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CHERUKUNNETH MANUKEL NILAKANDHEN NAMBUDIRAPAD AND ANOTHER (PLAINTIFFS),

and

VENGUNAT SIVARUPATHIL PADMANABHA REVI VARMA VALIA NAMBIDI AND OTHERS (DEFENDANTS).*

[On appeal from the High Court at Madras.]

Uraiyama, or rights of Uralan—Trustees and guardians of a temple in Malabar—Melkoima, or right of superintendence inherited by a family—Usage of the temple—Effect of compromise.

The appellants, who were Uralan, managing as trustees and guardians the affairs of a temple in South Malabar, claimed to exclude the respondents from the management jointly with themselves. The respondents, representing the Nambidi family, the descendants of the former rulers of the locality, were entitled to rights termed Melkoima, of superintendence over the temple. Disputes having arisen, the predecessors of the parties in 1845, and again in 1874 had compromised litigation, and had agreed, with the result that they had since then continued to act upon the agreement that they should jointly exercise the powers of management:

Held, that the compromise so agreed to was binding upon the appellants; that the usage, which had been followed since 1845, was the best exponent of the Melkoima right; and that the compromise could not be re-opened.

APPEAL from a decree (28th November 1890) of the High Court (see I.L.R., 14 Mad., 153) affirming a decree (10th December 1888) of the Subordinate Judge of South Malabar at Palghat.

The principal ground on which both the Courts below decided that the plaintiffs were precluded from claiming exclusive rights in the management of the Kachankurissi temple, an ancient

* *Present*: Lords HOBHOUSE, MACNAGHTEN and MORRIS, and Sir RICHARD COUCH.

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devaswom, in the taluk of Palghat in South Malabar, and from disputing the right of the defendants to joint management thereof with the plaintiffs, was that a compromise of suits relating to such rights had been entered into by persons through whom the plaintiffs claimed, with the predecessors of the defendants. Nothing was known of the early management of the temple. The Nambidis of Venganad, ancestors of the defendants, were the original rulers, or Naduvayi, of the country in which it was situated; and continued to rule until the British Government was established over Malabar in 1792. As rulers, the Nambidi possessed a right, not well defined, of superintendence over all religious endowments, without having the ownership. This right was termed Melkoima. As to this reference was made to H. H. Wilson's Glossary, Indian Terms, 338, where the word is translated "superior power or function;" and the words "Melkoima sthanam" are said to be "the exercise of chief authority in the affairs of a temple." Though indicating the right of a ruler, "Melkoima" was in this case also applied to the person in whom the right was vested. The plaintiffs claimed that their family (illom) had Uraiyama right, or held the office of Uralan, or Urallers, or trustees and guardians, of Kachankurissi devaswom in South Malabar from time immemorial. A second office of trustee had, in course of time, been vested in the family of the second plaintiff Cherumpatte Manakkel. Since 1835 the offices had been held by them without dispute. They claimed to be exclusively entitled to manage the temple affairs, admitting, however, that the ancestors of the defendants, the Nambidi of Vergunad, had formerly had the Melkoima. This right they contended had been extinguished when the British Government was established, having been possessed by the defendants' ancestors only so long as their power as rulers remained. Resisting the defendants' interference with the temple affairs, the Uralan then in office had, for the sake of peace, executed a karar in 1845, and a razi in 1874. But the plaintiffs' predecessors were not entitled to alienate or confer any right in respect of devaswom affairs; and the karar and razi were not valid on that ground and also for want of parties.

The first and second defendants—the second, Dhatri Valia Amma, being guardian of seven minor defendants—filed separate written statements that their family had originally been proprietors of the temple and its lands; and they relied on the compromise

and admissions made by the plaintiffs' predecessors in office. They also set up limitation.

The issues raised questions as to the respective rights of the parties, as to the effect of the compromise effected by the karar of 1845, the razi of 1874, and as to the application of limitation.

In the English year 1773, when Haider Ali ruled in Malabar, he granted to the then Raja of Vengunaud, the predecessor of these respondents, exemption from the full payment of land revenue in respect of the temple lands. From a memorandum in a revenue record of 21st March 1809 this exemption appeared to have been recognized in favour of the appellants' family after the annexation of Malabar by the East India Company. The documentary evidence relating to this exemption and to the other matters of temple management before the year 1845 was summarized as follows by the Subordinate Judge :—

"The earliest document filed is exhibit I, a certified copy of a "statement, dated 985 or A.D. 1809 obtained from the Collector's "records, which shows that the lands of the temple were exempted "from revenue in 948 (A.D. 1773) by Haider Ali at the request "of the Nambidi.

"The document next in date is A, a paimash account of the "year 998 (A.D. 1822) in which Cherukunnat and Kariat Nam-"budripads are described as the Uralers of this temple. The "Nambidi is described as the 'Naduvayi or chief of the district.' "He is mentioned as being the Uralan of another temple but not "of the plaint temple.

"Exhibit B. is a decree of the Palghat Munsif in a suit "No. 175 of 1830 brought against first plaintiff's predecessor as "Uralan. The predecessor of second plaintiff or of first defendant "was not a party to the suit.

"Exhibit A.M. is the deposition of first plaintiff's predecessor "taken by the Tahsildar in 1012 or A.D. 1836 during an enquiry "into a petition presented by certain parties alleging that heavy "mortgages were raised on devaswom properties by first plaintiff's "predecessor. In this deposition the latter stated that he and "Tekiniadat Nambudripad were the Uralan of the temple.

"Exhibit A.N. is a deposition given in the same year by the "same person stating that a portion of the temple lands were "exempted from revenue in 983 (A.D. 1808). If this statement

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"is correct it contradicts the statement in defendants' exhibit I. "that the exemption was in 948 or A.D. 1772.

"These are all the exhibits relating to the temple prior in date "to the karar C of 1020 (A.D. 1845) and they tend to show that "first plaintiff's Illom Cherukunnat was always regarded as pos-"sessing the Uraima right in the temple, that the Nambidi as "the Naduvayi, or ruler, of the district possessed what plaintiffs "assert he possesses, and what the Nambidi himself since 1020 or "A.D. 1845 declared that he possessed, a Melkoima right."

In 1845 a suit was brought by the second Uralan against the first Uralan the Nambidi and a tenant to set aside a tenancy which had apparently been granted without the consent of the second Uralan. This suit was compromised by a karar (D.) of the 18th August 1845 on the basis of an agreement (C.) between the two Uralan of the 16th August. The agreement recited the suit relating to land "belonging to Kachankurichi devaswom over which "we both have equal Uraima right and the Nambidi of Vengu-"naud has Melkoima right." It then proceeded as follows:

"As this suit has been compromised on the condition that "all the affairs of the said devaswom are to be caused to be "managed in future also, the daily expenses of the devaswom being "defrayed by the collection of interest, rent, &c., and the cere-"monies, &c., being performed just as they were hitherto jointly "caused to be managed through the Samudayam by us the two "Uralan and the Nambidiri who is the Melkoima, and that the "affairs which are to be conducted unanimously by us both and "the Melkoima shall be so conducted, and that no management "shall be exercised by any one of his own will and pleasure, and "that the affairs which are managed under the entrustment made "to the Samudayam shall, for the preservation of the property of "the devaswom, be conducted with the approval of the three "persons, and that the three persons shall jointly examine and "settle each year's account in the month of Chingom (August-"September) of the same year."

Notwithstanding the above, and the subsequent joint manage-ment, on suing certain tenants of the temple lands, the uncles of the present appellants, being then the heads of their family, alleged that a Nambidi defendant had no right whatever regarding the temple, his former right of Melkoima having become extinct.

Valia Nambidi, the second of these respondents, who was then, during the minority of her son the first respondent, representing the family estate, on the 4th September 1874 filed her written statement in answer to that suit. She denied the plaintiffs' allegations, and asserted the original right of her family to the temple.

On the 24th October 1874 a joint petition was presented to the Court of the Subordinate Judge in which that suit was pending on behalf of the plaintiffs and defendants expressing their mutual desire to have the suit compromised on the footing "of the future "joint management of the temple affairs by the plaintiffs and "Valia Nambidi," who were to appoint new officers and agents for the temple.

On the 19th November 1874 a joint appointment of a new pattamali or agent was accordingly made, and on the 21st November the second compromise was filed in the Court of the Subordinate Judge under section 98 of the then Code of Civil Procedure, Act 8 of 1859, and it was prayed that the suit should be dismissed on the terms of that compromise. This was ordered by the Court on the 3rd December 1874.

Those terms provided for the future joint management of the affairs of the temple by the first and second plaintiffs in that suit, and the second defendant, the present second respondent. The joint management continued down to a short time before the institution of the present suit.

The judgment of the High Court, MUTTUSAMI AIYAR, and BEST, JJ., was the following :—

"The institution in question is an ancient Hindu temple in "South Malabar, and the first respondent is the representative of "the Nambidi family which ruled in former times over that tract "of country in which the temple is situated, whilst the Uraima "right is vested in the illom, or family, of the first appellant, "a Nambudri Brahmin, from time immemorial. There is no legal "evidence before us to show when and by whom the temple was "founded, or what was the nature of management prescribed by "its original constitution. There are, however, certain facts which "are established beyond doubt and which are indeed not disputed "by the appellants, and the Subordinate Judge rests his decision "upon them. The appellants admit, and there is considerable "evidence to show that at least from 1845 the appellants' and "the respondents' families have been in joint management in

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"accordance with the terms of karar C. and razi D., dated the "16th August 1845, which were re-affirmed, except in one parti-"cular which is immaterial to our present purpose, by document "E., dated the 21st November 1874. The circumstances under "which documents C., D. and E. were executed and their contents "are set forth by the Subordinate Judge in paragraphs 16 to 20 of "his judgment, and it will be seen that the documents referred "to the first respondent's predecessors as Melkoimas and the "appellants' ancestors as Uralan, and that they were executed in "adjustment of pending litigation regarding the respective rights of "those persons. It is not urged, as pointed out by the Subordinate "Judge, that either fraud or a wilful suppression of material facts "vitiates the deeds of compromise; but it is contended that they "do not bind the appellants because, first, all the members of their "families, as constituted in 1845, had not joined in their execu-"tion; secondly, that the compromise practically created a new right "and thereby varied the original trusts of the institution; thirdly, "that the Melkoima right being a right of sovereignty, it ceased "on the introduction of the British rule; and fourthly, because no "joint right can be acquired by prescription.

"As regards the first ground of claim it is clearly untenable. "Prior to 1848 the first appellant's grandfather's brother was the "karnavan of his illom, and from 1848 to 1859 it was under the "management of the appellant's father. From 1859 to 1876 the "appellant's uncle was the managing member, and from 1876 to "1882 the appellant's elder brother was in management. The "first appellant has been the head of his family since 1882, and "although all the members of the appellants' family in 1845 did "not sign documents C. and D., the then head of the family signed "them, and the arrangement made by him was acted upon by "his successors and expressly recognized in 1874 and acquiesced "in by all the junior members of his family for more than two "generations and during a period of upwards of forty years. The "contention, therefore, that the arrangement had not the sanction "of the whole family in 1845 appears to us to be entitled to no "weight.

"As regards the second contention, the Subordinate Judge "is right in holding that after the compromise of 1845 and its "ratification in 1874, the appellants are not at liberty to re-open "the question, whether the right of joint management recognized

"in 1845 was then a subsisting right and whether as Melkoima, "the first respondent's family was entitled to participate in "management. It is sufficient to say that the right of joint "management was brought into controversy in a court of justice "and that it was, by way of compromise, recognized as a sub- "sisting right, and as being in accordance with the prior usage of "the institution. It was held by the Privy Council in *Sri Gajapathi* "*Radhika* v. *Sri Gajapathi Nilamani*(1) that when a state of facts "is accepted as the basis of a compromise whereby a suit pend- "ing decision is amicably adjusted, and when the compromise "is not vitiated by fraud, those who were parties to it and their "privies should not afterwards be heard to say, for the purpose of "reviving the controversy, that the real state of things was other- "wise. The principle is the same whether the mistake alleged "to have been made is one of law or of fact. We may here draw "attention to the words, "as hitherto" in document C., as indi- "cating that it did not purport to vary the prior usage of the "institution. Even assuming that the appellants may now be "permitted to show that the respondents' family had no joint "management prior to 1845, the evidence before us cannot be held "sufficiently to establish such contention. In 1821 the Collector "of this district called upon the then Nambidi to pay up the "arrears of the revenue due on devaswom land and this implies "some control on his part over the temple income. Again, in "exhibit A., which is the temple paimash of 1822, the Nambidi is "described as having a Melkoima right over it. Further, exhibit "I. shows that it was the Nambidi who got the devaswom land "exempted from assessment by Haider in 1773. Though the "paimash account is of itself no evidence of title, it is of value "as confirming the view since taken by the Uralan as to the "possession of the Nambidi."

After some notice of arguments by the pleaders on both sides as to parts of the evidence, the Judges further examined the exhibits and stated the opinion that it was impossible to hold upon the evidence that, prior to 1845, the Nambidi had no connection with the temple, nor control over its affairs, and that the recital that document C. recognized and regulated the prior practice was not *bonâ fide*. The judgment then continued thus:—

(1) 13 Moore, I.A., Calc., 497.

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"The next contention is that the Melkoima right is the sove-
"reign right of supervision and that when the Nambidis ceased to
"be rulers, their Melkoima ceased likewise, and that it was there-
"fore not a subsisting legal right in 1845. This is the substantial
"question raised for decision in this appeal. The learned pleader
"for the appellants relies on the definition of Melkoima given by
"Mr. Græme, the Special Commissioner of Malabar, about 1820,
"as 'the right which the sovereign power possessed over property
"of which ownership is in others. It is a right of superintend-
"ence, an incident of sovereignty.' The Melkoima right was also
"described by Mr. Justice Holloway, whilst District Judge of
"North Malabar, in Appeal Suit 118 of 1861 in the following
"terms: 'This is not only not the same, but absolutely incom-
"patible with ownership. It was the right of the sovereign power
"possessed over property of which the legal ownership was in
"others. That sovereign power, and the right of interference
"which nothing can prevent these Malabar Rajas from asserting,
"have of course wholly ceased.' Mr. Wigram, a former District
"Judge of Malabar, gives a similar definition (Wigram on Malabar
"Law and Custom). On the other hand, the respondents' pleader
"refers to Logan's Treatise on Malabar, Vol. II, p. 177, wherein
"the Uraima right is included among the four functions of a
"Desavali, and to exhibit A. in which the Nambidi is described as
"Naduvali. It appears from Logan's Glossary, page 211, that
"no one was called a Naduvali who had not at least 500 Nayars
"attached to his range; any number below that ranked a person
"as a Desavali. Our attention is also drawn to the ancient
"constitution of Hindu temples in Malabar as described by
"Mr. Conolly, a Collector of Malabar, in his letter to the Board of
"Revenue which is cited in R.A. 35 of 1887. 'The pagodas of
"Malabar,' says Mr. Conolly 'generally are, and have always
"been, independent of Government interference. They are either
"the property of some influential family, the ancestors of which
"either built or endowed them or, as is more commonly the case,
"are claimed and managed by a body of trustees who derive their
"right from immemorial inheritance and conduct the affairs of the
"temple under the patronage or superintendence of some Raja or
"person of consideration. This latter state of things, it will be
"seen, is nearly that which the Government are now desirous of
"introducing everywhere.' It will be seen that the above passage

"throws light also on the policy which the British Government "was inclined to adopt, viz., that of continuing the supervision of "the Raja who was the patron, as it originally existed, in the "interests of certain temples, instead of referring that supervision "solely to the *status* of the person exercising it as sovereign for "the time being, and declaring it to have ceased on the annexation "of Malabar. There is some indication of such policy having "been pursued in this case as in the Guruvayur devaswom case "(Appeal Suit 35 of 1887), for the Revenue authorities have "corresponded with the Nambidi relating to matters connected "with the temple, whilst there are traces of the continuance of "the right of interference by the Nambidi family subsequent to "the annexation of Malabar. The real question then which we "have to decide is this: Are we to ignore the state of things "which has existed admittedly from 1845, and probably from the "commencement of the century, and which was submitted to by "the Uralan as one consistent with the ancient usage and constitu-"tion of the institution and continued and countenanced by the "British Government as conducive to the protection of the interests "of the institution; and are we now to deduce a rule of decision "from the abstract theory of Melkoima as it existed prior to "British rule and to change the usage and unsettle what was set "at rest by a compromise forty years ago? We have no hesitation "in answering the question in the negative. In cases in which "there is a conflict between an ancient theory and the modern "usage in a religious institution, Courts of Justice must see whether "the usage is referable to some other legal origin with reference "to the facts of each case, if not to the ancient theory. As "observed by the Judicial Committee in the Ramnad case (12 "Moore's I.A., 390) with reference to a theory deduced from the "ancient Hindu Law of Niyoga or appointment in connection "with the law of adoption, the abstract theory has a judicial value "for the purpose of explaining and upholding the existing usage "and not for the purpose of ignoring it. It is then urged for the "appellants that the joint enjoyment, however long, can be referred "to no legal origin. But it must be observed that from what has "been stated above such legal origin may be found in the continu-"ance of what was Melkoima in ancient times as a co-trusteeship "subsequent to the British rule with the tacit sanction of the "British Government, or in the *status* of the Nambidi family as

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"patrons of the institution as part of its ancient constitution, a "*status* which did not cease on the introduction of the British rule. "It must have been well known in 1845 that the sovereign power "vested in the British Government, and the term Melkoima in "document C must therefore be taken to be a word of description "or distinction. The parties concerned took for their guide the "subsisting usage of the institution and agreed to continue it "without caring to ascertain to what legal relation of the Nambidi "to the temple the continued participation in management subse-"quent to the British rule might be referred.

"As regards the last question, viz., of limitation, it has been "decided by the Privy Council that the twelve years' rule is appli-"cable when there is no question for recovering any property for the "trusts of the institution and when the plaintiff sues only for his "personal right to manage or to control the management of the "endowment (L.R., 10 I.A., 96). When two persons have been "in joint management for more than forty years, the presumption "is that they have a joint right of management. This is not a "case of exclusive possession of portions of the same property at "different periods or a case of *contraria possessio* and the case in "L.R., 12 App. Ca., 544, is not in point. The decision of the "Subordinate Judge that the claim is barred by limitation is also "right.

"The appeal fails and is dismissed with costs."

On this appeal Mr. *J. D. Mayne*, for the appellants, argued that their predecessors in office as Uralan holding a trust could not effectively transfer the rights and duties belonging to it by the compromises of 1845 and 1874. They had no power to give up a portion of their Uraima rights to the Nambidi, or to invest any of the latter with the right of management of the temple. If the effect of the two agreements was to confer on the defendants' predecessors any of the powers held by the Uralan as trustees, the agreements could not be carried out, as the office of trustee of the temple could not be transferred either wholly or in part. It was submitted, however, that the agreement of 1845 with the Nambidi as Melkoima recognized no right in them, but their right, of that description; and did not operate to detract from the powers of the Uralan, who remained the sole guardians and trustees, with executive powers. This agreement was acted upon till 1874, when the suit of that year was partly directed at checking the encroachments of the Nambidi

as Melkoima, the defence of the latter showing that they asserted rights of exclusive property, rights which the razi of that year was framed to negative. The Melkoima rights could be recognized notwithstanding these documents of compromise, and without any unreasonable construction of them. The plaintiffs asked for a declaration that they were entitled to exercise the full powers of Uralan of the temple, subject only to the superintending influence of the Melkoima as formerly recognized. Reference was made to *Raja Vurma Valia* v. *Ravi Vurma Mutha*(1) as showing that persons holding such a trust as that of Uralan of a temple are incapable of transferring it at their own will, and to Wigram on "Malabar Law and Custom."

Mr. *R. V. Doyne*, for the respondents, was not called upon.

Their Lordships' judgment was delivered by Lord MORRIS.

The appellants are the plaintiffs in a suit which was dismissed by the Subordinate Judge of South Malabar on the 10th December 1888, and was again dismissed on appeal by the High Court of Madras on the 28th November 1890. The appellants sought for a declaration that they as Urallers were entitled to the exclusive management of the affairs of the temple of Kachankurissi, and that the respondents had no right over or right of management in the said temple, an ancient Hindu temple of such antiquity that nothing is known as to its foundation or original constitution. The respondents are the representatives of the original rulers of the district in which the temple is situated, who so continued till the British sovereignty was established over the country in the year 1792. The family of the appellants appear to have always held the office of Urallers or managers of the temple, while the Nambidi possessed certain sovereign rights of superintending the temple, called Melkoima rights. As long since as the year 1845 disputes arose between the ancestors of the appellants and respondents, and a suit was commenced as to the management of the temple, which was settled by a karar on the 16th August 1845; and in accordance therewith the parties two days afterwards filed a razi withdrawing the suit. The karar provides that the affairs of the temple were to be managed and that the ceremonies were to be performed jointly "just as they were hitherto," and for a period of thirty years afterwards, namely until 1874, that arrangement was carried out. In

(1) L.R., 4 I.A., 76; I.L.R., 1 Mad., 235.

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1874 fresh disputes sprang up between the Urallers and the Nambidi, and led to a suit in which the Urallers sought to recover certain lands belonging to the temple from a tenant who held under a demise granted by the Samudayam appointed by the Urallers and the Nambidi according to the agreement contained in the karar of 1845. This suit was compromised, and in a razi of the 21st November 1874, terms were set out, which again determined that there should be a joint management of the affairs of the temple by the Urallers and the Nambidi. This razi was acted upon until the date of the present suit, the Urallers and the Nambidi jointly appointing a Samudayam and a Pattawali, and joining in suits to recover temple lands and in applications to execute decrees.

Their Lordships are of opinion that the state of things which has admittedly continued since 1845, and which was probably the state existing before that time and since the establishment of British sovereignty, cannot now be questioned, and that the compromise of their rights entered into in 1845 and 1874 by the Urallers and Nambidi is binding upon them and their successors, and cannot be now re-opened upon any theory of the extent of the Melkoima right in the abstract. The usage which has existed for so long a period is the best exponent of the Melkoima right vested in the respondents, a right twice acquiesced in by the appellants or their predecessors in legal proceedings in which the opportunity was afforded of a definite decision as to the rights of the respective families. Their Lordships will therefore humbly advise Her Majesty that the judgment of the High Court ought to be affirmed and the appeal dismissed. The appellants must pay the costs of the appeal.

Appeal dismissed.

Solicitor for the appellants—Mr. *R. T. Tasker.*

Solicitors for the respondents—Messrs. *T. L. Wilson & Co.*