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COURTNEY TERRELL, C. J.

a sufficiently convincing character to justify the latter punishment. This is utterly wrong and the Sessions Judge should have known it. We hope that no further occasion will arise for a comment of this nature.

Thus the only conviction maintained is that of Santokhi and notice was issued on him and the others from this Court at the time of the admission of the appeal to show cause why the sentence of transportation for life should not be enhanced; but having regard to the time that has elapsed since his conviction by the Sessions Judge and as he appears to have more or less repented of his action by making a clean breast of the whole matter, we think that the justice would be satisfied with his sentence as it stands. We therefore discharge the rule.

The result is that the conviction and sentence of Santokhi Beldar will be maintained and that the three appellants Chotka Sonar, Mahabir Sanghai and Dwarika Mahto will be acquitted.

Order accordingly.

PRIVY COUNCIL

MAHANTH RAM CHARAN DAS

v.

NAURANGI LAL.

J.C. 1933.

Jan. 17.

On Appeal from the High Court at Patna.

Limitation—Adverse Possession—Religious Endowment—Sale or permanent Lease of Property of Math—When Possession becomes adverse—Limitation Act, 1908 (*Act IX of* 1908), *Schedule I, article* 144.

Although an assignment or disposition of a math and its properties by the mahanth is void, either a sale or permanent lease by him of an item of property appertaining to the math

* *Present*: Lord Blanesburgh, Lord Russell of Killowen, and Sir John Wallis.

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even if not for necessity, is valid during the tenure of office of the mahanth; consequently, upon an alienation of that nature the possession of the purchaser or lessee does not become adverse so as to cause time to run under the Limitation Act, 1908, Schedule I, article 144, until the alienating mahanth ceases to be mahanth, either by death or otherwise.

Vidya Varuthi v. *Balusami Ayyar*(1) and *Subbaiya Pandaram* v. *Mahammad Mustapha Marcayar*(2), applied.

Gnanasambanda Pandara Sannadhi v. *Velu Pandaram*(3) and *Damodar Das* v. *Lakhan Das*(4), distinguished.

Judgment of the High Court(5), reversed.

Appeal (no. 92 of 1932) from a decree of the High Court (April 8, 1930) reversing a decree of the Subordinate Judge of Patna (September 6, 1927).

On December 21, 1909, Rampat Das, the mahanth of a math, executed a mukarrari lease of certain property appertaining to the math in favour of respondent no. 1 and put him into possession; on February 13, 1911, Rampat Das executed a sale deed of the same property, subject to the lease, to respondent no. 3, the wife of respondent no. 2. In or about July 1913 Rampat Das died. After a dispute as to the office the appellant became mahanth.

On May 27, 1924, the appellant, as mahanth, instituted the present suit against the three respondents claiming possession of the property and mesne profits.

Both the mukarrari lease and the sale deed purported to have been executed in order to meet the expenses of the math, but that was negatived by concurrent findings of the Courts in India.

Upon the present appeal the sole question was whether the suit was barred by limitation as pleaded

(1) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(2) (1923) I. L. R. 46 Mad. 751; L. R. 50 I. A. 295.
(3) (1899) I. L. R. 23 Mad. 271; L. R. 27 I. A. 69.
(4) (1910) I. L. R. 37 Cal. 885; L. R. 37 I. A. 147.
(5) (1930) I. L. R. 9 Pat. 885.

by the defendants. Both Courts held, and it was not disputed upon the present appeal, that the article of the Limitation Act applicable was article 144 and not article 134.

The trial Judge rejected the plea of limitation, holding that both under the mukarrari lease and the sale adverse possession began to run only upon the death of Rampat Das.

An appeal to the High Court was allowed by a judgment delivered by Fazl Ali J., Wort J. agreeing. The learned Judge held that the property was to be deemed to have been vested in the math or idols, in the absence of a deed of trust, and that consequently the decision in *Damodar Das* v. *Lakhan Das*(1) applied with the result that the suit was barred. In his view the authority of that case was not affected by *Vidya Varuthi Thirtha* v. *Balusami Ayyar*(2). He was of opinion that as the vendee and the mukarraridar were of the same family adverse possession under the lease began when possession was obtained under the sale deed.

1933, December 2. *Parikh* for the appellant. Possession did not become adverse under either deed until the death of Rampat Das and consequently the suit was not barred as to either transaction. The judgment of the High Court was based upon such cases as *Damodar Das* v. *Lakhan Das*(1) and *Gnana-sambanda Pandara Sannadhi* v. *Velu Pandaram*(3), which followed *Vurmah Vahia* v. *Ravi Vurmah Mutha*(4). But in those cases the alienations were void and no property passed, as they were attempts to deal with the office of the shebait or mahanth and with the whole endowment. Here the transactions were

(1) (1910) I. L. R. 37 Cal. 885; L. R. 37 I. A. 147.
(2) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(3) (1899) I. L. R. 23 Mad. 271; L. R. 27 I. A. 69.
(4) (1876) I. L. R. 1 Mad. 235; L. R. 4 I. A. 76.

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voidable and not void; they were effected by the mahanth as manager, and if they had been for necessity, as they purported to be, they would have been valid. In *Vidya Varuthi Thirtha* v. *Balusami Ayyar*(1) it was held that the mahanth is not in the position of a trustee but of a manager, and that a permanent lease by him, even if not for necessity, is valid during his lifetime. For the purpose of this case no distinction can be drawn between the sale and the permanent lease. The judgments in *Subbaiya Pandaram* v. *Mahammad Mustapha Maracayar*(2) and *Nainapillai Marakayar* v. *Ramanathan Chettiar*(3) draw no such distinction. That there is a distinction between *Vidya Varuthi's case*(1) and cases such as *Damodar Das's case*(4) has been recognized by the Patna High Court in *Ramrup Gir* v. *Lal Chand Marwari*(5). On appeal to the Privy Council(6) in that case it was not necessary to determine whether adverse possession began at the date of the alienation or when the alienating mahanth died.

Wallach for the respondents. The distinction between the class of cases of which *Damodar Das* v. *Lakhan Das*(4) is typical and *Vidya Varuthi's case*(1) is that the former related to property vested in the idol as a juridical person. In the present case the plaint stated in terms that the property was vested in the named idols installed in the math. Accordingly, under the decision in *Damodar Das's* case(4) the transfers were void and possession was adverse from their date. In any case the principle applied in *Vidya Varuthi's case*(1) to the grant of mukarrari lease by a mahanth does not extend to a sale. The transactions are essentially different as under

(1) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(2) (1923) I. L. R. 46 Mad. 751; L. R. 50 I. A. 295.
(3) (1923) I. L. R. 47 Mad. 337; L. R. 51 I. A. 83.
(4) (1910) I. L. R. 37 Cal. 885; L. R. 37 I. A. 147.
(5) (1922) I. L. R. 1 Pat. 475.
(6) (1925) I. L. R. 5 Pat. 312; L. R. 53 I. A. 24.

mukarrari lease the math has a reversion with the rights attached thereto, whereas upon a sale the property is cut out of the endowment. There is no judgment of the Board so extending the principle. In *Subbaiya Pandaram* v. *Mahammad Mustapha Maracayar*(1), Lord Buckmaster who was a party to the judgment in *Vidya Varuthi's* case(2) pointed out that it referred only to a mukarrari lease. In the last case before the Board in which the question was raised, namely *Lalchand Marwari* v. *Ramrup Gir*(3), the judgment expressly declared that the question was still open.

Parikh replied.

1933, January 17. The judgment of their Lordships was delivered by

LORD RUSSELL OF KILLOWEN.—The question for determination on this appeal is whether the plaintiff's suit is barred by limitation.

The relevant facts must first be stated. In December, 1909, one Rampat Das was the mahanth of a math situate at Paliganj in Patna district. On the 21st December, 1909, he executed a *mukarrari* or permanent lease of some 70 acres of land to Munshi Naurangi Lal under which the latter paid a premium and an annual rent to the mahanth. On the 13th February, 1911, he executed a sale deed of the land subject to and with the benefit of the lease to Musammat Sampat Kuer in consideration of Rs. 900. Each document states that it is executed by the mahanth for the expenses and necessities of the math, but in view of the findings at the trial these statements may be disregarded, and it must be taken that neither of these documents was executed for legal necessity or was for the benefit of the math or the deities installed therein.

Mahanth Rampat Das died in or about July, 1913. On his death one Sant Das took possession of

(1) (1923) I. L. R. 46 Mad. 751; L. R. 50 I. A. 295.
(2) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(3) (1922) I. L. R. 1 Pat. 475.

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the math claiming to be mahanth, but on the 20th February, 1916, by registered deed he surrendered all his rights to the plaintiff, who was and is the mahanth of a math at Ramdih Baga. The registered deed included the 70 acres. The plaintiff claimed that Rampat Das had died without leaving behind any disciple, and that in those circumstances he, as mahanth of the Ramdih Baga Math, was entitled to take possession of the Paliganj Math (which was subordinate to and a branch of the Ramdih Baga Math) and all properties appertaining to it. Their Lordships, however, are not now concerned with any question of title, because both the Courts below have found that the plaintiff is the person in actual possession of the Paliganj Math and as such entitled to maintain a suit to recover property not for his own benefit but for the benefit of the math.

The plaintiff instituted the present suit on the 27th May, 1924, against the lessee, the purchaser and the husband of the purchaser, claiming possession of the 70 acres as property appertaining to the Paliganj Math and mesne profits.

A number of contentions were raised by the written statements, the two main ones being (1) that the 70 acres were the personal property of Rampat Das, and (2) that the suit was barred by the Limitation Act. The first contention failed completely. The 70 acres undoubtedly appertained to the math. The second contention failed at the trial and it is the sole contention which survived before the Board. The Subordinate Judge held that the suit was not barred and gave the plaintiff a decree.

On appeal, the High Court decided that the suit was barred. Both Courts agreed (and rightly) that Article 134 of the Limitation Act did not apply. The only Article applicable is Article 144. This article, which applies to a suit " for possession of immovable property or any interest therein not hereby otherwise

specially provided for," prescribes as the period of limitation twelve years from the time "when the possession of the defendant becomes adverse to the plaintiff."

The question then resolves itself into this: did the possession of the relevant defendant become adverse to the math or to the mahanth as representing the math at the date of the relevant assurance or at the date of the death of Rampat Das?

The Subordinate Judge held the latter date to be the correct date, and the suit to be within the 12 years. The High Court held the former date to be correct and the suit to be barred.

The Subordinate Judge, it would seem, reached his conclusion upon the footing that the title to the property was in the mahanth and not in the idols. His view was that, had the title been in the idols, the act of alienation would have been a challenge to the title of the idols and the limitation period would begin to run from the act of alienation; but since (as he found) the title was in the mahanth, possession only became adverse when a new title came into existence, the owner of which had not approved of the alienation. He came to this conclusion upon the authority of the cases of *Vidya Varuthi* v. *Balusami Ayyar*(1) and *Mahanth Ramrup Gir* v. *Lalchand Marwari*(2), distinguishing the case of *Damodar Das* v. *Lakhan Das*(3).

The Judges of the High Court, in deciding that the period of limitation ran from the date of alienation, delivered a most painstaking and elaborate judgment, in the course of which all available authorities were reviewed and considered. They held that two cases before this Board (*Gnanasambanda*

(1) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.
(2) (1922) I. L. R. 1 Pat. 475.
(3) (1910) I. L. R. 37 Cal. 885; L. R. 37 I. A. 147.

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Pandara Sunnadhi v. *Velu Pandaram*(1), and *Damodar Das* v. *Lakhan Das*(2) had affirmed the view that in a suit to recover the property of an idol or a math the starting point for the period of limitation was the date of the alienation and not the date on which the successor of the alienor assumed office. They also held that the authority of those cases was in no way affected by the later decision of this Board in *Vidya Varuthi's* case(3).

Their Lordships do not think that it is necessary to follow the learned Judges of the High Court in their examination of the older authorities, but they must point out that *Gnanasambanda's* case(1) and *Damodar Das'* case(2) were both of them cases in which the assignment or disposition consisted of an assignment or disposition of the math and its properties. Such an assignment was void and would in law pass no title, with the result that the possession of the assignee was perforce adverse from the moment of the attempted assignment. *Vidya Varuthi's* (3) case, however, was the case (as here) of a disposition by the mahanth of an item of property appertaining to the math, the disposition being in the form of a grant of a permanent lease. The disposition was one not made for necessity and so was beyond the powers of the mahanth to grant. But in delivering the judgment of the Board, Mr. Ameer Ali used this most relevant and important language:—

"In view of the argument it is necessary to discover when, according to the plaintiff, his adverse possession began. He was let into possession by mahanth no. 1 under a lease which purported to be a permanent lease, but which under the law could endure only for the grantor's lifetime. According to the well-settled law of India (apart from the question of necessity which does not here arise) a mahanth is incompetent to create any interest in respect of the math property to endure beyond his life. With regard to mahanth no. 2, he was vested with a power similarly limited. He permitted the plaintiff to

(1) (1899) I. L. R. 23 Mad. 271; L. R. 27 I. A. 69.
(2) (1910) I. L. R. 37 Cal. 885; L. R. 37 I. A. 147.
(3) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.

continue in possession and received the rent during his life. The receipt of rent was with the knowledge which must be imputed to him that the tenancy created by his predecessor ended with his predecessor's life, and can, therefore, only be properly referable to a new tenancy created by himself. It was within his power to continue the tenancy during his life, and in these circumstances the proper inference is that it was so continued, and consequently the possession never became adverse until his death."

In other words, a mahanth has power (apart from any question of necessity) to create an interest in property appertaining to the math which will continue during his own life, or to put it perhaps more accurately, which will continue during his tenure of office of mahanth of the math, with the result that adverse possession of the particular property will only commence when the mahanth who had disposed of it ceases to be mahanth by death or otherwise.

If this be right, as it must be taken to be, where the disposition by the mahanth purports to be a grant of a permanent lease, their Lordships are unable to see why the position is not the same where the disposition purports to be an absolute grant of the property; nor was any logical reason suggested in argument why there should be any difference between the two cases. In each case the operation of the purported grant is effective and endures only for the period during which the mahanth had power to create an interest in the property of the math.

The same view is apparent in a later judgment of this Board, *Subbaiya Pandaram* v. *Mohamad Mustapha Maracayar*(1). The disposition in that case was a sale in 1898 of land devoted to charitable purposes, under an execution decree against the person who was the trustee of the charity. In the year 1913 the person who was then trustee of the charity sued to recover the property from the purchaser at the execution sale, or those claiming under him. It was held, not unnaturally, that the purchaser's possession was adverse from the date of the sale; but in delivering the judgment of the Board, Lord Buckmaster, after

(1) (1923) I. L. R. 46 Mad. 751; L. R. 50 I. A. 295.

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referring to *Ishwar Shyam Chand Jiu* v. *Ram Kanai Ghose*(1) and to *Vidya Varuthi's* case(2), said:—

> In each case they relate to the effect of an attempt on the part of a trustee to dispose of the property by a permanent *mukarrari* lease. This he has no power to do, though he is at liberty to dispose of it during the period of his life, and a grant made for a longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse.

This is a clear statement that a mahanth is at liberty to dispose of the property of a math during the period of his life and that a grant purporting to be for a longer period is good to the extent of the mahanth's life interest. Here again their Lordships think that the reference to life is upon the footing that the mahanth continues during his life to hold that office.

It will be observed that the statement is in no way confined to the grant of a lease, but covers the case of a purported out and out grant of the property. Whatever the intended duration of the attempted grant may be, it is good, but good only for the limited period indicated.

In view of these statements by the Board, their Lordships hold that in the present case the lease and the deed of sale of the 13th February, 1911, were good and effective so long as Rampat Das continued to be mahanth, and that therefore adverse possession only commenced when he died.

The result is that the plaintiff's suit is not barred, and the appeal succeeds. The decree of the High Court should be set aside with costs in that Court, and the decree of the Subordinate Judge restored. Their Lordships will humbly advise His Majesty accordingly. The respondents must pay the costs of this appeal.

SOLICITORS for appellant: *Watkins and Hunter.*

Solicitors for respondents:—*H. S. L. Polak and Co.*

(1) (1910) I. L. R. 38 Cal. 526; L. R. 38 I. A. 76.
(2) (1921) I. L. R. 44 Mad. 831; L. R. 48 I. A. 302.