

BABU  
SURENDRA  
NARAIN  
SINGH  
v.  
RAJA LAL  
BAHADUR  
SINGH

The decision in that case was founded upon the particular facts of that case and no general principle of law useful for the purposes of the present appeal can be discovered from a perusal of that judgment.

We hold therefore that there is no force in the objections of the judgment-debtors appellants and that those objections were rightly dismissed by both the lower courts. The appeals therefore fail and are accordingly dismissed with costs.

*Appeal dismissed.*

### APPELLATE CIVIL

*Before Sir Syed Wazir Hasan, Knight, Chief Judge and  
Mr. Justice Bisheshwar Nath Srivastava*

1933  
December 4

CHINKAN PANDE AND ANOTHER (DEFENDANTS-APPELLANTS) v.  
MAHANT DURGA BHARTHI AND ANOTHER (PLAINTIFFS-  
RESPONDENTS)\*

*Limitation Act (IX of 1908), section 10—Suit by Mahant of an asthan to recover possession of land transferred by his predecessor to defendant by way of shankalap—Section 10 of the Limitation Act, applicability of.*

Where a suit is brought by the Mahant of an *asthan* for the recovery of possession of certain land which had been transferred to the defendant by his predecessor by way of *shankalap* by a registered document, *held*, that even assuming that the land in suit was property appertaining to the *asthan*, it cannot be said that it had become vested in trust for any specific purpose and therefore section 10 of the Limitation Act did not apply to the case. *Vidya Varuthi Thirtha v. Balusami Ayyar* (1), relied on.

Messrs. *Mahmud Beg, Mohammad Ayub and Akhtar Husain*, for the appellants.

Messrs. *A. P. Sen and S. C. Dass*, for the respondents.

HASAN, C.J. and SRIVASTAVA, J.:—This is the defendants' appeal from the decree of the Subordinate Judge of Gonda, dated the 12th of May, 1932.

In the village of Jagannathpur, pargana Bodhapair, there lies an area of 105 bighas 6 kham which, on the

\*First Civil Appeal No. 54 of 1932, against the decree of M. Mahmud Hasan Khan, Subordinate Judge of Gonda, dated the 12th of May, 1932.

(1) (1921) L.R., 48 I.A., 302.

finding of the learned Subordinate Judge appertains to the *asthan* of Parela. The plaintiff Durga Bharti is admittedly now the Mahant of that *asthan*. The suit out of which this appeal arises was brought by the plaintiff in the character of the Mahant of the aforementioned *asthan* for the recovery of possession of the area stated above lying in the village of Jagannathpur. The following facts are not now disputed. The area in question is a part of a much larger area and the latter was acquired by means of a purchase in the year 1880 by the former Mahant Partab Bharti when he was occupying the status of a *chela* of the then reigning Mahant. Partab Bharti became Mahant in the right of succession of the *asthan* of Parela in the year 1891. On the 7th of September, 1893, Partab Bharti made a transfer by way of *shankalap* of the area in suit in favour of the defendants by means of a registered document of the date just now mentioned, and the defendants are in possession thereof in virtue of the title which came to vest in them under the deed of 7th of September, 1893. The plaintiff Mahant Durga Bharti succeeded to the *gaddi* of the *asthan* at Parela in the year 1915 and entered into possession of the entire endowed property.

One of the defences raised to the suit is that it was barred by limitation. The learned Subordinate Judge over-ruled this plea on the ground that limitation was saved by the provisions of section 10 of the Indian Limitation Act, 1908. This decision of the learned Subordinate Judge is challenged in appeal before us. We are of opinion that the appeal succeeds.

The question whether the limitation for the suit out of which this appeal arises is or is not saved by the provisions of section 10 of the Indian Limitation Act was the only question argued before us in appeal and it was agreed that if section 10 does not apply to this case then the suit must be held to be barred by the provisions of Article 144 of the Second Schedule of the Indian Limitation Act.

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Hasan, C. J.  
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Srivastava,  
J.

It seems to us that the point under discussion as stated above is wholly covered by the decision of their Lordships of the Judicial Committee in the case of *Vidya Varuthi Thirtha v. Balusami Ayyar* (1). According to that decision Article 134 of the Second Schedule is controlled by the provisions of section 10 of the Limitation Act and the property held by a Mahant of a *math* for the purpose of maintaining the *math* and the office relating thereto is not property which "has become vested in trust for any specific purpose". It was held in that case that the endowments of a Hindu *math* are not "conveyed in trust" nor is the head of a *math* a "trustee" with regard to them save as to specific property proved to have been vested in him for a specific object. In the course of the judgment in that case their Lordships observed as follows:

"Neither under the Hindu Law nor in the Mahommedan system is any property 'conveyed' to a *shebait* or a *mutawalli*, in the case of a dedication. Nor is any property vested in him; whatever property he holds for the idol or the institution he holds as manager with certain beneficial interests regulated by custom and usage."

At another place after reviewing all the important cases bearing on the subject their Lordships summed up the law in the following words:

"From the above review of the general law relating to Hindu and Mahommedan pious institutions it would *prima facie* follow that an alienation by a manager or superior by whatever name called cannot be treated as the act of a 'trustee' to whom property has been 'conveyed in trust' and who by virtue thereof has the capacity vested in him which is possessed by a 'trustee' in the English law. Of course, a Hindu or Mahommedan may 'convey in trust' a specific property to a particular individual for a specific and definite purpose, and place him-

(1) (1921) L.R., 48 I.A., 302.

self expressly under the English law when the person to whom the legal ownership is transferred would become a trustee in the specific sense of the term."

We are accordingly of opinion that even assuming that the property in suit was property appertaining to the *asthan* of Parela, it cannot be said that it had become vested in trust for any specific purpose and therefore section 10 does not apply to the case.

We accordingly allow the appeal, set aside the decision of the Court below and dismiss the plaintiffs' suit with costs in both courts.

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*Hasan, C.J.*  
*and*  
*Srivastava,*  
*J.*

*Appeal allowed.*

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and  
Mr. Justice E. M. Nanavutty*

MUSAMMAT AYUB FATIMA AND ANOTHER (JUDGMENT-DEBTORS-APPELLANTS) v. JHAO LAL AND OTHERS (DECREE-HOLDERS-RESPONDENTS)\*

1933  
November, 24

*Civil Procedure Code (Act V of 1908), Order XXIII, rule 3 and Order XXXIV, rule 4—Mortgage suit—Compromise decree in mortgage suit—Provision to sell property in default of payment of instalment—Decree in terms of compromise—Default of instalment beyond the fixed time—Extension of time—Court whether can extend time and compel decree-holder to accept money deposited beyond time—Provision allowing decree-holder to sell mortgaged property in default of payment of an instalment, whether of a penal character—Court's power in case of consent decrees to relieve a party of provision of a penal character.*

Where a suit on the basis of a mortgage was decided by means of a compromise, the terms of which were that the defendant was to pay the decretal amount by instalments and in case of default in payment of any instalment the decree-holder was entitled to realise the unpaid balance by sale of the property mortgaged without the necessity of getting a final decree prepared and the court decreed the claim in terms of the compromise under Order XXIII, rule 3 of the Code of Civil Procedure and the decree which was prepared in pursuance of this order was not one under Order XXXIV, rule 4 of the Code

\*Execution of Decree Appeal No. 55 of 1932, against the order of Pandit Damodar Rao Kelkar, Subordinate Judge of Kheri, dated the 9th of July, 1932.