APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Burn.

BALASWAMY AYYAR AND TWO OTHERS (PLAINTIFFS), APPELLANTS,

v.

VENKATASWAMY NAICKEN AND TWENTY-SEVEN OTHERS (DEFENDANTS), RESPONDENTS.*

1916, September, 28 and 29 and October, 2 and 19.

Hindu Law—Mutt, head of—Power of, to grant permanent lease—Limitation Act (IX of 1908), art. 134—Permanent lease, a transfer within the article.

Although the head of a *mutt* is entitled to appropriate part of the income of the properties of the *mutt* to his own maintenance, he is only a trustee in respect of those properties, and he is ordinarily incompetent to grant a permanent lease of the *mutt* properties. A permanent lease for an annual rent is a transfer for a valuable consideration within article 134 of the Limitation Act (IX of 1908) and the transferee acquires an indefeasible title to the permanent lease by possession for 12 years as provided by the article.

Knowledge that the title of the transferor is only a limited one cannot by itself disentitle the transferee to the benefits of article 134.

Ram Parkash Das v. *Anand Das* (1916) I.L.R., 43 Calc., 707 (P.C.), *Subbaiya Pandaram* v. *Mahammad Musthapa Maracayar*, Appeal No. 13 of 1916 and *Ram Kani Ghose* v. *Raja Sri Hari Narayan Singh Deo Bahadur* (1905) 2 C.L.J., 546, followed.

APPEAL against the decree of S. MAHADEVA SASTRIYAR, the Temporary Subordinate Judge of Ramnad at Madura, in Original Suit No. 61 of 1914.

The facts are given in the first paragraph of the judgment of BURN, J.

A. Krishnaswami Ayyar for the appellants.

S. Muthia Pillai for the first respondent.

S. R. Muttuswami Ayyar for the second respondent.

B. Sitarama Rao for the respondents Nos. 3 and 28.

T. Narasimha Ayyangar for the twenty-seventh respondent.

BURN, J.—The facts of this case, as far as it is necessary to state them, are as follows :— BURN, J.

On 17th March 1891, the second plaintiff obtained a permanent lease (Exhibit A) of certain land within the limits of Madura town from the *Matathipathi* of Sri Vyasaraya Mutt the seat of which is in the State of Mysore. The second

* Appeal No. 52 of 1915.

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plaintiff was a near relative of the grantor. The rent reserved was a fixed sum, Rs. 24 *per annum*. The grantor died shortly after the execution of Exhibit A. His successor held office till 1906 when the twenty-sixth defendant became head of the *mutt*. In 1902, the second plaintiff sublet (Exhibits D and D 1) to first defendant for a period of ten years, and in 1905, the second plaintiff and his son the third plaintiff sold their rights, under Exhibit A to first plaintiff (Exhibit E). From 1905, the properties controlled by the heads of the *mutt* were managed by the Diwan of Mysore, under powers of attorney executed by the *matathipathis*, and the Diwan in turn empowered defendant's first witness to conduct the management. In 1908, defendant's first witness visited Madura and it was then only that he became aware of the nature of the lease granted to the second plaintiff. He at once objected to it and tried to induce first defendant to attorn to him. This first defendant at that time refused to do. In November 1911, however, first and second defendants took a lease of the land for 17 years from defendants' first witness (Exhibit V). At the end of September 1912, the term fixed in the lease deed (Exhibit D) expired. The rent for the whole period had been paid in advance. Defendants Nos. 1 and 2 are admittedly in possession of the land and claim to hold it under Exhibit V. In 1908, defendant's first witness objected to the lease of 1891 on the ground that it was not competent to the head of the *mutt* to grant a permanent lease of the kind. He tried to get first plaintiff to come to terms but in vain. Certain payments were made by first plaintiff after 1908 and the effect of these is a subject of controversy between the parties. First plaintiff seeks (amongst other reliefs) a declaration that he is the permanent lessee of the property and a direction to the defendants to deliver up possession of it.

The main contentions on behalf of first plaintiff are: (1) that the permanent lease is binding on the grantor and his successors, (2) that a valid title has been acquired under the provisions of the Limitation Act, and (3) that the defendants are estopped from denying the first plaintiff's title. The findings of the learned Subordinate Judge are against the plaintiff's appellants on all these points. With regard to the first point there is no doubt that the head of a *mutt* cannot in the absence

of necessity bind his successors in office by a permanent lease at a fixed rent for all time. This would be so, even if the rent had been adequate in 1891: *Maharanee Shibessouree Debia* v. *Mothooranath Acharjo*(1). There is no allegation much less proof, of any such necessity. The first contention must be rejected.

In connexion with the second point, a question arises as to the nature of the endowment and the position of the head of the *mutt* in relation to it. The exact terms of the original grant are not in evidence. It was conceded in argument that the grant was made by one of the Naicken dynasty of Madura. The case for the appellants is that the endowment was for a specific purpose, *i.e.*, for the worship of Gopalakrishna Swami who is described by defendant's first witness as the "Titular-deity of the *mutt*." The evidence does not support this contention and it has been found against in the Lower Court. A statement made by a local agent of the *mutt* during the Inam Commission inquiries is relied upon for the appellants. It was apparently unsupported by any documentary evidence. The description of the *inam* as given at the close of the inquiry, is that it was granted "for the support of Vyasaraya *Madam*" (Exhibit L): compare also description in Exhibit F. The evidence for the defendants is that the income from this property is not appropriated to any particular purpose but forms part of the general funds of the *mutt*. I think the grant must be held to have been made for the general purposes of the *mutt*.

What then is the position of the head of the *mutt* in relation to the general endowments of the institution? In *Sammantha Pandara* v. *Sellappa Chetti*(2), there is a description of the nature of the generality of such institutions and the incidents of the property which is devoted to their mainten ance. The property is stated to be,—

"in a certain sense, trust property; it is devoted to the maintenance of the establishment, but the superior has large dominion over it, and is not accountable for its management nor for the expenditure of the income provided he does not apply it to any purpose other than what may fairly be regarded as in furtherance of the objects of the institution."

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In *Giyanasambandha Pandara Sannadhi* v. *Kundasami Tambiran*(1), a description is given of how the endowments of *mutts* were acquired and this description appears to fit the case now under consideration in so far as the facts have been ascertained. The judgment then proceeds to lay down that the head of the *mutt* came to own its endowments :—

"On trust for the maintenance of the *mutt* for his own support for that of his disciples, and for the performance of religious and other charities in connexion with it according to usage."

In *Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami*(2), a different view was taken as to the position of the head of a *mutt* towards its endowments. It is this ruling which forms the basis of the judgment of the Lower Court on the point now under consideration. The question was again examined by a Full Bench in *Kailasam Pillai* v. *Nataraja Tambiran*(3). As I read the judgments in the last mentioned case it was held that no general rule could be laid down and that each case must be judged on the particular facts. SANKARAN NAIR, J., appears to accept the statement of the law in *Giyanasambandha Pandara Sannadhi* v. *Kundasami Tambiran*(1), as strictly accurate with regard to the endowments there referred to [*vide Kailasam Pillai* v. *Nataraja Tambiran*(3)], which seem to me similar in kind to the endowment now in question.

It is not in my opinion, necessary to discuss these cases in detail, because in my opinion, the matter is now governed by the decision of the Privy Council in *Ram Parkash Das* v. *Anand Das*(4). The nature of the interest of the head of a *mutt* in the *mutt* property is declared in clear terms :—

"The whole assets are vested in him as the owner thereof in trust for the institution itself" (page 713).

Again at page 714—

"the nature of the ownership is, as has been said, an ownership in trust for the *mutt* or institution itself, and it must not be forgotten that although large administrative powers are undoubtedly vested in the reigning *Mahant* this trust does exist and must be respected."

And at page 732, in referring to the retirement of the head of the *mutt*, it is said ;

"The *Mahant*, in their Lordships' opinion, is not only a spiritual preceptor but also a trustee in respect of the *mutt* over which he presides."

(1) (1877) L.R., 10 Mad., 375 at p. 386. (2) (1904) L.R., 27 Mad., 435.
(3) (1910) I.L.R., 33 Mad., 265 (F.B.). (4) (1916) I.L.R., 43 Calc., 707 (P.C.).

Their Lordships seem to me to lay this down as a rule of general applicability, for whereas in the matter of succession to the headship, the usage and custom of a *mutt* have to be considered, in each case this is expressly stated. It is true that the point to be decided in the case related to the office of superior of the *mutt* and not to the management of the other property and that the latter decision of this Court does not seem to have been referred to. The judgment however opens with a considered pronouncement as to the position of the head of a *mutt* as to his functions and his legal position with regard to the endowments. The fact that certain decisions of this Court may not have been referred to does not make the ruling any the less binding.

There do not appear to be any circumstances peculiar to the present case which would exclude it from the operation of the general rule. It seems to me therefore that the sole beneficiary is the *mutt*. This is not an instance in which there is any individual interest in the head of the *mutt* independently of the institution itself. He is no doubt entitled to appropriate part of the income to his own maintenance on account of his position in the *mutt*, but his rights in this respect are the same in kind as those of others connected with the *mutt* who are entitled to be supported from its funds. In this view it is unnecessary to consider the bearing on the question of limitation of the cases, where it has been held that the head of the *mutt* had a personal interest in the property alienated: *e.g.*, *Abhiram Goswami* v. *Shyama Charan Nandi*(1) and *Narsaya Upada* v. *Venkataramana Bhatta*(2). The decision in *Muthusamier* v. *Sree Sreemethanithi Swamiar*(3) proceeds on the footing that the position of the head of a *mutt* is that enunciated in *Vidyapurna Tirthaswami* v. *Vidyanidhi Tirthaswami*(4); but as already stated, this view appears to be overruled by the decision of the Privy Council.

I think, therefore, that the alienor held the property simply as a trustee. It has been held in *Rameswar Moalia* v. *Sri Sri Jin Thakur*(5), that a permanent lease is a transfer within the meaning of article 134 of the Limitation Act of 1908. The same decision and *Narsaya Upada* v. *Venkataramana Bhatta*(2) are

(1) (1909) I.L.R., 36 Calc. 1003 (P.C.) (2) (1912) 23 M.L.J., 260.
(3) (1915) I.L.R., 38 Mad., 356. (4) (1904) I.L.R., 27 Mad., 435.
(5) (1916) I.L.R., 43 Calc., 34.

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authorities for holding that the annual rent is a valuable consideration. The requirements of the article would therefore seem to be fulfilled.

It has however been urged that the appellants are not entitled to take advantage of the article, because the second plaintiff was aware at the time he obtained the lease of the position of his lessor. The plaint alleges that the *matathipathi* was a trustee and the second plaintiff in his evidence describes him as a "trustee merely". There is nothing in the actual wording of section 10 of the Act or in article 134 to support the contention. It is however argued that this has been held to have been the meaning of the provision in the Act of 1877 and that these rulings are not affected by the changes in wording made in 1908: *vide, Tholasinga Mudali* v. *Nagalinga Chetty*(1). The rulings relied on appear to rest on the remarks of Lord CAIRNS in delivering the judgment of the Privy Council in *Radanath Doss* v. *Gisborne*(2). In that case, the actual finding was that the transaction was consistent with the view that the alienee intended to take only such interest as the transferor was competent to alienate (vide pages 17 and 19). This decision has been explained by MOOKERJEE, J. in *Ram Kani Ghose* v. *Raja Sri Hari Narayan Singh Deo Bahadur*(3) and quite recently by AYLING and SRINIVASA AYYANGAR, JJ. in *Subbaiya Pandaram* v. *Mahammad Musthapa Maracayar*(4). In the latter case, the later rulings of this Court have also been considered and distinguished. The fact of knowledge may be an important piece of evidence in judging of what interest the transferee contracted to take especially where (as in most of the cases cited) the transferor was a mortgagee; but such knowledge cannot by itself disentitle the transferee to the benefit of article 134 of the Act. In the present case, I entertain no doubt that it was the intention of the grantor to create a permanent lease and that second plaintiff intended to take and did take the lease as a permanent one. His subsequent dealings with the property support this view. The grantor died a few months after the execution of Exhibit A. During the fourteen years that his successor held office the second plaintiff continued to hold on the terms of the

(1) (1916) 3 M.L.W., 19.
(2) (1871) 14 M.I.A., 1.
(3) (1905) 2 C.L.J., 546.
(4) Appeal No. 13 of 1916.

lease deed. I would respectfully follow the view enunciated by MOOKERJEE, J. in the case referred to and hold that the second plaintiff perfected his title to a permanent lease, as more than twelve years elapsed since the grant. The lessor intended to grant and the lessee intended to acquire an interest greater than the transferor was competent to alienate and all the requirements of article 134 have been complied with.

The above finding is sufficient for disposal of the appeal and it is therefore unnecessary to consider the question of estoppel which is raised by the appellants.

The Subordinate Judge has given the first plaintiff a decree for Rs. 116-6-6 as damages against first defendant. A memorandum of cross-objections was filed but was not pressed and is dismissed.

There is a further claim for Rs. 500 as damages for breach of the agreement in Exhibit D prohibiting the letting of trees for tapping in the last two years of the lease. The Subordinate Judge recorded no finding on the point as he considered the claim unsustainable for reasons given in paragraph 29 of his judgment. The evidence adduced is of a very vague description and in my opinion insufficient to enable a conclusion to be come to as to whether any, and, if so, what amount is due to the first plaintiff on this account.

In the result, I think the appeal should be allowed and first plaintiff given a decree for possession of the property and a declaration that he is a permanent lessee. He will also be entitled to *mesne* profits from 1st October, 1912 till delivery. These profits will be recoverable from defendants Nos. 1 and 2 and will be determined by the Lower Court and embodied in a supplemental decree. Having regard to the uncertainty of the law in this Presidency prior to the judgment of the Privy Council, I think the parties should bear their own costs in both Courts.

SADASIVA AYYAR, J.—I agree.

N.R.