

Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Young.

SARABDEO BHARTHI (PLAINTIFF) v. RAM BALI AND
ANOTHER (DEFENDANTS).*

1932
May, 25.

*Limitation Act (IX of 1908), articles 134, 134B, 144—
Religious endowment—Idol—Mahant—Property vested in
idol—Transfer by mahant as manager—Suit by successor
for recovery of property—Time from which limitation
begins to run.*

In a suit, which was brought and decided prior to Act I of 1929, by the successor of a mahant to recover immovable property illegally sold by the former mahant, it was held that where property vested in an idol was transferred by the mahant who purported to sell it in his capacity as the manager of the idol, adverse possession against the idol commenced from the very moment possession was taken under the sale deed, and it could not be deemed to have been postponed till the mahant died. The suit for recovery of the property brought after twelve years from the transfer of possession under the sale was time barred.

A mahant cannot be treated as a trustee to whom property has been conveyed in trust within the meaning of article 134 of the Limitation Act, and that article was not applicable.

Mr. K. Verma, for the appellant.

Mr. Shiva Prasad Sinha, for the respondents.

SULAIMAN, C. J., and YOUNG, J. :—This is a plaintiff's appeal arising out of a suit brought by the plaintiff, alleging himself to be the duly installed mahant, for possession of certain properties transferred by the former mahant.

In the connected appeals we have held that the plaintiff has established his claim as the *chela* of the last mahant, that it is proved that that mahant abdicated and resigned his mahantship and that he could validly do so, and that the present plaintiff was duly installed as his successor by election. It follows that the plaintiff was entitled to maintain the suit for

*First Appeal No. 471 of 1929, from a decree of S. M. Alam, Subordinate Judge of Gorakhpur, dated the 29th of August, 1928.

1932

SARABDEO

BHARTHI

v.

RAM BALL.

recovery of possession of property transferred by the last mahant, provided there was no legal necessity for the transfer and provided his claim was within time.

This appeal relates exclusively to a sale deed, dated the 18th of November, 1912, executed by the former mahant, Ram Prasad, for Rs. 3,499-15-0 in favour of Mst. Ureha, predecessor of defendants Nos. 3 and 4, in respect of village Batelpur. The court below has held that there is no legal necessity for this sale deed also, but has dismissed the claim on the ground of limitation. In appeal it is urged that the view taken by the court below on the question of limitation is wrong.

Before 1929 there was at one time some authority for the view that a suit brought by a succeeding mahant to recover possession of property transferred by his predecessor was governed by article 134 of the Limitation Act; but in the case of *Vidya Varuthi v. Balusami Ayyar* (1) their Lordships of the Privy Council distinctly laid down that a mahant cannot be treated as a trustee to whom property had been conveyed in trust within the meaning of that article, and that therefore article 134 would not be applicable. Their Lordships applied article 144, which is the general article for suits for recovery of possession of immovable property.

The learned advocate for the appellant, however, relies on the concluding portion of that judgment for the proposition that adverse possession can never become adverse during the lifetime of the trustee who made the transfer. That case, however, was a special case, in which the plaintiffs were claiming rights as permanent lessees and they had been allowed to remain in possession by the succeeding mahant. Their Lordships came to the conclusion that the proper inference to be drawn from the circumstances of that case was that the new trustee, who had power to continue the tenancy, had continued

(1) (1921) I.L.R., 44 Mad., 631.

it, and consequently the possession of the lessee never became adverse until his death. Where a person is claiming as a permanent lessee and is allowed to remain in possession by a succeeding trustee as lessee, he need not necessarily acquire adverse rights so as to become a permanent lessee in perpetuity. The case of an out and out transfer obviously stands on a different footing. In such a case the transferee from the very moment of his taking over possession asserts adverse title and remains in possession as an adverse proprietor.

Their Lordships of the Privy Council in the case of *Lal Chand Marwari v. Mahant Ramrup Gir* (1) do not think that the point was clearly covered by *Vidya Varuthi's* case.

There has been a slight conflict of opinion in this country as a result of the last mentioned pronouncement. But a Bench of the Madras High Court in the case of *Rama Reddy v. Rangadasan* (2) came to the conclusion that adverse possession could only begin to run after the death or retirement of the last trustee who had made the transfer. On the other hand, the contrary view has been accepted by another Bench of the Madras High Court in the case of *Vadlamudi Sastrulu v. Thalluri Venkataseshayya* (3), by the Patna High Court in the case of *Badri Narain Singh v. Mahant Kailash Gir* (4), and the Lucknow Chief Court in the case of *Mahant Parkas Das v. Mahant Janki Ballabh* (5) and also by the Calcutta High Court in *Debendra Nath Sadhukhan v. Naharmal Jalan* (6).

It seems to us that when the property does not vest in the mahant, but vests in the idol and the mahant purports to transfer it in his capacity as the manager of the idol, adverse possession against the idol commences from the very moment possession is taken under the sale deed, and it cannot be deemed to have been

1992

SARADDEO
BHARTI
v.
RAM BALL.

(1) (1925) I.L.R., 5 Pat., 312.

(2) (1925) I.L.R., 49 Mad., 543.

(3) (1927) 110 Indian Cases, 894.

(4) (1925) I.L.R., 5 Pat., 341.

(5) (1926) I.L.R., 2 Luck., 239.

(6) A.I.R., 1930 Cal., 678.

1932
 SARABDEO
 BEARTEH
 RAM v. BALI.

postponed till the mahant died. So far as the vendee is concerned, his possession certainly becomes adverse from the very moment of the sale. We, therefore, think that there is no justification for holding that adverse possession would not commence to run in the case of an out and out transfer until the mahant is dead.

This view finds support from the rules laid down by their Lordships of the Privy Council in the cases of *Subbaiya Pandaram v. Mahammad Mustapha Maracayar* (1) and *Damodar Das v. Lakkhan Das* (2), in both of which their Lordships held that adverse possession commenced from the date of the transfer.

We may also point out that the legislature itself realised the difficulty and hardship that might in some cases arise, and has accordingly intervened. Act I of 1929 adds article 134 B in the schedule, under which the suit by a new trustee can be brought within 12 years from the date of death, resignation or retirement of the transferor. We are accordingly of opinion that the view taken by the court below on the question of limitation was correct. The appeal fails and it is hereby dismissed with costs.

SPECIAL BENCH.

Before Mr. Justice Young, Mr. Justice Pullan and Mr. Justice Niamat-ullah.

IN THE MATTER OF AN ADVOCATE.*

1932
 May, 26.

Contempt of court—Advocate—Contempt of court committed by a person qua a party and not qua advocate—No professional misconduct—Bar Councils Act (XXXVIII of 1926), section 10.

Where a party to a litigation, who was an advocate, made false allegations in an application, involving imputations on the

*Miscellaneous Case No. 645 of 1931.

(1) (1923) I.L.R., 46 Mad., 761. (2) (1910) I.L.R., 37 Cal., 885.