1842 the father of the present plaintiff being then the head of the mutt granted certain lands in the village above referred to to his younger brother, the deed of grant being in terms absolute. The grantee died about thirty years before the suit and the lands in question came into the possession of his widow (defendant No. 1) and a mortgagee from her (defendant No. 2) respectively. In 1863 the plaintiff's father placed certain other lands in possession of defendant No. 3 who paid rent therefor and received pattas for some years from the plaintiff. In a suit by the plaintiff for possession of the lands in the possession of the defendants it was pleaded, *inter alia*, that the grant of 1843 was binding on him and that defendant No. 3 had a right of permanent occupancy:

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

(2) that the yadasts above referred to were admissible as indicating the general consciousness as to the nature of the grant of the village.

(3) that the grant was an endowment in trust for the mutt and the charities connected therewith, and not merely a grant of property to the original grantee, on which certain trusts were engrafted so as to impose on him an obligation to apply a portion of the income of the village to those trusts.

(4) that the grant of 1843 was valid for the life time of defendant No. 1 (who had become by marriage part of the family of a descendant of the original grantee) but that the property comprised therein was liable to revert to the representative of the mutt on her death.

(5) that the plaintiff, although he had issued pattas, was entitled to recover possession of the lands occupied by defendant No. 3 and not to receive rent from him merely.

APPEAL against the decree of P. Dorasami Ayyar, Subordinate Judge of Tinnevelly, in original suit No. 46 of 1886.

The first plaintiff claimed to be the chief of a mutt situated in the village of Mantithope and he sued to recover possession of certain lands and houses as the property of the mutt. The second plaintiff was his son and the third plaintiff his brother. The first plaintiff died during the pendency of the suit and the proceedings were prosecuted by the second plaintiff.

It was admitted that the property in question orginally formed part of the endowment of the mutt, but the defendants claimed title from a previous head of the mutt. The original grant, which comprised the village where the property in question was situated, was dated 1544, and it provided that the grantee was "to improve the mutt and maintain the charity and be happy," but

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otherwise it was absolute in its terms. By an inam title-deed, dated 1866, the village was confirmed to the then manager and his successors to be held as long as the conditions of the grant are duly fulfilled. Certain yadasts, subsequent in date to the last-mentioned document, addressed by tahsildars to the father of the plaintiff, then the head of the mutt, were put in evidence together with other exhibts to show what the object of the grant was. The Subordinate Judge overruled an objection taken to the admissibility of these yadasts; and he recorded the findings, which are summarised by the High Court, as to the objects of the grant.

The first and second defendants claimed title to the land in question under exhibit XIV, which was an instrument described as a kararnama, dated the 22nd of May 1842, and executed in favour of the plaintiff's father therein described as "by hereditary right the successor and chief of the mutt," by his younger brother who was the husband (since deceased without male issue) of defendant No. 1. The instrument was in the following terms:—

"In accordance with the practice of our adinam, agreements were executed by one Rama Bharati Gosamiyar and (another) Visvanatha Bharati Gosamiyar in favour of their elder brother Bheema Bharati Swamiyar who was our father: also my elder brother Visvanatha Bharati Gosamiyar Avergal has executed a kararnama in favour of you, which you have (thus) obtained from (him). In accordance with these agreements, I have executed now in your favour this kararnama, and the particulars whereof is as follows:—As I have accepted from your hands six varaikkottais of nanjai land, six kayarus of karisal punjai, three kayarus of several punjai, ten pons (in cash), one garden, nine (?) oxen for ploughing, and thirty pons for the price of sheep, &c., you shall hold this itself as my receipt in respect of them all. Moreover, as no house has yet been built and given to me, and as I am yet unmarried, and as no jewels, utensils, &c., have been given to me for the present, I shall soon after I am married and am provided with a house, take from you the jewels, utensils, cows, &c., as stated above, and which were (as in my case) settled upon Visvanatha Bharati Gosamiyar, my elder brother. I shall (thenceforwards) continue to enjoy the aforesaid properties from generation to generation, and for ever shall conduct myself in accordance with your wishes and orders. You shall hold this stamped document itself as a kararnama or written agreement from me, also as a

declaration on my part that I shall have no disputes whatever with you in regard to this settlement, and as a receipt from me for the properties which I have accepted from you. To this effect this agreement has been executed to Sivaprakasa Bharati Gosami-yar the head of the mutt by his younger brother Nataraja Bharati Gosami."

Defendant No. 2 held the land on a mortgage from defendant No. 1. Defendant No. 3 claimed title under a conveyance for value from the plaintiff's father said to have been since ratified by the plaintiff. The plaintiff's case was that the land had been granted to his uncle merely for his maintenance in consideration of his performing certain services in the mutt on the understanding that the land should revert to the mutt on the event of his failure to perform the services or on his death without male issue. Defendant No. 1, on the other hand, pleaded that the land had passed to her husband as his share on a partition of ancestral property. She also pleaded, *inter alia*, that the suit was barred by limitation.

In the first instance the Subordinate Court dismissed the suit, but a re-trial having been ordered, a decree was passed declaring the plaintiff's right of collecting the rents of the lands in suit under the provisions of the Rent Recovery Act, 1865, for the benefit of the mutt and charitable and religious institutions thereto attached; the claim for ejectment being refused.

The plaintiff preferred this appeal and the defendants took objection to the decree appealed against so far as it was prejudicial to their interests.

Bhashyam Ayyangar for appellant.

Krishnasami Ayyar for respondent No. 1.

Anandacharlu and *Varadayya* for respondent No. 2.

JUDGMENT.—This was a suit to recover with mesne profits possession of the properties specified in the plaint from the defendants. The ground of claim is that they are comprised in the endowment of a Gosami mutt and that they are improperly alienated to, or retained by, the defendants. The plaintiff was the chief or representative of the institution, and upon his demise the second plaintiff was brought in as his legal representative.

The mutt is situated at the village of Mantithope, in the Ottappidaram taluk, of the district of Tinnevelly. After its founder

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it is known by the name of Srimat Sankara Bharati Swami Adinam. In the village of Mantithope there are about twenty families of Gosamis, who claim to be descendants of the original grantee and several of them are in possession of small portions of the endowments. The entire village was granted free of assessment to Sankara Bharati according to the plaintiff for the support of the matam and its charities. A Gosami is not a religious ascetic like a Sunniyasi or Tambiran who abjures the world and its pleasures and lives a life of celibacy, but a married man who is considered to live a pious life affording religious instruction to those who seek it from him, performing religious charities and delivering lectures on religious subjects and on the duty of man to God and to his fellow creatures. The specific trusts, to which the income of the village is applicable according to the usage of the institution, are found by the Subordinate Judge to consist (i) in the distribution of sadavarthi (rice and condiments were supplied in lieu of cooked food) in the mutt to Gosayi and other pilgrims who pass through Mantithope; (ii) in the maintaining of puja or worship in the temple called Sankara Bharati Swami kovil; (iii) in supporting a watershed or pandal at a place near the village called Ellandope, and (iv) in providing maintenance to the descendants of the grantee. The eldest male representative of the eldest son of the grantee succeeds to the dignity of the chief of the mutt, and holds the village save such portions of it as have been alienated to others.

The properties forming the subject of this litigation are those parts of the matam endowment which have passed into the possession of the defendants. The first defendant's husband, Nataraja Bharati Gosamiar, was the brother of the first plaintiff's father Sivaprakasa Bharati Gosami and on the 22nd May 1842, the latter executed in favour of the former the agreement, exhibit XIV, by way of making a provision for him and his family. The document purports to have been executed in accordance with the practice of our 'Adinam.' It gives first defendant's husband certain lands and promises to give him a house and some jewels, utensils and cows, &c., soon after he is married. In return for this settlement, the first defendant's husband covenants to the following effect: "I shall continue to enjoy the aforesaid properties from generation to generation and for ever shall conduct

myself in accordance with your wishes and orders." After marrying the first defendant her husband left the village about thirty years ago and has not since been heard of, and the land granted by exhibit XIV passed into her possession. On the 4th September 1885, she mortgaged it for Rs. 1,200 to the second defendant Anandanada Pillai, a stranger to the families of the descendants of the original grantee. As regards this land, the plaintiff's case is that the agreement, exhibit XIV, is invalid that the land was granted in consideration of certain services which the first defendant's husband was to render in the mutt and on the understanding that it was to revert to the mutt either in case he failed to render those services or died without male issue. On the other hand, the first defendant's contention is that the grant was not a service grant, that exhibit XIV granted an absolute estate, and that the plaintiff's claim was barred by limitation. The second defendant's contention was to the same effect, except that he also set up against the plaintiff the mortgage in his favour.

As regards items of lands Nos. 1, 2, 15 to 17 and 19 to 21, the plaintiff's case was that the third defendant obtained them from the first plaintiff's father on a patta for cultivation about nine years ago, and that he was bound to give them up on demand. But the third defendant alleged that the original first plaintiff's father granted the lands in perpetuity for valuable consideration, and that the first plaintiff ratified that grant by issuing pattas for the same for Andus 1053, 1054 and 1055 or the years 1863 to 1865.

Five issues were originally framed in this case. On the first issue, a former Subordinate Judge found that the lands in dispute belonged to the matam. On the second issue, he held that the land, which passed into the possession of the first defendant's husband, was not held by him on service tenure. On the third issue, he was of opinion that the claim was barred by limitation. On the fifth issue, he found that the settlement made by the first plaintiff's father was binding on his successors, and upon those findings he dismissed the suit with costs.

On appeal, however, this Court set aside the decree, on the ground that the investigation was defective, and remanded the case for re-trial. With reference to the order of remand, four more issues were framed, and the defects in the original enquiry

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remedied. On the sixth issue the Subordinate Judge found that the specific trusts of the Gosami mutt were as already mentioned. On the seventh issue, he held differing from his predecessor, that the maintenance of the descendants of the original grantee was a legitimate charge only on the income of the endowment, and that the allotment of land made over to the first defendant's husband was not valid. On the eighth issue, he was of opinion that document XIV was genuine, but that it was not valid so far as it related to allotment of land. He found, however, that the head of the mutt was entitled to the rent, but not to possession of the lands sued for. As for the ninth issue which related to the occupancy right set up by the third defendant, the Subordinate Judge found in his favour. In the result he passed a decree declaring that the head of the mutt possessed only the right of collecting rents due on the lands sued for under the provisions of the Rent Recovery Act for the benefit of the mutt and the charitable institutions attached thereto, and dismissing the rest of the plaintiff's claim, he directed the plaintiff to pay the costs of the third defendant and first and second defendants and plaintiff to bear his own costs. Against this decree the plaintiff has appealed, and the first and second defendants have objected to it under section 561, Civil Procedure Code, in so far as it is against them.

The first objection taken in appeal is that the suit is barred by limitation, and that section 10 of the Limitation Act is not applicable to a suit brought by a person succeeding to the office of trustee. Reliance is placed on 3 and 4 *William* IV, cap. 27, section 25. Section 10 of the Indian Act of Limitations specifies as exempt from its operation suits against a person, in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns not being assigns for valuable consideration, for the purpose of following in his or their hands such property. Unlike the provision of the English Act, section 10 does not state that the plaintiff ought to be a beneficiary or beneficiaries whilst, according to section 437 of the Code of Civil Procedure, a trustee represents the persons beneficially interested when the suit is concerning property vested in a trustee and the contention is between the persons beneficially interested and a third party. It must be remembered that the plaintiff is not the alienor, and as the present manager of the mutt, he is

entitled to sue the assigns of his predecessor in office, on the ground that the assignment was in violation of his trust. This view is in accordance with the decisions in *Mahomed* v. *Ganapati*(1) and *Jamal Saheb* v. *Murgaya Swami*(2). It is next urged, on appellant's behalf, that the Subordinate Judge is in error in holding that appellant was only entitled to rent and not to actual possession of the land in dispute. The Subordinate Judge considers that if pattas are issued under Act VIII of 1865, land-holders are not entitled to eject their tenants, but can only claim rent. He appears to have misconstrued section 12, which regulates the mode of ejectment and provides that the land-holders specified in section 3 are not empowered to eject their tenants from their lands except by a decree of Court or under section 10 or 41 of the Act. On the true construction of section 12, the issue of a patta is clearly not intended to do more than prevent arbitrary ejectment of tenants or to give them a right of permanent occupancy, though the grant or contract, under which their possession commenced, creates either a limited estate or a terminable holding. The Subordinate Judge refers in paragraph 31 of his judgment to an admission by plaintiff that third defendant has been in possession under a lease granted by first plaintiff's father for nine years, but this circumstance is not sufficient to support the finding that the former has a permanent right of occupancy. In our judgment the appellant's contention must prevail.

The real question, then, is whether having regard to the grant or contract under which the defendant's possession commenced, they are entitled to continue in possession and can legally resist plaintiff's claim to eject them.

Exhibit XIV is the kararnama on which first defendant's title rests, and we agree with the Subordinate Judge that that document is genuine. There is no doubt that it is not a mere maintenance grant, but a grant of an absolute estate as alleged by first and second defendants. The words "from generation to generation" and the absence of any clause prohibitive of alienation are consistent only with the view that the intention was to create an absolute estate, not a limited one merely. That this is the proper construction to be put on the document XIV is confirmed by the terms of similar grants made by some of the plaintiff's predecessors to their

(1) I.L.R., 13 Mad., 277, 280. (2) I.L.R., 10 Bom., 34.

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brothers. As recited in document XIV it appears to have been customary in the adinam for the head of the mutt, for the time being, to make a provision for his younger brother by grant of land to him and his heirs. This brings under our consideration the contention on respondent's behalf that the original grant of the village of Mantithope was not a grant of an endowment in trust for the mutt and the charities connected therewith, but a grant of property to the original grantee on which certain trusts were engrafted, so as to impose on him an obligation to apply a portion of the income of the village to those trusts. We do not consider that this contention is tenable. The Subordinate Judge discusses the evidence on the subject under the first issue and decides that issue in plaintiff's favour. But the first and second respondents' pleader draws our attention to exhibits W, R, T, Q, 27, 31, 32, 14, 17, 28, 29 and 30; to exhibits 15, 16, 18, 19, 20, 21, 25 and 26, and to the oral evidence of plaintiff's witnesses 1, 2, 7, 10 and 4 and of defendant's witnesses 2, 3, 8, 9 and 10. Exhibit W is the original grant, dated Andu 719 (1544) and purports to be a grant of the village of Mantithope made by Visvanatha Nayak's Dewan Tiruvengadanadha Naicker to Sankara Bharati Tambiran to be held and enjoyed free of assessment so long as the sun and moon endure from generation to generation. It says that the grantee is thus "to improve the mutt, maintain the charity and be happy." There is no allusion in the inscription to maintenance, and the grant contemplates the improvement of the mutt and the maintenance of the charity as its primary object. Stress is laid on the words "from generation to generation" and on Sankara Bharati instead of the mutt being named as the grantee. But this is not conclusive. The subsequent usage of the institution and several other exhibits in evidence are inconsistent with this contention, and show that Sankara Bharati was probably named as the grantee because the mutt was his mutt.

Exhibit R is the inam title-deed, dated 1st February 1866. It was issued to the manager, for the time being, of Sankara Bharati Tambiran mutt by the Inam Commissioner on behalf of the Governor in Council. It confirms the village to the manager and his successors tax-free to be held without interference "so long as the conditions of the grant are duly fulfilled." It is not possible to reconcile this document with the respondent's contention. Exhibit B is the register of inams prepared by the Inam Commissioner.

In that it is recorded that the grant was made for the support of the Gosai matam at Mantithope and that the matam is well kept up. Exhibit C is the inam statement put in by the first plaintiff's father and the grant is described in it as made by the former Government for the maintenance of the charities conducted in Sankara Bharati Tambiran's matam.

Exhibits T and Q are yadasts addressed by Tahsildars to plaintiff's father, which tend to show that the object of the grant was as found by the Subordinate Judge. They are dated, respectively, in 1872 and 1882. It is contended, on behalf of first defendant, that they are not evidence against her. They are admissible, however, as indicating the general consciousness as to the nature of the grant.

Exhibit 27 is the yakat account of 1803 in which the village of Mantithope is entered as "Sudda maniam village belonging to Gosamiars." There is nothing to indicate that the object with which it was prepared was to show the precise nature of the grant and it is not safe to attach weight to it.

Exhibits 31 and 32 only show that it was customary for the chief of the mutt for the time being to allot lands for the maintenance of his junior sons when he has several sons and to his brothers, and that this practice was followed in 1879 and 1877.

Exhibit XIV under date May 1842 which is the grant relied on by first and second defendants shows that prior to it there had been similar grants.

Exhibit XXVIII is a jamabundy account and gives no useful information.

Exhibit XVII, which was a grant for maintenance made in 1888, describes the usage of the mutt as regards such grants in the following terms:—"As among the hereditary descendants of our adinam, be the number of brothers what it may in each generation, when the eldest of them who is the heir apparent to the dignity comes to be the head of the mutt, it has been the practice with such eldest brother to allot to his younger brothers for their maintenance certain lands, maniyams, houses and grounds and such other properties as may be sufficient therefor and thus to separate them after obtaining from them written agreements for the same."

Exhibits XXIX and XXX are the razinamâh in original suit No. 381 of 1861 and the written statement in original suit No,

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139 of 1860. They also show that maintenance grants were usually made and no partition was allowed.

The other exhibits to which respondent's pleader has drawn our attention are hypothecation bonds and mortgages executed by those to whom lands were granted for maintenance.

The effect of the oral evidence is sufficiently stated by the Subordinate Judge and it is unnecessary to recapitulate it.

Neither the oral nor the documentary evidence proves the respondent's case, that the village was originally granted as private property and not as an endowment. The evidence, taken as a whole, points to the conclusion that the village was granted as an endowment for the mutt and the charities connected therewith. Having regard to the usage of the institution the specific trusts are (1) the up-keep of the mutt, (2) the distribution of sadavarti to Gosayi pilgrims, (3) the performance of puja in Sankara Bharati Swami kovil, (4) the maintenance of a watershed at Ellandope, and (5) the support of the descendants of the grantee. The evidence does not show that at each generation the village was divided subject to the obligation of contributing to the cost of maintaining the charities, or that any portion of the village was specially set apart as trust property and the rest as partible property as would ordinarily be the case if the villages were granted for the personal benefit of the grantee and his heirs, subject to the fulfilment of certain trusts annexed to the grant. The conclusion to which we come is that the village was granted as an endowment for the mutt and the charities connected with it, and that what might remain after the due execution of those trusts was intended to be applied to the maintenance of the grantee or his descendants. It has, no doubt, been usual from before 1840 for the head of the mutt for the time being to make provision for his brother or junior sons, but such grants would be valid, only if they were real maintenance grants. The Subordinate Judge considers that only money payments should have been made and that no lands ought to have been allotted. We do not concur in this opinion; whether maintenance is provided by an assignment of land or paid in cash from time to time there is no difference in principle, provided that the allotment is purely by way of providing maintenance. That which vitiates the allotment is its character as an absolute grant and the grant is bad to that extent only. The first defendant

being by marriage part of the family of a descendant of the grantee, the grant should be declared to be valid during her life and liable to revert to the representative of the matam on her death. The decree of the Subordinate Judge must, therefore, be set aside so far as it declares that the plaintiff is entitled to rent and a decree be passed declaring him entitled to hold the lands on and after the demise of the first defendant.

Each party will bear his or her own costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

ANNAPURNI NACHIAR (DEFENDANT No. 2), APPELLANT,

v.

COLLECTOR OF TINNEVELLY AND ANOTHER (PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.*

1895. March 11, 12. April 10.

Hindu law—Inheritance—Impartible estate—Adoption by a zamindar in conjunction with one of his two wives—Right to succeed to adoptive son.

The holder of the impartible Zamindari of Uthumalai, who married two wives, subsequently made an adoption in conjunction with his junior wife. The zamindar died in August 1891, and the adopted son died an infant without issue in December of the same year:

Held, that the junior wife having taken part in the adoption was entitled to the impartible estate in preference to her co-wife.

APPEAL against the decree of F. H. Hamnett, Acting District Judge of Tinnevelly, in original suit No. 15 of 1892.

This was an interpleader suit relating to the rival claims of defendants Nos. 1 and 2 to succeed to the impartible estate the property of the infant adoptive son of their late husband. The facts of the case was stated sufficiently for the purposes of this report in the judgment of BEST, J.

The *Advocate-General* (Hon. Mr. *Spring Branson*), *Ramachandra Rau Saheb*, *Gopalasami Ayyangar* and *Ranga Ramanujachariar* for appellant.

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* Appeal No. 70 of 1894.