thereafter at 6 per cent. per annum until realization will be passed against Moti Lal personally. Out of the sum so decreed a decree for Rs. 4,131 principal with interest and proportionate costs together with future interest as stated above is passed against the defendants Nos. 3 and 4. Six months' time from this date is allowed to them for payment, and in default the entire mortgaged property covered by the mortgage-deed of the 8th of February, 1918 shall be sold.

As to costs, our order is that parties will receive and pay costs in proportion to their success and failure in these appeals.

Decrees in both the appeals will be prepared on the lines indicated above under order 34, rule 4 of the Code of Civil Procedure.

Cross-objections filed on behalf of the plaintiffs are also dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice Muhammad Raza.

MAHANT PARKAS DAS (PLAINTIFF-APPELLANT) *v.* MAHANT JANKI BALLABH SARAN (DEFENDANT-RESPONDENT).* 1926 *April*, 19.

Limitation—Adverse possession—Asthan *property—Possession adverse against one mahant continues adverse against succeeding mahants*—Parti *land, jungle land or tank land—Possession of rightful owner over* parti *land, jungle land, etc., presumption of.*

It is true that if a particular land bears the character of a *parti* land, jungle land or tank land, the owner of such land is not required, in view of the character of the land, to prove

* Second Civil Appeal No. 299 of 1925, against the decree of Syed Asghar Hasan, Officiating District Judge of Fyzabad, dated the 3rd of March, 1925, upholding the decree of Manmath Nath Upadhya, Munsif of Fyzabad, dated the 22nd of December, 1923.

1926

MAHANT PARKAS DAS v. MAHANT JANKI BALLABH SARAN.

his possession over the same by proving overt acts of possession. To expect such a proof from the owner of the land would be tantamount to asking him to prove which is almost impossible to prove. The law, therefore, presumes his possession to continue till he is dispossessed, which dispossession can only take place if another person asserts clearly that he claims the right to hold possession as owner or shows by his conduct an intention to exclude the actual owner.

When, therefore, the defendant's predecessor-in-title after having foreclosed his mortgage took formal delivery of possession through Court of the plot of *parti* land in suit he must be deemed to have dispossessed the institution of the said land. The said delivery of possession should, in the eye of law, be deemed to have destroyed the presumption as to the continuity of possession in favour of the actual owner. The possession of the defendant-mortgagee, in respect of the plot in suit, became adverse not when overt acts of physical possession were committed by the defendant's predecessor-in-title, but when delivery of possession of the property was taken from the Court. [*Thakur Sheo Narain Singh* v. *Bodal Singh* (1), followed.]

Held, that an idol installed in a particular Asthan is a juridical person capable of holding property and getting it managed through its manager, sebait or mahant. Such a manager, sebait or mahant would represent the idol or the institution for the time being completely, and possession, if adverse, against the mahant for the time being must be deemed to be adverse against the idol or the institution, unless the character of the alienation under which possession was taken could be deemed to enure only for the lifetime of a particular manager, sebait or mahant. The adverse possession in such a case begins to run from the date when the alienee takes possession of the property alienated and each succeeding manager, sebait or mahant cannot get a fresh start, so far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager, the reason being that the succeeding managers, sebaits or mahants form a continuing representation of the idol or the institution to which the endowed property has

(1) (1905) 8 O.C., 177.

been dedicated. [*Nilmony Singh* v. *Jagabandhu Roy* (1), *Abdul Rashid* v. *Janki Das* (2), *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram* (3), *Damodar Das* v. *Adhkari Lakhan Das* (4), and *Badri Narain Singh* v. *Mahant Kailash Gir* (5), followed. *Abhi Ram Goswami* v. *Shyama Charan Nandi* (6), *Sri Ishwar Shyam Chand Jiu* v. *Ram Kanai Ghose* (7), *Subhaiya Pandaram* v. *Mahamad Mustafa Maracayar* (8), relied upon. *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (9), distinguished.]

Misra and Raza, JJ.

Mr. *Niamat Ullah*, for the appellant.

Mr. *M. Wasim*, for the respondent.

MISRA and RAZA, JJ. :—The suit which has given rise to this appeal was brought by the plaintiff-appellant in the Court of the Subordinate Judge of Fyzabad for possession of a plot of land measuring 6 biswas in area out of kishtwar No. 114 and abadi No. 344 situate in mohalla Ramkot in Ajudhia. The suit was originally brought by one Mahant Sita Ram Das, who died during the pendency of the suit in the Court of the Munsif, and since his death has been represented by the present appellant Mahant Parkas Das. Mahant Sita Ram Das, who originally brought the suit, claimed the plot in suit as a mahant of Birakt Asthan to which the land in suit is alleged to belong. The position of the plot in suit is shown clearly in the plan prepared by the Commissioner. The defendant is the mahant of another institution called Asthan Mangal Bhawan and claims the land through a deed of *waqf* executed by one Shiam Lal on the 24th of October, 1920. It appears that on the 4th of May, 1870 a decree in respect of the plot

(1) (1896) I.L.R., 23 Calc., 536.
(2) (1922) 9 O.L.J., 2.
(3) (1900) I.L.R., 23 Mad., 271 (P. C.).
(4) (1910) L.R., 37 I.A., 147 : S. C., I.L.R., 37 Calc., 885.
(5) (1926) 93 I.C., 303.
(6) (1909) L.R., 36 I.A., 148, S. C., I.L.R., 36 Calc., 1003.
(7) (1911) L.R., 38 I.A., 76 : S. C., I.L.R., 38 Calc., 526.
(8) (1923) L.R., 50 I.A., 295 : S. C., I.L.R., 46 Mad., 751.
(9) (1921) L.R., 48 I.A., 302 : S. C., I.L.R., 44 Mad., 831.

1926

MAHANT PARKAS DAS v. MAHANT JANKI BALLABH SARAN.

Misra and Raza, JJ.

in dispute was passed by the Settlement Courts in favour of one Ram Das who was then the mahant of Birakt Asthan. Several mahants succeeded one after another, and it is necessary to mention only one of them, namely, Mahant Dharam Das, who was removed from his post of the mahant of the said Asthan owing to his misconduct and in whose place original plaintiff Mahant Sita Ram Das was installed in the year 1909. Dharam Das had made several transfers relating to the property appertaining to the said Asthan, and one such transfer was in the shape of a possessory mortgage (exhibit A7) executed by him on the 29th of September, 1902 in favour of a mahant of Hanuman Garhi, known also as Sita Ram Das *alias* Sur Das, in respect of some property including that in dispute. The said mortgage contained a condition as to foreclosure. In the year 1906 proceedings for foreclosure of the said mortgage were taken by the mortgagee and a preliminary decree for foreclosure was passed on the 9th of April, 1906 (exhibit A9), and that decree was made absolute on the 31st of October, 1906 (exhibit A10). On the 30th of January, 1907 Mahant Sur Das got formal delivery of possession of the said property through the Court. On the 1st of June, 1912 the successor of Mahant Sur Das sold the property to one Bhagat Sunsun Ram (exhibit A12) who obtained permission from the Municipal Board to construct an *ahata* round the land in dispute and obtained the said permission on the 8th of August, 1912 (exhibit A1). On the 10th of April, 1916 Bhagat Sunsun Ram sold the property to one Shiam Lal (exhibit A3), who subsequently on the 4th of October, 1920, as stated above, made a *waqf* of the property in suit in favour of Asthan Mangal Bhawan, of which the defendant is the mahant. It is said that the property in suit along with other property was in possession of

the Maharaja of Tikamgarh and in order to recover possession Mahant Sita Ram Das, the original plaintiff, had to bring a suit against the said Maharaja, which suit was decreed on the 14th of May, 1921, and this decree was confirmed in appeal by the late Court of the Judicial Commissioner of Oudh on the 31st of March, 1922 (exhibit 35). On the 21st of May, 1921 he took *dakhal dehani* on the basis of his decree, but on the objection raised by the defendant the Court restored to the latter possession of the property in dispute on the 26th of November, 1921 (exhibit A19). The present suit has been brought on the 6th of October, 1922.

Two main pleas were taken in defence, one was to the effect that the plaintiff's title to the plot in dispute was denied and the other that the plaintiff had not been in possession of the property in suit within limitation.

The trial Court, the Munsif of Fyzabad to whose Court the case was transferred for decision, found that the plot in dispute appertained to the institution known as Birakt Asthan and the plaintiff was, therefore, entitled to recover it. He, however, dismissed the plaintiff's suit on the ground that his possession within limitation had not been proved. The matter was carried further in appeal by the plaintiff-appellant and the learned Subordinate Judge of Fyzabad who heard the appeal concurred with the findings arrived at by the trial Court and therefore dismissed the appeal.

The plaintiff-appellant has now come up to this Court in second appeal and the main point which has been argued by the learned Advocate for the appellant is the question of limitation. The argument advanced by him was to the effect that the plaintiff's

1926

MAHANT PARKAS DAS v. MAHANT JANKI BALLABH SARAN.

Misra and Raza, JJ.

title having been established his possession over the plot in dispute ought to be presumed inasmuch as it was *parti* land; and the defendant's possession could not be considered to be adverse because, after taking formal delivery of possession on the 30th of January, 1907, no overt act had been committed by the defendant except the construction of an enclosure (*ahata*) on the land in dispute in the year 1912 in pursuance of a permission having been obtained from the Municipal Board. It was contended that the suit having been brought in 1922, that is within 12 years of the overt act mentioned above, was within limitation. It was also argued that a formal delivery of possession in the year 1907, which had been taken out against the predecessor of the plaintiff Sita Ram Das, was of no avail because he had succeeded as mahant only in 1909.

The case was argued before us at great length and we have taken time to consider our judgment. As to the first contention that the land in dispute being *parti* land and that the plaintiff's possession should consequently be presumed to continue we are of opinion that after the formal delivery of possession in favour of the defendant on the 30th of January, 1907, no such presumption can be made. The proceedings for delivery of possession through Court must be deemed in law to have destroyed the presumption as to the continuity of plaintiff's possession. It is true that if a particular land bears the character of a *parti* land, jungle land or tank land the owner of such land is not required, in view of the character of the land, to prove his possession over the same by proving overt acts of possession. To expect such a proof from the owner of the land would be tantamount to asking him to prove which is almost impossible to prove. The law, therefore, presumes his possession to continue till he is dispossessed, which dispossession can only take

place if another person asserts clearly that he claim the right to hold possession as owner or shows by his conduct an intention to exclude the actual owner. We are supported in our view by a decision of a Bench of the late Court of the Judicial Commissioner of Oudh reported in *Thakur Sheo Narain Singh* v. *Bodal Singh* (1).

Misra and Raza, JJ.

It is, therefore, clear that when the defendant's predecessor-in-title, Mahant Sur Das, after having foreclosed his mortgage took the formal delivery of possession through Court of the plot in suit he must be deemed to have dispossessed the institution known as Birakt Asthan of the said land. The said delivery of possession should, in the eyes of the law, be deemed to have destroyed the presumption as to the continuity of possession in favour of the actual owner. We, therefore, hold that the possession of the defendant in respect of the plot in suit became adverse, not from the year 1912, when overt acts of physical possession were committed by the defendant's predecessor-in-title, but from the year 1907, when delivery of possession of the property was taken by Mahant Sur Das from the Court.

As to the next contention that adverse possession against the Mahant Dharam Das, who was succeeded by the plaintiff, could not be deemed to be adverse against the plaintiff, we are of opinion that the argument is not sound. The learned Advocate for the appellant relied strongly on a case reported in *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (2) to show that the possession of each succeeding mahant was merely for life, and if any act constituting adverse possession was committed against one mahant, it could not be deemed to be adverse against the succeeding mahant

(1) (1905) 8 O.C., 177.

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

1926

MAHANT PARKAS DAS v. MAHANT JANKI BALLABH SARAN.

Misra and Raza, JJ.

whose possession must be deemed to have commenced from the date when he succeeded the previous mahant. In our opinion this case dealt with an alienation under a permanent lease which under the law could enure only for the grantor's lifetime. It was, therefore, clearly a case in which adverse possession could not commence against a succeeding mahant before he had actually succeeded to his office as a mahant. This case cannot be considered to be an authority for holding that, where the alienation is not by way of a lease but by way of a complete transfer under a foreclosure decree, which cannot be presumed to be good only for the life of the mortgagor but also against the succeeding mahant as well, the possession cannot be deemed to be adverse from the date that an alienation of a complete character takes place. This would be clear by an earlier decision of their Lordships of the Privy Council reported in *Abhi Ram Goswami* v. *Shyama Charan Nandi* (1) where their Lordships held that a *mukarri patta* was not tantamount to a conveyance in fee simple and the grant of such a *patta* of endowed property enured only for the lifetime of the grantor. The same view was taken by their Lordships of the Privy Council in *Sri Ishwar Shyam Chand Jiu* v. *Ram Kanai Ghose* (2) and in *Subhaiya Pandaram* v. *Mahamad Mustafa Maracayar* (3). In the last case their Lordships clearly pointed out that the case reported in L. R. 48 I. A., 302, was a case which related to the effect of an attempt on the part of a trustee to dispose of the property by a permanent *mukarri* lease. This, their Lordships said, he had no power to do, though he has had liberty to dispose of it during the period of his life and a grant made for a longer period may be good, but good

(1) (1909) L.R., 36 I.A., 148 : S. C., I.L.R., 36 Calc., 1003.
(2) (1911) L.R., 38 I.A., 76 : S. C., I.L.R., 38 Calc., 526.
(3) (1923) L.R., 50 I.A., 295 : S.C., I.L.R., 46 Mad., 751.

only to the extent of his own life interest. Their Lordships further observed that possession in such a case could not be treated adverse and 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 and that such an argument had no relation to the case where the property had been acquired under an execution sale and possession retained throughout. In our opinion an idol installed in a particular Asthan is a juridical person capable of holding property and getting it managed through its manager, sebait or mahant. Such a manager, sebait or mahant would represent the idol or the institution for the time being completely, and possession, if adverse, against the mahant for the time being must be deemed to be adverse against the idol or the institution, unless the character of the alienation under which possession was taken could be deemed to enure only for the life-time of a particular manager, sebait or mahant. The adverse possession in such a case begins to run from the date when the alienee takes possession of the property alienated, and each succeeding manager, sebait or mahant cannot get a fresh start so far as the question of limitation is concerned, upon the ground of his not deriving title from any previous manager, the reason being that the succeeding managers, sebaits or mahants form a continuing representation of the idol or the institution to which the endowed property has been dedicated. We are supported in this view by a case decided by BANERJI and GORDON, JJ., of the Calcutta High Court, reported in *Nilmony Singh* v. *Jagabandhu Roy* (1) and another case decided by LINDSAY, J. C., and reported in *Abdul Rashid* v. *Janki Das* (2). In *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram* (3) the same principle was laid down by their Lordships

Misra and Raza, JJ.

(1) (1896) I.L.R., 23 Calc., 536. (2) (1922) 9 O.L.J., 2.
(3) (1900) I.L.R., 23 Mad., 271.

1926

MAHANT PARKAS DAS v. MAHANT JANKI BALLABH SARAN.

Misra and Raza, JJ.

of the Privy Council. In that case the manager of a particular religious foundation had sold certain lands belonging to the endowment to another person and delivered possession thereof. It was held that possession delivered to the purchaser was adverse to the vendor and a suit brought by a subsequent manager of the endowed property for possession of the property sold after the expiration of 12 years from the date of the sale was barred by the law of limitation. In that case the plaintiff had sued for possession of the hereditary office and also for the property alienated which had originally belonged to the endowment. Their Lordships observed that there was no distinction between the office and the property of the endowment, the one being attached to the other, and that the plaintiff's suit having been brought after 12 years adverse possession was barred under article 144 of the Limitation Act. In *Damodar Das* v. *Adhkari Lakhan Das* (1) their Lordships took a similar view. That was a suit brought by the mahant and sebait of the Sadabart Math or temple of Thakur Sri Gopal Ji situate at Bhadrak in the district of Balasore to eject the defendant from certain properties which were alleged to belong to the idol and the Math and had been invalidly assigned in his favour by a previous mahant. The defendant set up limitation as his defence and the High Court of Calcutta allowed it to prevail. On appeal their Lordships of the Privy Council observed at page 151 that in point of law property in dispute should be deemed to have vested not in the mahant but in the legal entity, the idol, the mahant being only his representative and manager. They, therefore, held that possession of the defendant was adverse to the idol because the mahant represented the idol and his exclusion virtually meant the exclusion of the

(1) (1910) L.R., 37 I.A., 147 : S. C., I.L.R., 37 Calc., 885.

idol; and on this ground their Lordships held that the suit was barred by limitation.

The view which we have taken of the various cases decided by their Lordships of the Privy Council is the view which was recently taken by their Lordships of the Patna High Court in a case reported in *Badri Narain Singh* v. *Mahant Kailash Gir* (1), decided by MULLICK and KULWANT SAHAY, JJ. We, therefore, hold that the possession which was taken by the defendant's predecessor-in-title, Mahant Sur Das, during the time that Mahant Dharam Das was the mahant of Birakt Asthan was adverse not only to the said mahant but to the Asthan itself, and that the Courts below have correctly decided that the plaintiff's suit is barred by limitation.

Misra and Raza, JJ.

The appeal, therefore, fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Mohammad Raza.

BANNU MAL (PRISONER) (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT).*

1926 *May*, 26.

Indian Penal Code (XLV *of* 1860), *sections* 366 *and* 368—*Wrongfully keeping in confinement a kidnapped person—Kidnapper's conviction under section* 368 *of the Indian Penal Code, legality of.*

Held, that section 368 of the Indian Penal Code refers to some other party who assists in concealing any person who had been kidnapped and does not refer to the kidnappers.

* Criminal Appeal No. 183 of 1926, against the order of Aprakash Chandra Bose, Additional Sessions Judge of Kheri (at Lakhimpur), dated the 13th of April, 1926, convicting the accused appellant under sections 366 and 368 of the Indian Penal Code.

(1) (1926) 93 I.C., p. 303.