regard to it, I will not attempt any definition of the word "judgment." I will only say this, that I am not prepared to say that every order on a contested petition is a judgment. The line dividing judgments from orders must be drawn somewhere short of this. Having regard to the fact that in the case before us no substantial right of the defendants has been adversely affected by the order under appeal, I would say that it does not fall on the judgment side of the line. Beyond this I make no further attempt.

Grant and Greatorex, solicitors for appellant.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Waller.

1925, October 28.

RAMA REDDY (3RD DEFENDANT), APPELLANT,

v.

RANGADASAN AND OTHERS (PLAINTIFFS AND 4TH AND 5TH DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), arts. 134 and 144—Hindu Law—Religious endowment—Temple—Trustee—Alienation by trustee, not for a valid purpose—Suit against alienee to recover temple property, more than twelve years after alienation—Bar of limitation—Temple property, whether vested in idol or trustee—Trustee, mere Manager—Adverse possession.

Where a trustee of a Hindu temple improperly alienated temple property and a suit was instituted by a succeeding trustee to recover the property from the alienee more than twelve years from the date of the alienation,

Held, that, in the case of a Hindu temple, its property vested in the idol and the trustee was only a manager for the time being; that the trustee could not convey a valid title to the transferee, and therefore article 134 of the Limitation Act, 1908, did not apply to a suit for recovery of the temple property improperly

* Letters Patent Appeal No. 158 of 1924.

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alienated by the trustee; *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar* (1921) I.L.R., 44 Mad., 831 (P.C.), applied; that article 144 of the Act did not apply to a case of alienation by a trustee, where the alienee derived possession from the trustee, and that consequently the suit was not barred by limitation.

Semble.—Where a person takes possession of temple property, not derivatively from the trustee but hostilely against the trustee, article 144 will apply as against the trustee and the idol.

APPEAL under clause 15 of the Letters Patent against the judgment of MADHAVAN NAYAR, J., in Second Appeal No. 1230 of 1921 preferred against the decree of J. J. COTTON, District Judge of Coimbatore, in Appeal Suit No. 33 of 1921 preferred against the decree of P. G. RAMA AYYAR, Principal District Munsif of Erode, in Original Suit No. 713 of 1918.

The plaintiff sues as the present pujari and trustee of the suit temple to recover possession of certain lands, which were granted to an ancestor of the plaintiff as the manager for the time being of the suit temple. The lands had been sold by the first and second defendants (who were the father and uncle of the plaintiff and defendants 6, 7 and 8, respectively) to the third defendant in 1893. The plaintiff alleged that the lands had been granted as service inam to their family for doing pujari service; that the alienation by his father and the uncle were not valid and he instituted this suit in 1918. The District Munsif dismissed the suit as barred by limitation. On appeal, the Subordinate Judge reversed and remanded the suit, holding that if the plaintiff's family were entitled to a beneficial interest in the inam, the suit would not be barred by limitation on the authority of the decisions in 13 Mad., 277, and 10 M.L.T., 781. After remand the District Munsif again dismissed the suit and on appeal the District Judge confirmed the decree and dismissed the appeal. The lower Appellate Court found that the plaintiff was the pujari or trustee of the suit

temple and that the suit property was attached to the temple. The plaintiff preferred a second appeal, which was heard by MADHAVAN NAYAR, J., who held that the suit was not barred under article 134, Limitation Act, and relied on the decision of the Privy Council in 44 Madras, 831, reversed the decrees of the lower Courts and gave a decree to the plaintiff as prayed, subject to his paying Rs. 1,700 to the third, fourth and fifth defendants for value of improvements. The third defendant preferred this Letters Patent Appeal.

T. R. Ramachandra Ayyar and *N. P. Narasimha Ayyar* for appellant.

T. M. Krishnaswami Ayyar for respondents.

JUDGMENT.

DEVADOSS, J.

DEVADOSS, J.—This is an appeal against the judgment of MADHAVAN NAYAR, J., giving a decree to the plaintiff. The third defendant has preferred this Letters Patent Appeal. The question for determination is whether the suit is barred by article 134 of the Limitation Act. The plaintiff is the trustee of a temple. The finding is that the property is the property of the temple. The contention of Mr. Ramachandra Ayyar is that the suit is barred under article 134 inasmuch as the suit was brought more than twelve years after the date of the alienation. Article 134 gives a period of twelve years for the recovery of possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for valuable consideration. The argument advanced is that the suit is barred by article 134, if the transferor is held to be a trustee, and if he is not a trustee, then the suit is barred by reason of article 144 of the Limitation Act. The finding that the transferor is a trustee cannot be challenged now. The simple

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question is therefore whether article 134 applies to the case. It was decided in *Sri Vidya Varuthi* v. *Baluswami Ayyar*(1) that a permanent lease of mutt property granted by the head of the mutt could not create any interest in the property to enure beyond the life of the grantor and consequently article 134 of Schedule I of the Limitation Act of 1908, did not apply to a suit brought by the successor of the grantor for the recovery of the property. Mr. Ramachandra Ayyar tries to get over this decision by contending that the transferee was only a lessee and that he did not deny the title of the mutt but only contended that he was entitled to be in perpetual possession of the property being a permanent lessee. Mr. AMEER ALI in delivering the judgment of their Lordships observed—

> "It is also to be remembered that a 'trustee' in the sense in which the expression is used in the English law is unknown in the Hindu system, pure and simple."

With reference to the head of a mutt or Shebait he observed,

> "In no case was the property conveyed to or vested in him, nor is he a 'trustee' in the English sense of the term, although in view of the obligations and duties resting on him he is answerable as a trustee, in the general sense, for maladministration."

In the case of a religious institution the property is vested in the idol and the trustee is only a manager for the time being. In the case of a mutt the head of the mutt for the time being is entitled to use the income of the mutt property subject to the maintenance of the Thambirans and the ascetics attached to the mutt. In the case of a trustee of a temple he is not entitled to use any portion of the income for himself. In the case of a wakf if the deed of trust makes provision for the maintenance of the Muthavalli or the trustee for the time being, he may use the income for

(1) (1921) I.L.R., 44 Mad., 831 (P.C.).

himself as allowed by the deed of trust, but in the case of Hindu religious institutions no trustee of any institution is entitled to use any portion of the income for himself if the property is vested in the idol. The decision in 44 Madras cannot be said to apply only to cases of leases. The remarks of their Lordships apply to cases of all alienations of property. A permanent lease is as much an alienation as a sale. The mere fact that rent is payable by the permanent lessee does not make a permanent lease any the less an alienation than a sale. Has the trustee of a religious institution the right to alienate the kudivaram interest in the temple property? Can it be said, if he lets into possession tenants so as to enable them to acquire occupancy rights, that he does not alienate the kudivaram interest? The mere fact that the tenants pay the melvaram to the temple cannot convert the transfer of the kudivaram into anything less than an alienation of it. A trustee therefore cannot convey a valid title to the transferee and therefore article 134 does not apply to a suit for the recovery of the temple property improperly alienated by the trustee. The case in *Subbayya Pandaram* v. *Mahammad Musthapha Maracayar*(1) has no application to the present case. In that case the property was vested in the trustees and it was sold in execution of a decree. It was held that the suit was barred by article 144. In that case it was distinctly found that the property was vested in the person against whom the decree was obtained and the property being vested in him he could by transfer give a title to the vendee and if the transaction is not set aside within 12 years the vendee gets a good title. The case in *Kuppuswami Mudaliar* v. *Samia Pillai*(2) does not touch the point under discussion. There the holder of a religious office

(1) (1917) I.L.R., 40 Mad., 751. (2) (1922) 42 M.L.J., 1.

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was dismissed from the office, but he continued to be in possession of the property for more than 12 years after his dismissal and a suit by the successor was held to be barred. The property was vested in the person and he held the office for the time being and when he was dismissed from the office his possession became adverse to his successor and the successor not having sued within 12 years his suit was barred.

There were a few cases which may be said to support the contention of Mr. Ramachandra Ayyar that an invalid alienation of trust property should be set aside within 12 years, and, if not so set aside, the vendee under the invalid sale gets a good title. The decision in *Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*(1) and *Damodar Das* v. *Lakhan Das*(2) supports this view. In *Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*(1), the hereditary managers of the property with which a religious foundation was endowed had purported to sell and assign the management and lands of the endowment to the representative of another institution. It was held that the possession delivered to the purchaser was adverse to the vendors, and after 12 years, the successor of the vendor could not recover possession of the property conveyed.

Their Lordships observed at page 279,

"There is no proof of any custom in this case, and consequently these deeds of sale are void and did not give any title to the purchasers. The title remained in Chockalinga and Nataraja and the possession which was taken by the purchaser was adverse to them. . . . "

"Their Lordships are of opinion that there is no distinction between the office and the property of the endowment. The one is attached to the other, but if there is, article 144 of the same schedule is applicable to the property. That bars the suit after 12 years' adverse possession."

(1) (1910) I.L.R., 23 Mad., 271. (2) (1910) I.L.R., 37 Calc., 885.

In *Damodar Das* v. *Lekhan Das*(1), the Privy Council held that where two chelas divided two institutions and the property among themselves one chela could not recover the property on the death of the other. Sir ARTHUR WILSON, who delivered the judgment of their Lordships, observed at page 894,

> "It follows from this that the learned Judges were further right in holding that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of the terms of that *ekrarnama* was adverse, to the right of the idol and of the senior chela, as representing that idol, and that therefore the previous suit was barred by limitation."

There is no discussion in *Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar*(2) of the decisions in *Gnana Sambanda Pandara Sannadhi* v. *Velu Pandaram*(3) and in *Damodara Das* v. *Lekhan Das*(1). In view of their Lordships' decision in *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar*(2), the decisions in the former cases cannot be considered to be good law. The principle underlying these decisions seems to be this : that where the trustee of a religious institution who is only a manager for the time being, alienates any property belonging to the trust, he cannot give a valid title to the alienee, for he himself has no interest in the property and the alienee can only get what the manager himself possesses, namely, of being in possession of the property. The principle of adverse possession would apply to cases where a person who could assert his title does not assert his title within the period fixed by article 144 of the Limitation Act. In the case of a minor whose property has been improperly alienated by the guardian he has the right of suit within three years after his attaining majority. The legal fiction is that an idol is a minor for all time and it has to be under

(1) (1910) I.L.R., 37 Calc., 885. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).
(3) (1900) I.L.R., 23 Mad., 277.

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perpetual tutelage and that being so, it cannot be said that the idol can ever acquire majority, and a person who acquires title from a trustee of a temple cannot acquire any title adverse to the idol, for the idol is an infant for all time and the succeeding trustee could recover the property for the idol at any time. Though the language has been loosely used as if the trustee occupies a position similar to that of the karnavan of a Malabar tarwad, or the managing member of a joint Hindu family, or the guardian of a minor, yet his position is different from that of any of these. It is contended by Mr. Ramachandra Ayyar that a trustee can alienate the property for certain purposes. In order to preserve the trust or with the sanction of the Court he could alienate the property, but such alienation is under exceptional circumstances. But where he purports to convey the title to the property which is vested in him the vendee cannot be said to derive title from a man who could never give a good title to him. If the vendee buys knowing that the trustee has no right to convey title to the property which is vested in the idol, he cannot set up article 144 in answer to a suit by the trustee for the recovery of the property. His possession is that of the trustee and a trustee's possession can never be adverse to the idol. No doubt if a person takes possession of the immovable property belonging to a temple and keeps the trustee and the persons connected with the temple out of possession and is able to assert such possession adversely to the trust for over 12 years, he could acquire a valid title under section 28 of the Limitation Act. But where such person acquires possession from the manager, his possession can only be with the consent of the trustee for the time being and therefore his possession can never become adverse to the temple. The observation

of one of us in *Jagya Rao Bahadur Garu* v. *Gohar Bibi*(1), apply to the present case;

"If the properties are trust properties, any person claiming from a trustee cannot acquire a prescriptive title against the trust. Whether the document is valid or invalid, it would not give a right to anybody claiming under that document to prescribe for a title against the trust."

MADHAVAN NAYAR, J., held similarly in *Lakshminarayana Kulluraya* v. *Rajamma*(2). In a recent case in *Govinda Row* v. *Chinnathambi Pillai*(3). PHILLIPS, J., held that a permanent lessee could not set up the bar of limitation in a suit for recovery of possession of the property by the trustee. He held that article 134 did not apply to that case. As regards the contention that article 144 applied, the learned Judge observed:—

"This contention was negatived by their Lordships on the ground that the idol has no power to bring a suit except through the trustee and consequently there can be no question of the suit being barred unless it could not have been brought at an earlier date."

Reliance is placed upon *Ramrup Gir* v. *Lal Chand Marwari*(4). In that case the Patna High Court held that the alienation by the Mahant did not give a good title to the alienee, unless it is proved that the alienation was one which could bind the institution. In the course of the judgment, DAS, J., observed:—

"In my opinion the true rule is this; where the property is vested in the juridical person as it was in Damodar Das's case (37 Calcutta, 885) and the Mahant is only the representative and manager of the idol, the act of alienation is a direct challenge upon the title of the idol; and the idol, or the manager of the idol on behalf of the idol, must bring the suit within 12 years from the date of the alienation. But where the title is in the Mahant or the Shebait, as it was in the two other cases to which I have referred, the act of alienation is not a challenge upon the title of the idol, though the property may be endowed property in the sense that its income has to be appropriated to

(1) (1923) 17 L.W., 521 (529).
(2) (1925) 21 L.W., 256.
(3) (1925) 49 M.L.J., 640.
(4) (1922) 67 I.C., 401.

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the purposes of the endowment, and there is no adverse possession so long as the person making the alienation is alive; and the possession of the defendant becomes adverse to the plaintiffs only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation."

With due respect to the learned Judge, I am unable to follow his reasoning as regards the property vesting in an idol. Where a manager alienates property belonging to an idol, his act cannot be said to be a challenge on the title of the idol. When the idol is incapable of asserting its will except through its manager, how can it be said that the manager's act is a challenge on its title? An idol, as I have already observed, being under perpetual tutelage can never assert its will and therefore the manager or the trustee who alienates its property cannot by his act be said to challenge the title of the idol. He might as well set up his own title against the idol. Can any express trustee or manager of a temple set up his own title against the trust or the temple? If the manager cannot set up an adverse title to the property vested in the idol, can he by his act allow a person who derives title from him to assert a title which he himself could not assert against the idol. The case of *Ramrup Gir* v. *Lalchand Marwari*(1), is against the principle of the decision in *Sri Vidya Varuthi Thirthaswami* v. *Baluswami Ayyar*(2), and therefore it cannot be relied upon in support of the argument for the appellant.

In the result the appeal fails and is dismissed with costs of first respondent.

WALLER, J.

WALLER, J.—I agree.

K.R.

(1) (1922) 67 I.C., 401. (2) (1921) I.L.R., 44 Mad., 831 (P.C.).