

PRIVY COUNCIL.*

SUBBAIYA PANDARAM (PLAINTIFF), APPELLANT,

1923,
June 26.

v.

MAHAMMAD MUSTAPHA MARCAYAR, SINCE
DECEASED AND OTHERS (DEPENDANTS), RESPONDENTS.[On Appeal from the High Court of Judicature at
Madras.]

*Limitation—Adverse possession—Hindu charitable endowment—
Decree declaring trust—Possession continuing after decree—
Recovery of trust property—Indian Limitation Act (IX of
1908), s. 10, sch. I, arts. 134 and 144.*

The appellant was trustee under a registered deed executed by his grandfather in 1890 endowing a chatram with immoveable property. In 1898 the first respondent purchased part of the property at a sale in execution of a decree against the appellant's father, the then trustee, for debts incurred by him; the purchaser and the other respondents, who claimed under him, had been in possession since that date. In 1904, in a suit in which the first respondent was a defendant, the appellant obtained a decree declaring the validity of the trust. In 1913 the appellant sued the respondents for possession of the purchased property.

Held that the decree of 1904 did not operate as *res judicata* so as to preclude the respondents from asserting that the property was now theirs, and that the suit was barred under either article 134 or article 144 of the Indian Limitation Act, 1908, Schedule I; the decree merely emphasized the fact that the purchaser's possession was adverse. Further, the exception in section 10 of that Act shows that a claim to recover trust property from an assignee for valuable consideration with notice can be defeated by adverse possession.

* Present: LORD BUCKMASTER, LORD DUNEDIN, LORD CARSON, SIR JOHN EDGE
and LORD SALVESSEN.

SUBBAIYA
PANDARAM
v.
MAHAMMAD
MUSTAPHA
MARAYAR.

Ishwar Shyam Chand Jui v. Ram Kanai Ghose (1911) I.L.R., 38 Calc., 526 (P.C.) and *Vidya Varuthi v. Balusami Ayyar* (1921) I.L.R., 44 Mad., 831 (P.C.), distinguished.

Judgment of the High Court affirmed.

APPEAL (No. 84 of 1920) from a judgment and a decree of the High Court (31st August 1916) affirming a decree of the temporary Subordinate Judge of Tanjore.

The suit was brought by the appellant in 1913 against the respondents for possession of immoveable property which had been dedicated to the endowment of a food chatram and other charitable objects by deeds of trust executed in 1890 by the appellant's grandfather. The first respondent had purchased in 1898 at a sale in execution of a decree against the appellant's father; the purchaser and the other respondents who claimed under him had since been in possession. In 1904, in a suit to which the first respondent had been joined as a party at his own request, a decree had been made declaring the validity of the trust, but no steps had been taken under that decree prior to the present suit. The facts are more fully stated in the judgment.

The temporary Subordinate Judge of Tanjore dismissed the suit on the ground that it was barred by limitation, and that decision was affirmed, on appeal to the High Court, by AYLING and SRINIVASA AYYANGAR, JJ.

Kemworthy Brown for the appellant.—The purchaser was a party to the suit in which the decree of 1904 was obtained by the appellant and cannot deny the existence of the trust as affecting the property; the respondents consequently cannot allege that they subsequently held adversely to the appellant trustee: *Nasrat Ullah v. Mujiib Ullah*(1). Further the statutory period only ran against the appellant from the time when he became entitled to possession as trustee, and

(1) (1891) I.L.R., 13 All., 309, 315.

that was within 12 years of the suit: *Vidya Varuthi v. Balusami Ayyar*(1), *Ishwar Shyam Chand Jiu v. Ram Kanai Ghose*(2).

SUBBAIYA
PANDARAM
v.
MAHAMMAD
MUSTAFA
MARCAYAR.

De Gruyther, K. C., and Dube for the respondent.—The decree of 1904 did not prevent the purchaser's possession from continuing to be adverse; *Singaravelu Mudaliar v. Chokka Mudaliar*(3). The time limited for executing that decree has long since passed. The period of limitation for the present suit ran against the successive trustees: *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*(4), *Trimbak Bawa v. Narayan Bawa*(5). The decisions of the Board referred to by the appellant on this point are distinguishable; they related to mukarari leases which were valid for the lifetime of the grantor. If section 10 of the Limitation Act applies the purchaser was an assignee for valuable consideration and the ordinary rules of limitation apply: *Chintamani Mulapatro v. Sarup Se*(6). The suit was barred by article 134 and by article 144; it was also barred by article 11, having regard to sections 280, 283 of the Code of Civil Procedure, 1882.

Kenworthy Brown in reply.—In *Singaravelu Mudaliar v. Chokka Mudaliyar*(3), there had not been, as in this case, a decree declaring that the property was subject to a trust. In *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*(4), the claim was not contrary to the trust, but an adverse claim to the trustee. Both cases are therefore distinguishable.

The JUDGMENT of their Lordships was delivered by

(1) (1921) I.L.R., 44 Mad., 881 (P.C.); L.R., 48 I.A., 302, 318.

(2) (1911) I.L.R., 38 Calc., 526 (P.C.); L.R., 38 I.A., 76.

(3) (1922) 43 M., L.J., 737.

(4) (1900) I.L.R., 23 Mad., 271 (P.C.); L.R., 27 I.A., 69, 76.

(5) (1883) I.L.R., 7 Bom., 188.

(6) (1888) I.L.R., 15 Calc., 703.

SUBBAYYA
PANDARAM
v.
MAHAMMAD
MUSTAPHA
MARCATAR.

—
Lord
BUCKMASTER.

Lord BUCKMASTER.—The real question in this appeal is whether the suit is barred by the operation of the Indian Limitation Act.

It was instituted by the Appellant to recover, as against a purchaser under an execution sale and those who claimed under him, certain property which had by two deeds dated the 21st February 1890 and the 13th December 1894 been devoted to charitable purposes. The first of these two documents declared that the heirs of the settlor in the order of primogeniture should be trustees and conduct the said charities. The settlor died in 1895, leaving him surviving his widow and Arunachellam, his only son. Arunachellam is the father of the present appellant. He was trustee of the charity and having become involved in debt, one of his creditors sued him and obtained a decree in execution of which the endowments of the charity were attached. The settlor's widow, on behalf of the appellant who was then an infant, filed an objection to the attachment, but it was dismissed on the ground that during the lifetime of the appellant's father he had no *locus standi*. In the same year another suit was instituted by the minor acting through the same next friend seeking to establish the validity of both the deeds, and while this suit was pending, the property was brought to sale under the decree against Arunachellam on the 22nd March 1898. It was purchased by Maracayar who is since deceased, and whose legal personal representatives are the respondents Nos. 4 to 8 of this appeal; the sale was confirmed on the 11th August 1898, and delivery of possession was made to the purchaser, the settlor's widow being removed from possession. From that day until the institution of these proceedings, the purchaser and those claiming under him have been in uninterrupted possession of the property.

On the 31st December 1900, it was declared in the second suit of 1897 (1) that the properties, including those seized under the execution sale, formed a trust estate for the purpose specified in the deed. On the 9th November 1911, the appellant, who had come of age on the 6th August 1910, petitioned the District Court asking for leave to bring a suit to remove Arunachellam from the office of trustee, and such leave was granted; the suit for removal was accordingly instituted and on the 21st July 1913, a decree was obtained removing Arunachellam, and the appellant succeeded as trustee. The present suit was then brought on the 23rd July 1913, to recover the property. Both the learned Judge, before whom the matter first came, and the learned Judges of the High Court have decided against the appellant but on different grounds: the result of the decisions was, however, in their Lordships' opinion, correct.

There is no doubt that whatever period of limitation be assigned, the full period had run before these proceedings were instituted, unless it could be alleged that by virtue of the proceedings to which reference has been made, there was some interruption in the period.

Now the real argument in favour of the appellant was that in the presence of the purchaser it was declared that the trust had been validly created and that the property was, in fact, trust property, and it is suggested that this effects *res judicata* as against the respondents and prevents them from now asserting that the property is their own. Their Lordships do not think that the decree had that effect. At the moment when it was passed the possession of the purchaser was adverse, and the declaration that the property had been properly made subject to a trust disposition, and therefore ought

SUBBAYYA
PANDARAM
v.

MAHAMMAD
MUSTAPHA
MARCAYAR.

Lord
BUCKMASTER.

(1) The respondent Maracayar, after his purchase, was joined as a defendant to that suit on his own application.

SUBBAIYA
PANDARAM
v.
MAHAMMAD
MUSTAPHA
MARCAVAR.
—
Lord
BUCKMASTER.

not to have been seized, did not disturb or affect the quality of his possession; it merely emphasised the fact that it was adverse. No further step was taken in consequence of that declaration until the present proceedings were instituted, when it was too late.

A further argument has been put forward to the effect that the Statute of Limitation begins to run afresh as each new trustee succeeds to the office, and in support of that view reliance is placed on the case of *Ishwar Shyam Chand Jiu v. Ram Kanai Ghose*(1), and on the case of *Vidya Varuthi v. Balusami Ayyar*(2), but these authorities do not assist the appellant. In each case they relate to the effect of an attempt on the part of a trustee to dispose of the property by a permanent mukarari lease. This he has no power to do, though he is at liberty to dispose of it during the period of his life and a grant made for a longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he assumed the office. Such an argument has no relation to the case where, as here, property has been acquired under an execution sale; possession retained throughout. Their Lordships are, therefore, of opinion that this suit is barred either under article 134 or 144 of the first schedule to the Limitation Act. The former fixes the period as 12 years where the suit is to recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration; and the latter assigns the same

(1) (1911) I.L.R., 38 Calc., 526 (P.C.); L.R., 38 I.A., 76.

(2) (1921) I.L.R., 44 Mad., 831 (P.C.); L.R., 48 I.A., 302.

period where the claim is for possession of immoveable property or any interest therein not thereby otherwise specially provided for.

This is not, in fact, a transfer by the trustee himself for a valuable consideration, though there is little difference in principle between a transfer under an adverse execution and a sale by the trustee himself, but disregarding that article, article 144 covers the exact case. Further, section 10 of the Limitation Act appears also to contemplate the exact position: it is in these terms:—

“10. Notwithstanding anything hereinbefore contained, no suit 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, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.”

and it shows that, where it is sought to follow trust property, as in the present case, on the ground that the person in possession knew that it was trust estate, the claim is not barred, excepting in a case of assigns for valuable consideration, and the exception shows that in that event the claim may be defeated by adverse possession. The purchaser in the present case is clearly within the terms of the exception, and consequently he is not prevented, by reason of the fact that the property was to his knowledge trust property after the date of the decree, from relying on the provisions of the statute which limit the time within which suits must be brought for recovery.

Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed with costs.

Solicitor for appellant: *Douglas Grant*.

Solicitor for respondents: *T. L. Wilson & Co.*

SUBBAIYA
PANDARAN
v.
MAHAMMAD
MUSTAPHA
MARCATAR
Lord
BUCKMASTER.