PRIVY COUNCIL.

RAMANATHAN CHETTI, DEFENDANT,

v.

MURUGAPPA CHETTI, PLAINTIFF.

P. C.* 1906. May 1, 24.

[On appeal from the High Court of Judicature at Madras.]

Hindu law--Endowment—Hereditary managers or trustees—Right of management vested by descent in two branches of a family—Relinquishment of right by junior branch to member of senior branch—Alteration thereby of turns of management—Continuous usage by senior branch—Delegation of duties of trustees.

On the death of the sole manager of a Hindu temple and endowed property attached to it, the managership of which was hereditary in his family without any beneficial interest in the endowed property or income, the office devolved on his male descendants by his two wives, there being four in each branch. Until 1881-82 one member of each branch took the management for one year in alternate succession. In 1882 the members of the junior branch relinquished their rights in the management in favour of the plaintiff who was member of the senior branch and for 19 years immediately before suit there had been a settled order of succession amongst the members of the senior branch, the plaintiff in each period of eight years taking five turns (one in his own right and four in the turns of each member of the junior branch), and the other members of the senior branch (of whom the defendant was one) taking one turn each. On the expiration of one of the defendants' turns of management on 13th July 1899 he made over the temple to the plaintiff but retained the endowed property. In a suit brought on 3rd September 1900 to recover possession of it:

Held, by the Judicial Committee (upholding the decisions of the Courts in India) that the unbroken usage during the time the order of succession had continued was conclusive evidence against the defendant of a family arrangement to which the Court was bound to give effect until it was validly altered, or superseded by a new scheme effected with the concurrence of all parties interested. It was one which those parties were competent to make without applying to the Court; and it was not for the defendant at his will and pleasure to disturb an arrangement of which he had on more than one occasion taken the benefit; nor could he in this suit set up the rights of the junior branch against the plaintiff.

The manager of the temple was by virtue of his office the administrator of the property attached to it as regards which he was in the position of a trustee. As regards the service of the temple and the duties appertaining to it he was in

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*Present: Lord MACNAGHTEN, Sir ANDREW SCOBLE, Sir ARTHUR WILSON, and Sir ALFRED WILLS

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the position of the holder of an office or dignity which may have been originally conferred on a single individual, but which in course of time had become vested by descent in more than one person. In such a case in order to avoid confusion it was not unusual, and certainly not improper, for the interested parties to arrange amongst themselves for the due execution of the functions belonging to the office in turns, or in some settled order and sequence. There was no breach of trust in such an arrangement nor any improper delegation of the duties of a trustee.

APPEAL from a judgment and decree (17th August 1903) of the High Court at Madras, which substantially affirmed a decree (30th April 1901) of the Subordinate Judge of Madura (East), and decreed the respondent's suit.

The main question in this appeal related to the right to the management of certain endowed property consisting of a Hindu temple and certain villages assigned for the support of its services. The right to manage the temple in question and the villages endowed for its maintenance was admittedly hereditary in the family of the plaintiff and defendant who were descended from one Mayandi Chetti who was the last sole manager of the endowment. The members of the family had no beneficial interest in the endowed property, being bound to apply the whole of the net profits of it to religious and charitable purposes connected with the worship of the temple deity.

Mayandi Chetti had two wives, and on his death his private property was divided into two portions, one-half being taken by the issue of each of the wives; and an agreement was come to by which the management of the temple and the endowed property was vested in the four members of the senior branch (that is, the descendants of the first wife) and the four members of the junior branch (descendants of the second wife) of the then descendants of Mayandi Chetti. Each branch was given the right to manage for one year, the senior and junior branches managing in alternate years. In 1880 disputes having arisen as to the order in which the members of the senior branch, namely, Chidambaram, Ramanathan (the defendant), Narayan and Murugappa (the plaintiff) should manage, an agreement was made on 14th July 1880 which provided that after excluding the one-half period of the years during which the junior branch should manage the temple Chidambaram should, according to the practice theretofore observed, manage for one year from 14th July 1880, Ramanathan for one year, Murugappa for one year, and Narayan for one year.

In May 1882 the plaintiff alleged that the members of the junior branch relinquished to the plaintiff their rights to manage in the years when the management fell to their turn; and that the agreement thus come to was made with the knowledge and consent of the defendant and was acted on for a long term of years; and for a period considerably more than 12 years prior to the institution of the present suit the plaintiff exercised the right to manage in each of the years in which but for the said agreement each one of the four members of the junior branch would have managed.

In due course the defendant managed from 15th July 1898 to the 13th July 1899. On the expiration of that period the plaintiff was entitled to manage for the next succeeding three years; and the defendant, on the completion of his turn, made over to the plaintiff's agent possession of the temple, the villages, and certain books of account: but disputes arose with regard to the jewels belonging to the temple which the defendant retained; and in consequence of these disputes the defendant again took possession of the villages and books of account, evicted the plaintiff's agent, and denied the plaintiff's right to manage: whereupon on 3rd September 1900 the plaintiff instituted the present suit to recover possession of the villages with mesne profits, and to recover the jewels or their value, and the books of account.

The defendant denied that he had made over possession of the temple and endowed villages to the plaintiff, and asserted that he was in rightful possession thereof and carrying on the religious and charitable work connected with the temple. He also denied that there had been any renunciation of trusteeship in favour of the plaintiff, and submitted that such renunciation, if made, was void and of no effect in law, and that the arrangement by which the management was held for a year by each of the trustees was subject to revocation at the instance of any of them.

The questions now material arising out of the pleadings and issues, were (*a*) whether a scheme of management was settled by which each branch of the family managed for one year; and whether such scheme was revocable at will? (*b*) Whether the members of the junior branch of the family delegated their rights to manage to the plaintiff, and to this extent the scheme was validly altered? (*c*) Whether any claim by the members of the junior branch now to manage was barred by limitation?

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(*d*) Whether it was open to the defendant to set up the rights, if any, of the junior branch against the plaintiff's claim ?

Both Courts decided the suit in favour of the plaintiff. The decision of the High Court (BENSON and BHASHYAM AYYANGAR, JJ.) in which the facts of the case and the findings of the Subordinate Judge are sufficiently stated, is reported in I.L.R., 27 Mad., 194.

On this appeal,

Cohen, K.C., and *W. C. Bonnerjee* for the appellant contended that the Courts in India were in error in holding that the members of the junior branch of the descendants of Mayandi Chetti had not lost their rights to the management of the temple and endowed villages by the operation of the law of limitation. A binding arrangement which excluded the junior branch and substituted the respondent for them could not be validly made. Some of several trustees could not substitute for themselves another person as trustee so as to bind other trustees who objected, and to their exclusion. To do so was to give effect to a transfer of rights without attempting to prove the transfer. To any such arrangement of the turns of management as that now relied on by the respondent the appellant was entitled to object, and this notwithstanding that the members of the junior branch were not represented, and even if their rights were extinguished. The turns by which the trustees exercised the management were, it was submitted, liable to alteration at the will of any of these members, and were not absolutely and permanently binding on them. The Court could not declare that some of the trustees in rotation should, for a definite period, enjoy the right of management, to the exclusion of others. *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj*(1) was referred to. Here, as in that case, there was no emolument attached to the office of trustee.

Finlay, K.C., and *DeGruyther* for the respondent contended that the scheme in accordance with which the management of the endowment had been apportioned amongst the trustees was a valid one, and not revocable by the will of the appellant. It was open to the members of the junior branch, and not contrary to Hindu Law, to relinquish their rights of management to the respondent, and by that relinquishment the original scheme had been validly altered in a manner which was binding on the

(1) I.L.R., 19 All., 423 at pp. 432, 433.

appellant. That arrangement had been in operation for 19 years, and up to the date of suit, and he could not now challenge its operation as being illegal, both because the delegation of their rights by the junior branch to the respondent was valid, and also because it was not open to do so by reason of the provisions of the Limitation Act. Reference was made to *Manoharam* v. *Pranshankar*(1); Mayne's 'Hindu law,' 6th edition, page 568, para. 439, and page 612, para 468; *Gossamee Sree Greedhareejee* v. *Rumaulolljee Gossamee*(2); and *Jagadindra Nath Roy* v. *Hemanta Kumari Debi*(3). The appellant did not claim for himself any right to management during the three years from 1899 to 1902, and he could not now set up against the respondent the rights of the members of the junior branch of the managers.

Cohen, K.C., replied citing *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj*(4) and *Trimbak Ramkrishna Ranade* v. *Lakshman Ramkrishna Ranade*(5).

24th May 1906.—The judgment of their Lordships was delivered by—

Lord MACNAGHTEN.—In the village of Kottoor, in the Zamindari of Sivaganga, there is a Hindu temple dedicated to the public worship of the deity in whose honour it was founded, and endowed with the revenue of three villages. The office of manager of this temple is hereditary in a family of which the appellant and respondent are both members, but the family has no beneficial interest in the property or in the income of the temple.

The office of manager was formerly vested in one Mayandi Chetti, who was grandfather of the respondent and great-grandfather of the appellant. On Mayandi's death the office devolved by inheritance on his male descendants by his two wives. There were four by each wife, or eight in all. One member of each branch took the management for one year in alternate succession until the year 1881-82. About that time the members of junior branch renounced or relinquished their claim to the office in favour of the respondent who is a member of the senior branch. During the 19 years immediately preceding the institution of this suit, in

(1) I.L.R., 6 Bom., 298.
(2) L.R., 16 I.A., 137; I.L.R., 17 Calc., 3.
(3) L.R., 31 I.A., 203 (208); I.L.R., 32 Calc., 129 (139).
(4) I.L.R., 19 All., 428 at pp. 432, 433.
(5) I.L.R., 20 Bom., 495 at pp. 499, 500, 501.

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each cycle of eight years, there has been a settled order of succession among the members of the senior branch. The respondent has had five turns, and the appellant and the other two representatives of the senior branch one turn each.

In accordance with this arrangement the appellant held the office of manager of the temple, and the property belonging to it, from 1st Adi of the year Vilambi (15th July 1898) to 30th Ani of the year Vikari (13th July 1899). On the expiration of that year it was the respondent's turn to hold office for the next three years—one year in his original right and two years in right of the junior branch. The appellant handed over the temple to the respondent, but he kept back the jewels and retained or retook possession of the three villages with which the temple is endowed.

The respondent then brought this suit to recover the jewels and the villages, with mesne profits. The appellant did not dispute the facts alleged by the respondent, but he set up various defences on points of law. Both the Subordinate Judge and the High Court decided against him.

In their Lordships' opinion the case is a very simple one. They think the unbroken usage for a period of 19 years is as against the appellant conclusive evidence of a family arrangement to which the Court is bound to give effect. Twice during that period of 19 years the appellant has, in his proper turn, enjoyed the position of manager for a year. The arrangement seems to have been a perfectly proper arrangement conducing to the due and orderly execution of the office. It was one which the Court would no doubt have sanctioned if its authority had been invoked. It was one which, in their Lordships' opinion, the parties interested were competent to make without applying to the Court. If the appellant wishes to set it aside and to have a new scheme settled, he must take proper proceedings. If he has any ground for attacking the management of the temple or the administration of the property attached to it, the Courts are open. But it is not for him, at his will and pleasure, to disturb an arrangement of which he has on more than one occasion taken the benefit. It is plain that the arrangement was not intended to be merely temporary, nor can it be regarded as precarious. It must hold good until altered by the Court or superseded by a new scheme effected with the concurrence of all parties interested.

The argument on behalf of the appellant seems to have been founded on a mistaken analogy. The manager of the temple is by virtue of his office the administrator of the property attached to it. As regards the property the manager is in the position of a trustee. But as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity which may have been originally conferred on a single individual, but which, in course of time, has become vested by descent in more than one person. In such a case, in order to avoid confusion or an unseemly scramble, it is not unusual, and it is certainly not improper, for the parties interested to arrange among themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence. There is no breach of trust in such an arrangement nor any improper delegation of the duties of a trustee.

The members of the junior branch are not before the Court. Their rights, if they have any, are not affected by this suit. The appellant cannot be allowed to put himself forward as their champion to disturb an arrangement with which they seem to be quite content.

Their Lordships will humbly advise His Majesty that the appeal must be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitors for the appellant: *Sanderson, Adkin, Lee, D. Eddis.*

Solicitor for the respondent: *Douglas Grant.*