PRIVY COUNCIL.*

AMBALAVANA PANDARA SANNIDHI AVERGAL (PLAINTIFF),

v.

MEENAKSHI SUNDARESWARAL DEVASTANAM OF MADURA AND OTHERS (DEFENDANTS).

1920, February 17, 19, 20 and April 27.

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

Hindu Law—Endowment—Trustee of Hindu Religious endowment—Right of Trustee to possession of endowed property—Madras Regulation VII of 1817, *sec.* 12—*Religious Endowments Act* (*XX of* 1863), *ss.* 3 *and* 4—*Limitation Act* (*IX of* 1908), *schedule I, article* 141—*Possession adverse to Trustee.*

The property of an endowment may consist partly or wholly in the right to enjoy the revenues of property which is in the possession of persons who have the right and the duty to manage the property, collect the revenue and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such persons may even have certain rights of apportionment of the revenues so handed over by them among the several purposes of the endowment. All this is compatible with there being a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee would not be entitled to the possession of the properties out of which this portion of the revenue comes. His rights do not commence until after the collection of the revenues by and under the management of those who hold possession. Possession would be in the hands of those entitled to manage these special properties and their possession would be adverse to his.

The appellant in this case claimed to be *hukdar* or trustee of the Thanappa Mudali Kattalai, an endowment for the performance of certain ceremonies in a temple at Madura, and to be entitled to the possession of four villages forming part of the endowment. The villages came into the possession of the East India Company in 1801 and remained in their possession until 1849, when the general manager of the temple, was placed by the company in possession. Since 1849 the villages were in the hands of the said manager and his successors, the respondents, the whole of the revenue had been used for the purposes of the endowment (including the expenses of the temple) according to the directions of the temple manager, and the temple committee.

Held, in a suit brought in 1908 by the appellant for possession of the villages, that the possession of those who had held the villages from 1849 was possession adverse to the appellant and his predecessors in title and that the suit was barred by limitation.

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* *Present*:—Viscount CAVE, Lord MOULTON, Sir JOHN EDGE and Mr. AMIR ALI.

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APPEAL No. 70 of 1917 from a judgment and decree (10th November 1914) of the High Court at Madras, which affirmed the decree (16th January 1911) of the District Judge of Madura.

The suit from which this appeal arose was brought by the appellant as *hukdar* or trustee of a religious and charitable endowment, for possession of four villages, Amur, Mallapuram, Chettikulam and Chinna Ulagani, situate near the town of Madura, and admittedly forming part of the endowment. The suit was dismissed by the District Judge. In the High Court (Sir JOHN WALLIS, C.J. and SESHAGIRI AYYAR, J.) the Judges differed in opinion as to the title set up by the plaintiff, the Chief Justice being of opinion that apart from limitation it was established by the documentary and other evidence; but he held that the suit was barred by lapse of time. SESHAGIRI AYYAR, J., who put a different construction on the document, decided against the plaintiff's title.

The chief questions for determination on this appeal were (1) as to the plaintiff's title to the lands as hukdar, (2) as to the defence of limitation, and (3) as to the trusts of the endowment, whether the funds were to be expended in the performances of the specific religious services and ceremonies, or whether (as pleaded by the defendants) they were available for the general upkeep and maintenance of the temples of which the defendants are in control under Act XX of 1863.

The plaintiff is the head of a monastic institution at Tiruvadur known as an adhinam or mutt, and he and his predecessors in office for the time being are hereinafter referred to as the Pandaram or Pandara Sannidhi. The ascetics of the next rank are called Tambirans, some of whom are in charge of minor mutts which are dependent on the adhinam. One of such dependent mutts is situated at Madura. It was presented early in the eighteenth Century to the Pandara Sannidhi by the family of Thanappa Mudali, the founder of the charity in question, known as the Thanappa Mudali Kattalai, of which the plaintiff claims to be the hereditary hukdar or trustee.

No endowment deed was produced. It was undisputed that down to the present time the Pandaram through a Tambiran appointed by him and residing in the mutt at Madura has

performed the functions of vicharanai or manager of the kattalai. This has been the uninterrupted practice for the whole period covered by the evidence. It was further undisputed that the Pandaram in his capacity as hukdar or trustee has held and now holds possession of Kudipatti and other villages, situated outside the Madura country, as part of the endowment.

Government subsequently decided to give up the actual management of the temples through its ordinary officials, and in 1842 it proceeded, in exercise of its powers under Regulation VII of 1817, to appoint a manager of the temples themselves. In 1849 it further transferred to the same officer the management of the villages in its possession belonging to the kattalai—which was recognized as an institution distinct from the temples—and required him to execute a razinamah or agreement for their due administration under the orders of Government. Notwithstanding that the actual management of the villages had been placed in the hands of the temple manager, Government through the District officers, still carried out the duties of general superintendence and control under Regulation VII of 1817. That regulation remained in force until the Religious Endowments Act of 1863 came into operation and repealed it so far as concerned the institution now in question.

When the Act of 1863 was passed the Government of Madras took action under section 7, and on 19th August 1864 appointed a committee,

"to take the place and to exercise the powers of the Board of Revenue and the local agents under the Regulation hereby repealed."

This committee in due course was succeeded by the committee who are respondents to the present appeal. The committee acted on the theory that the kattalai endowments were owned by the temple and intended for its general upkeep, and "not simply for specific services or religious charity therein."

The assumption by the committee of this attitude involved not only a denial of the plaintiff's right as *hukdar* and trustee, and an interference with his rights and duties, but also a diversion of the trust funds to purposes different from the original objects of the endowment.

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Thereupon on 14th December 1908 the Pandara Sannadhi instituted the present suit against the manager of the temple and the temple committee.

The District Judge was of opinion that the plaintiff had failed to make out his case; that the funds of the kattalai were available for the general purposes of the upkeep of the temples; that the Pandara Sannadhi had never been constituted trustee, nor had as such; and that the defendants were not estopped by the previous litigation and its result. As to the defence of limitation, he held that the Collector, the Managers, and the temple committee were in possession of the endowments in question under a claim of adverse title, and consequently that the plaintiff's rights and the interests of the trust were barred by the law of limitation. An appeal by the plaintiff to the High Court was heard by Sir JOHN WALLIS, C.J., and SESHAGIRI AYYAR, J.

The former came to the conclusion on the evidence as a whole that the Pandara Sannadhi was the rightful trustee or *hukdar* of the charity and its endowments. He said:—

"It is not disputed that the endowment of the four villages in suit, and another which has ceased to belong to it, was founded by one Thanappa Mudali, whose name it bears, long before Madura came under the Government of the East India Company at the beginning of the nineteenth century. According to the tradition he was a minister of the ruling Nayak at the beginning of the eighteenth century. It is also not disputed that the donors of endowments such as this for temple purposes were in the habit of appointing separate trustees or that many such endowments in different temples in Southern India were entrusted to the predecessors of the plaintiff Pandara Sannadhi, and were managed by him through the agency of tambirans, as his ascetic followers are called, who resided in mutts belonging to him in the neighbourhood of the temples in question. He has been compared in one of the cases to a bishop, but his position more resembles that of an abbot of a monastery with dependent priories or mutts in different parts of India, many of them in charge of a single ascetic or tambiran."

The Chief Justice accordingly was of opinion that the position of the Pandara Sannadhi was recognized, and that but for the question under the law of limitation he would have been for reversing the decree of the District Judge.

On the question of limitation the Chief Justice was of opinion that

"whatever the reasons which induced the Pandara Sannadhi to acquiesce in the suit villages being handed over to the manager of the temple in 1849 there is no doubt that they have since been in possession of the manager of the temple when there was one; and when there was not in the possession and management of the local temple committee under Act XX of 1863, who for some periods managed the affairs of the temple themselves instead of appointing a manager as they are required to do under the Act. Their possession, equally with that of the manager when there was one, was clearly on behalf of the temple, and also, as it seems to me on the facts already stated clearly adverse to the plaintiff."

In this view of the facts and the law, the learned Chief Justice held that the Pandara Sannadhi was too late in asserting his right to possession of the villages as trustee or *hukdar*, and that the suit was barred by limitation.

SESHAGIRI AYYAR, J., differed in opinion from the Chief Justice as to the title of the Pandara Sannadhi. But he agreed that in any case the suit was too late. He considered that the possession and management of Government up to 1849 was not in derogation of the rights of the true trustee, but that from that year there was adverse possession.

ON THIS APPEAL

De Gruyther, K.C., Kenworthy Brown and *Narasimham*, for the appellant, contended that the findings of the Chief Justice on the facts were all in favour of the appellant. He succeeded to the rights of his predecessor in the office of Pandara Sannadhi, which were those of the hereditary trustee of the kattalai, and all its endowments, and those rights included the rights in the villages now claimed by the appellant. The suit, it was contended, was not barred by limitation. There was no adverse possession by any one as against the hereditary trustee, to whose rights the appellant succeeded. The possession and management of the villages in suit by Government, whether under the Regulation VII of 1817 or otherwise, were not adverse to the Pandara Sannadhi, nor, it was submitted, did it become adverse when possession was handed over officially to the manager of the temple. Nor was possession adverse when held by the Temple Committee which was appointed under the

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Religious Endowments Act (XX of 1863) section 7 and did not bar the rights of the hereditary trustee of the endowment. Reference was made to *Sitharama Chetty* v. Sir *Subramania Iyer*(1). The respondents had no possession of the villages under any claim of title, they only had the duty of supervision, the rights of the trustee being undisturbed. Regulation VII of 1817, section 12, was not applicable to the present case: the Religious Endowments Act (XX of 1863), section 3, applied. The appellent asserts that the income of the endowment is being wrongly dealt with, which distinguishes *Balwant Rao* v. *Puran Mal*(2), from the present case. The endowment was created solely for the maintenance of the kattalai and the performance of the trusts thereof and not for the general purposes of the temple as asserted by the respondents. The ordinary meaning of the word 'kattalai' was rightly, stated in the case of *Vythilinga Pandara Sannadhi* v. *Somasundara Mudaliar*(3), and there is nothing to show it was used in any different sense here. The receipt of the income of the villages was not adverse to the appellant's possession as hukdar. Reference was made to *Jalandhar Thakur* v. *Jharula Das*(4).

A. M. Dunne, K.C., and *B. Dubé* for the respondents, were not called upon.

The JUDGMENT of their Lordships was delivered by

LORD MOULTON.

Lord MOULTON.—This is a suit brought by the *Pandara Sannidhi* of an important mutt situated in Tanjore to recover possession of four villages situated in the Madura district. He alleges that he is *hukdar* or trustee of the *Thanappa Mudali kattalai*, which is an endowment for the performance of certain ceremonies in a temple at Madura, and that these villages form part of that endowment, and that, therefore, as such trustee he is entitled to their possession. The defendants are the manager of the temple and the members of the Temple Committee appointed by the Government under Act XX of 1863. They deny that the plaintiff is trustee of the endowment, or that he has any right either to the management or to the possession

(1) (1916) I.L.R., 39 Mad., 700 (717).
(2) (1884) I.L.R., 6 All. 1 (P.C.): L.R. 10, I.A. 90.
(3) (1894) I.L.R., 17 Mad., 199.
(4) (1915) I.L.R., 42 Calc., 244 (P.C.): L.R. 41, I.A. 267.

of the properties in question, and they further allege that if he had at any time such right his claim is barred by limitation.

In the Court of First Instance the District Judge decided in favour of the defendants on the ground that the plaintiff had failed to prove that he was trustee of the endowment, and also on the ground of the Statute of Limitations. On appeal to the High Court, both Judges agreed with his finding that the plaintiff's suit was barred by limitation, but they differed in opinion as to whether the plaintiff had proved his claim to be trustee of the endowment. In the result, therefore, the plaintiff's suit was dismissed in both Courts, and from these decisions the present appeal is brought.

The history of the villages in suit has been examined in great detail in the proceedings in the Courts below, and certain points in that history may be taken to have been established. The documents relating to the creation of the *kattalai* appear to be lost, but it is agreed that the founder was Thanappa Mudali, who was Prime Minister to the Ruler of Trichinopoly between the years 1704 and 1735. It is not clear at what date or how these villages became connected with the endowment, but it must have been at an early date because very shortly after the foundation of this *kattalai* the Muhammadan Government attached these villages, and retained possession of them until about 1790, when the Madras Government assumed possession of Madura district. Ultimately, in 1801, the villages came into the possession of the East India Company, and remained in their possession until 1349, when the general manager of the temple at Madura (who had been appointed by the Company in 1842 in exercise of the powers given them under Regulation VII of 1817) was placed by the Company in possession of the villages.

The income derived from the villages in suit has been applied in various ways during this period. During the time that they remained under attachment by the Muhammadan Government it would seem that a portion of the income was applied to the uses of the endowment, and the remainder was appropriated by that Government. There is no evidence as to what happened between 1790 and 1801. From 1801 to 1849, while the villages in question were in the possession of the East India Company, the revenue from them was applied in whole or in part by the Company to the uses of the endowment. In the

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earlier years it appears to have been handed over as a whole, but from the year 1817 the Government followed the practice of settling each year a budget showing the amount necessary for the expenses of the *kattalai* for that year, paying over only so much of the income as was sufficient to satisfy that budget, and retaining the remainder. Since 1849, the villages have been in the hands of the predecessors of the defendants, and the whole of the revenue has been used for the purposes of the endowment (including the expenses of the temple) according to the directions of the temple manager and the Temple Committee.

Throughout the whole of the history of these villages from the date of the Muhammadan attachment to the present time, there is one fact that is clear from the evidence, i.e., that these villages have never been in the possession of the plaintiff or his predecessors. Other villages form part of the property of the endowment, and these have been in the possession of the plaintiff and his predecessors throughout. These latter villages appear not to have been attached by the Muhammadan Government but to have been left in the possession of the predecessors of the plaintiff on behalf of the endowment. But in all the records relating to possession the contrast between those that relate to the villages in suit and those that relate to these other villages is marked. The latter are entered as being in the possession of persons representing the predecessors of the plaintiff. This is never the case with regard to the villages in suit.

The argument in favour of the plaintiff's claim is therefore in reality an argument which is not founded on evidence relating to the past history of the villages, but is of a legal nature. It avers that he and his predecessors have held the position of general trustee of the endowment, and that as such the villages in suit whose revenues form part of that endowment must, as a matter of law, be his and he must therefore be entitled to possession. The people who manage the villages and collect the revenues are, he contends, acting for him, and cannot set up an adverse title, so that their possession has been, in the eye of the law, his own. In their Lordships' opinion, there is a fallacy in this reasoning. The property of an endowment may consist partly or wholly in the right to enjoy the revenues of property which is in the possession of persons who have the right

and the duty to manage the property, collect the revenue and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such persons may even have certain rights of apportionment of the revenue so handed over by them among the several purposes of the endowment. All this is compatible with there being a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee would not be entitled to the possession of the properties out of which this portion of the revenue comes. His rights do not commence until after the collection of the revenues by and under the management of those who hold possession. It must be remembered that after all the general trustee is only a representative of the Idol who is a juridical personage, and who is the true owner, and there is nothing legally incongruous in that personage having other subordinate representatives who have the right to manage certain special portions of his property, and pay over the income so collected to the endowment, and even to some degree to control its use. Such rights would, as has been said, not be inconsistent with the existence of a general trustee, but they would be fatal to his claim to possession of the properties from which these revenues are derived. Possession would be in the hands of those entitled to manage these special properties and their possession would be adverse to his.

Their Lordships therefore do not consider it necessary to decide whether the claims of the plaintiff to be *hukdar* or general trustee of the endowment are or are not well founded. The history of these villages from the year when they came into the possession of the Company, and even from a far anterior date, indicates that their relationship to the endowment was such as has been just described. The possession was always in some other person than the predecessor of the plaintiff or any person appointed by him, or, indeed, any other person claiming title from the foundation of the endowment. The sole interest of the endowment in them has been an interest in the revenues collected from them by such other persons who were in possession of and managed the villages themselves. Their Lordships would be very unwilling to value lightly the testimony of a long course of dealing with the possession of these villages such as

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the history of this case has disclosed, which, as already stated, indicates that the relationship of the villages to the general endowment has throughout been of this nature. But they consider that it is not necessary to base their decision on the testimony of the earlier history. It suffices to consider the events that have happened from 1849 onwards.

In the year 1849 the Government, which was undoubtedly then in possession of the villages in suit, handed them over to the manager of the temple of Madura (the appointment of whom was in their hands), and there is no doubt that from that time they have been in the possession of such manager and the Temple Committee which is also appointed by Government. The *Pandara Sannidhi* made no opposition to their being so handed over. From that time forward it is beyond question that the plaintiff has been out of possession of these villages. If he has any right to claim possession in his suit he undoubtedly had the same right in 1849, and therefore, as at the date of the suit he had been out of possession of these villages for nearly sixty years, his claim is barred by the Statute of Limitations, and this appeal fails.

Originally a claim for some alternative relief was included in this action, but no case has been made out for it.

Their Lordships will therefore humbly advise His Majesty that this appeal should stand dismissed, and that the appellant should pay the costs.

Appeal dismissed.

Solicitor for the appellant :—*Douglas Grant.*

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

J.V.W.