

1917
May, 27.

Before Mr. Justice Tudball and Mr. Justice Walsh.

RAM PIARI (PLAINTIFF) v. NAND LAL (DEFENDANT).*

Act No IX of 1908 (Indian Limitation Act), section 28: schedule I, articles 124 and 144—Religious endowment—Adverse possession of sarbarahkar—Suit by descendant of original dedicator to oust son of sarbarahkar.

Where a person had been appointed in 1899 by a Revenue Court sarbarahkar of certain endowed property and had remained in possession until 1914, when he died, it was held that a suit brought in 1915 by a descendant of the original dedicator to evict the son of the appointee of 1899 and to have herself declared sarbarahkar of the endowed property was barred by limitation. *Gnanasambanda Pandara Sannadhi v. Velu Pandayam* (1) followed.

THE facts of this case are fully stated in the judgement of the Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, and *Munshi Gulzari Lal*, for the appellant.

Pandit Uma Shankar Bajpai, for the respondent.

TUDBALL and WALSH, JJ.:—This is a first appeal by a plaintiff whose suit has been dismissed by the court below as barred by time. The suit arose out of the following facts. The plaintiff is the surviving daughter of one *Munshi Shib Dayal*. The latter's father or grandfather built a temple in Bareilly town and installed therein an idol. A priest was presumably appointed to preside at the worship in the temple.

By a deed, dated the 27th of March, 1881, *Shib Dayal* dedicated to the idol one-half of his landed property to meet the expenses of the temple. In the deed he laid it down that he himself should be the sarbarahkar or manager of the property and that after his death, his heir and representative should succeed him as such. He directed that the sarbarahkar should manage the property and out of the profits thereof should supply funds to the *pujari* or priest. He further laid it down that the *pujari* should have no right in the property and that his powers were limited to spending the funds supplied to him in decorating the temple and arranging for the ceremonies therein and that he was liable to dismissal by the sarbarahkar. *Shib Dayal* died leaving a widow, *Musammam Phula*, and two daughters, *Musammam Sundar* (the elder) and the plaintiff, *Musammam Ram Piari*.

* First Appeal No. 51 of 1916, from a decree of *Baij Nath Das*, Subordinate Judge of Bareilly, dated the 27th of November, 1915.

(1) (1899) I.L.R., 28 Mad., 271.

Musammat Phula succeeded him and was in turn succeeded by Musammat Sundar as *sarbarahkar*. The latter, it is said, delegated her powers as *sarbarahkar* to one Kuar Sen and also appointed one Nathu Ram as *pujari*. Shortly before her death Kuar Sen resigned his post.

The half of Shib Dayal's property, left after the dedication, descended to his two daughters for their lives in equal shares.

On the 10th of November, 1898, Musammat Sundar executed a will by which she purported to dedicate her half share to the god of the temple and she laid it down that the *sarbarahkar* of this property should be appointed by the residents and respectable people of the town of Bareilly and that the *pujari* also should be appointed in the same manner. She did not lay down a rule that her heir or representative or that any member of the family should have a right to be *sarbarahkar*. She died on the 11th of November, 1898, the day after she had executed the will. She was in her life-time the lambardar of the dedicated villages. As she was only the life tenant of the property mentioned in her will, she had no legal power to dispose of it as she did.

On the 30th of November, 1898, Nathu Ram applied to the Revenue Court to be appointed lambardar on the ground that he was both *pujari* of the temple and *sarbarahkar* of the dedicated property. He clearly claimed to be *sarbarahkar*. On the 15th of January, 1899, Musammat Ram Piari, who was living in the next district, Moradabad, also applied to be appointed lambardar on the ground that under the will of Shib Dayal she was entitled to the office of *sarbarahkar*.

On the 18th of March, 1899, a number of the inhabitants of Bareilly town also applied to the Revenue Court asking that Kuar Sen or some honest respectable man should be appointed lambardar and *sarbarahkar*. They objected to Musammat Ram Piari filling these posts and pointed out that she was contesting the validity of Musammat Sundar's will and the dedication made by her.

On the 6th of June, 1899, the Revenue Court appointed the idol as lambardar under the *sarbarahkarship* of Pandit Nathu Ram.

1917

 RAM PIARI
 v.
 NAND LAL.

1917

RAM PIARI
v.
NAND LAL.

From that time until his death on the 25th of September, 1914, i.e., for well over twelve years, Nathu Ram held possession of the property, of the office of *sarbarahkar*, and apparently also acted as *pujari*. Early in 1899, four of the respectable inhabitants of Bareilly out of those who applied to the Revenue Court for the appointment of Kuar Sen as *sarbarahkar*, had instituted a suit, No. 1 of 1899, in the court of the District Judge against Nathu Ram for his removal from the post of trustee under section 539 of the old Code of Civil Procedure.

Musammat Ram Piari applied to the court to be made a defendant to the suit, and she apparently claimed to be legally entitled to be the *sarbarahkar*. The suit was dismissed, the court holding that there was no ground for removing Nathu Ram from his post. It refused to decide, as between Ram Piari and Nathu Ram, their conflicting claims to the office and property, and referred the lady to a regular suit. This judgement was delivered on the 5th of February, 1901. Then Musammat Ram Piari brought a suit against the idol (No. 513 of 1901) in the court of the Munsif of Bareilly and she named Nathu Ram as guardian *ad litem* of the idol. She sought to have the transfer made by Musammat Sundar set aside and demanded possession of that property.

In paragraph 6 of her plaint she stated that Nathu Ram had been appointed *sarbarahkar* and *pujari* of the idol and she therefore impleaded him.

This suit she admittedly withdrew on the 23rd of December, 1901, (*vide* paragraph 6 of her present plaint) because, as she says, she was persuaded to allow the property to remain and become the property of the idol.

Nathu Ram died on the 25th of September, 1914. The present defendant is his son. He applied to the Revenue Court to have his name recorded as *sarbarahkar* in the revenue papers. The plaintiff objected and claimed to be entitled to the post and to possession of the dedicated property. On the 26th of July, 1915, the Revenue Court finally decided in favour of the defendant. Hence the present suit in which the plaintiff seeks for—

(1) an injunction restraining the defendant from interfering with the temple in any way and directing him to

deliver to the plaintiff all the movable properties appertaining thereto ;

(2) a declaration that she is entitled to be manager of the temple and of the properties appertaining thereto with power to appoint the priest ;

(3) possession of the dedicated properties, if the defendant be in possession.

Among other defences the defendant pleaded that the plaintiff had lost all right to be manager or *sarbarahkar*, and to possession as such of the properties by reason of Nathu Ram's adverse possession of both office and properties for over twelve years.

He also pleaded that in regard to the property dealt with in the will of Musammat Sundar, the plaintiff had had at no time any legal right to the post of *sarbarahkar*, in that by the will the power of appointment was given to the respectable inhabitants of Bareilly.

The lower court held that Nathu Ram's adverse possession for over twelve years had destroyed the plaintiff's right and dismissed the suit.

On appeal before us it is urged—

(1) that Nathu Ram's possession was not adverse, having been with the plaintiff's permission ;

(2) that even if it were adverse, on his death no right accrued to the defendant, his son, but that the plaintiff's right revived. It was urged that section 28 of the Limitation Act did not apply as the present claim was not a claim to "property" within the meaning of that word as used in the section.

In support of the lower court's decree the respondent pleads that the adverse nature of Nathu Ram's possession has been clearly established ; that this is a claim to "*property*" and that in any event the appellant has no title to the one-fourth share dedicated by Musammat Sundar. In regard to the first point we have been referred by the learned advocate for the appellant to the bald and unconvincing statements of three witnesses, who would ask the court to believe that Nathu Ram throughout the time of his holding rendered accounts to the plaintiff through her husband and father-in-law. Neither the husband nor the accounts have been put forward, and in view of the litigation which

1917

RAM PIARI
v.
NAND LAL.

1917

RAM PIARI
v
NAND LAL,

followed the death of Musammat Sundar we have no hesitation in rejecting this evidence and holding that Nathu Ram held adversely to the present plaintiff.

In regard to the second point, the plea that the plaintiff's right revived on the death of Nathu Ram and that section 28 of the Limitation Act did not destroy her rights is one that cannot be upheld in view of the decision of their Lordships of the Privy Council in *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1). The section (28) of the Limitation Act of 1877 was worded exactly as is the section of the present Limitation Act. It is impossible to differentiate between that case and the present one.

The plaintiff claims the office of *sarbarahkarship* as being the heir and representative of her father, i.e., she claims the possession of an hereditary office. She also claims possession of the property in her capacity as *sarbarahkar*. Nathu Ram was in adverse possession of both.

Similarly, in the case quoted the claim was for the office and the property, and it was held that there was no distinction between the two claims in regard to the application of article 124 of the second schedule and section 28 of the Limitation Act, and that if there were, then article 144 would apply to the claim for the property. Both these articles allow a period of twelve years.

It is faintly urged that this is not a claim to an hereditary office. If so then article 120 would apply which gives an even shorter period of limitation. In either event section 28 applies, in view of the ruling quoted. The office and the property cannot be separated.

It is urged that section 28 cannot apply to the office of manager or *sarbarahkar* as it is not 'property.' This very plea was referred to by their Lordships of the Privy Council in that part of their judgement in which they discussed (on page 279 of the report) the extinction of the right of Chockalinga by reason of his failure to sue within three years of his attaining majority and by the operation of section 28 of the Act. Their Lordships were of opinion that there was no distinction between the office and the property of the endowment.

The point is covered by authority binding upon us. There are other decisions to be found in I. L. R., 1 Mad., 343; 21 Mad., 278; 27 Mad., 192 and 28 Mad., 197, which go to support the respondent's case.

The appellant has therefore lost her right in respect to both sets of property, assuming, but not deciding, that she was initially entitled as regards the endowment made by Musammat Sundar.

The appeal must therefore fail and is dismissed with costs.

Appeal dismissed.

FULL BENCH.

*Before Justice Sir Pramada Charan Bakherji, Mr. Justice Tudball and
Mr. Justice Piggott.*

GAJADHAR SINGH (DECREE-HOLDER) v. KISHAN JIWAN LAL AND
OTHERS (JUDGMENT-DEBTORS).*

Civil Procedure Code (1908), order XXXIV, rule 5—Act No. IX of 1908 (Indian Limitation Act) schedule I, article 181—Limitation—Decree for sale on mortgage—Appeal from preliminary decree—Application for decree absolute.

Held that in a suit for sale on a mortgage, if an appeal has been preferred from the preliminary decree, the decree which is to be made absolute is the decree of the final court of appeal. In such a case, therefore, limitation for an application for a decree absolute runs, not from the expiry of the term fixed for payment by the original decree, but from the date of the decree of the final court of appeal. *Shohrat Singh v. Bridgman* (1), *Muhammad Sulaiman Khan v. Muhammad Yar Khan* (2) and *Abdul Majid v. Jawahir Lal* (3) referred to. *Madho Ram v. Nihal Singh* (4) overruled *quoad hoc*.

THE facts of this case were as follows:—

On the 16th of May, 1911, the plaintiff obtained a preliminary decree under order XXXIV, rule 4, of the Code of Civil Procedure. Six months' time was allowed to the judgement-debtor to pay up the decretal amount. The decree was afterwards affirmed by the High Court on the 23rd of February, 1915. On the 28th of June, 1915, the plaintiff put in an application for the preparation of a final decree. The judgement-debtor, on the 7th of December, 1915, objected on the ground that under section 47 of the Code of

* Second Appeal No. 603 of 1916, from a decree of D. R. Lyle, District Judge of Agra, dated the 22nd of January, 1916, confirming a decree of B. C. Forbes, Subordinate Judge of Muttra, dated the 11th of December, 1915.

(1) (1882) I. L. R., 4 All., 376. (3) (1914) I. L. R., 36 All., 250.
(2) (1888) I. L. R., 11 All., 267. (4) (1915) I. L. R., 38 All., 21.

1917

RAM PIARI
v.
NAND LAL.

1917
May, 24.