tor could or should have extracted any implied intention on the part of the debtor as to the method of its appropriation. Still less was there in my view any presumption which could be fastened upon the creditor that the debtor's intention was that the money should be appropriated to the later of the two specific debts, *i.e.* to the mortgage debt. Under these circumstances it appears to me that in this case, as the law stands, it is hopeless to argue and cannot seriously be maintained that Mr. Hill could not have had the right of appropriating this sum in whatever manner he might have thought fit.

Appeal decreed.

APPELLATE CIVIL.

Before Mullick and Kulwant Sahay, J.J.

BADRI NARAYAN SINGH

v.

MAHANTH KAILASH GIR.*

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Limitation Act, 1908 (*Act IX of* 1908), *Schedule I, Article* 144—*Mahanth of math, nature of the office of—alienation made by mahanth, suit to set aside—limitation, terminus a quo—whether each succeeding mahanth gets a fresh cause of action.*

The mahanth of a math is merely the manager or custodian of the institution and he does not hold the math properties as a life-tenant or trustee.

Sri Vidya Varuthi Thirtha Swamigal v. *Balusami Ayyar* (1) and *Kailasam Pillai* v. *Natraja Thambiran* (2), followed.

Vidyaporna Tirtha Swami v. *Vidyanidhi Tirtha Swami* (3), disapproved.

Therefore, the effect of a sale by a mahanth in excess of his authority, is not to give each succeeding mahanth

* Appeal from Appellate Decree no. 35 of 1923, from a decision of B. Kamal Prasad, Additional Subordinate Judge of Shahabad, dated the 21st November, 1922, reversing a decision of B. Kamini Kumar Banerji, Munsif of Arrah, dated the 6th May, 1922.

(1) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(2) (1910) I. L. R. 33 Mad. 265, F. B.
(3) (1904) I. L. R. 27 Mad. 435.

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a new cause of action for setting aside the alienation; consequently adverse possession commences from the date of the original disposition of the property and is not interrupted by the death of the original mahanth and the succession of a new mahanth; each succeeding mahanth does not get a new start for the purpose of limitation.

Nilmony Singh v. *Jagabandhu Roy* (1), *Damodar Das* v. *Lakhan Das*(2) and *Madhusuduan Mandal* v. *Radhika Prasanna Dass* (3), followed.

Appeal by the defendant.

This was an appeal on behalf of the defendant in an action in ejectment. The only important question for decision in the appeal was the question of limitation.

The plaintiff-respondent was the mahanth of Noornagar, otherwise called Jalpura, and he brought a suit for a declaration that a deed of sale executed by Ram Kishun Gir, a former mahanth of the math, to Tilak Singh, an ancestor of the defendant, in the year 1894, was not binding upon him; and that it did not convey any title inasmuch as the vendor mahanth had no right to sell the property, which was a property endowed to the math, without any justifying necessity of the math. The present suit was instituted on the 29th of July, 1921. The defendant, in his written-statement, alleged inter alia that he and his ancestors had been in adverse possession for more than twelve years and that the suit was accordingly barred by limitation.

The learned Munsif held that the defendant had been in possession of the land at least from the year 1895 and that the plaintiff and the math represented by him had been out of possession for about 27 years before the suit. He held that the article applicable was Article 144 of Schedule I of the Indian Limitation Act and that the defendant was in adverse possession since after the death of Ram Kishun Gir,

(1) (1896) I. L. R. 23 Cal. 536.
(2) (1910) I. L. R. 37 Cal. 885; L. R. 37 I. A. 147.
(3) (1912-13) 17 Cal. W. N. 878.

he being of opinion that during the lifetime of Ram Kishun Gir the possession of the defendant was permissive possession. He accordingly dismissed the suit.

On appeal the Subordinate Judge held that time began to run as against the plaintiff when he became the mahanth of the math. It appeared that since Ram Kishun Gir there had been three mahanths of the math, namely, Sheodhyan Gir, Ganesh Gir and the plaintiff Kailash Gir. The Subordinate Judge was of opinion that the mahanth for the time being was a tenant for life and any alienation of the math property made by him which was not for the benefit of the math was valid during his lifetime, and that if the successor of the vendor did not sue the purchaser for more than twelve years he would be barred only for the period that he remained the mahanth of the math, and that after him his successor would have a fresh start of limitation from the time of the death of his predecessor. He accordingly held that as the suit was brought within 12 years of the death of the plaintiff's immediate predecessor, Mahanth Ganesh Gir, the suit was not barred by limitation. He accordingly decreed the suit with costs.

N. N. Sinha and *B. P. Sinha*, for the appellant.

P. Dayal and *R. Prasad* for the respondents.

KULWANT SAHAY, J. (after stating the facts as set out above, proceeded as follows): The only question is as to whether the suit is barred by limitation.

The determination of this question depends on the determination of the status of the mahanth of a math. The property admittedly was endowed property and belonged to the math. The question as regards the true position of a mahanth of a math in relation to the properties belonging to the math or to any idol in the math has been considered in a number of cases. His position has been expressed variously in

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various decisions. Sometimes his position is described as that of a life-tenant, sometimes as that of a trustee, in some cases he is described to hold the position of a guardian of a minor, and in some cases he is described as a corporation sole. The question, however, was considered by the Privy Council in a very recent case in *Sri Vidya Varuthi Tirtha Swamigal* v. *Balusami Ayyar*(1) and it was held that the mahants of maths, called by whatever names, are only the managers or custodians of the institution and that in no case is any property conveyed to or vested in them; nor are they "trustees" in the English sense of the word, although they are answerable as trustees in the general sense for maladministration. The learned Subordinate Judge was of opinion that the position of a mahanth of a math was that of a life-tenant. This view was taken by the Madras High Court in *Vidyaporna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*(2) where the learned Judges observed that the mahanth is, as he would be described in England, a "corporation sole" having an estate for life in the permanent endowments of the math and an absolute property in the income derived from offerings, subject only to the burden of maintaining the institution; but in a later Full Bench decision of the same Court in *Kailasam Pillai* v. *Natraja Thambiran*(3) it was held that it could not be predicated of the head of a math that as such he holds the math properties as a life-tenant or trustee. The view taken in *Vidyaporna Tirtha Swami* v. *Vidyanidhi Tirtha Swami*(2) was disapproved of by the Privy Council in the case of *Sri Vidya Varuthi Tirtha Swamigal* v. *Balusam Ayyar*(1) referred to above. The learned Subordinate Judge was wrong in his view that the position of each succeeding mahanth was that of a life-tenant.

(1) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(2) (1904) I. L. R. 27 Mad. 495.
(3) (1910) I. L. R. 33 Mad. 265, F. B.

The question as to whether each succeeding mahanth gets a fresh start of limitation from the date of his succession as mahanth was directly raised and considered in several cases. In *Nilmony Singh* v. *Jagabandhu Roy*(1), Bannerji, J., after considering the position of a mahanth of a math, held that although it is true that an idol holds a property in an ideal sense, and its acts relating to any property must be done by or through its manager or shebait, yet that does not show that each succeeding manager gets a fresh start as far as the question of limitation is concerned on the ground of his not deriving title from any previous manager. The succeeding shebaits were considered as forming a continuing representation of the idol's property. In *Damodar Das* v. *Lakhan Das* (2) it was held by the Privy Council, affirming the decision of the High Court at Calcutta, that the property vested not in the mahanth but in the legal entity, the idol, the mahanth being only its representative and manager and that the title of a transferee from the mahanth became adverse to the right of the idol and of the senior chela as representing that idol and that the suit brought by the successor of that chela was barred by limitation. In *Madhusudan Mandal* v. *Radhika Prasanna Das*(3) it was held by Mookerjee and Beachcroft, J.J., that the effect of a lease granted by a shebait in excess of his authority is not to give each succeeding shebait a new cause of action for setting aside the alienation, and adverse possession commences from the date of the original disposition of the property and is not interrupted by the death of the original shebait and the succession of the new shebait, and that each succeeding shebait does not get a new start for the purpose of limitation.

It is clear from these authorities that the plaintiff in the present case could not get a fresh start for the purposes of limitation from the date of his succession

(1) (1896) I. L. R. 23 Cal. 536. (2) (1910) I. L. R. 37 Cal. 885.
(3) (1912-13) 17 Cal. W. N. 873.

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as mahanth. The possession of the transferee became adverse to the institution from the date of the transfer upon the finding that the transfer was without any legal and justifying necessity; but even assuming that his possession was permissive during the lifetime of the vendor Ram Kishun Gir, the cause of action in any event accrued on the death of Ram Kishun Gir, and it is admitted that Ram Kishun Gir died more than twelve years before the suit. The succeeding mahanths represented the institution completely and the defendant did acquire a title by adverse possession for more than twelve years not only from the date of his purchase but also from the death of the vendor.

I am, therefore, of opinion that the decision of the learned Subordinate Judge cannot stand. The result is that the appeal is decreed. The decree of the Subordinate Judge is set aside and that of the Munsif restored. The appellant is entitled to his costs.

MULLICK, J.—I agree.

Appeal decreed.

APPELLATE CRIMINAL.

1925.

Dec., 21.

Before Ross and Foster, J.J.

ILTAF KHAN

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 162—*Police diary, contradiction of witness by.*

In a trial on a charge of murder two witnesses deposed that on the evening of the occurrence they saw the accused persons passing through the village and thereafter they did

* Death Reference no. 22 of 1925 and Criminal Appeal no. 198 of 1925, from a decision of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 18th November, 1925.