

1872. him. The case, in my view, stands thus:—An ignorant set of
 December 13. people having a claim of the simplest character, have their
 O. S. No. 262 own natural apprehensions of the strange caprices of the law
 of 1872. aggravated by a false color of difficulty given to the case by
 their own attorney, who, equally exaggerating the expenses of
 so simple a suit, represents the necessity of a bargain with a
 more favored client. That bargain, of the most oppressive
 character, is made for a division of a fund which must certainly
 have been recovered, and in which the plaintiff really risked,
 and the attorney knew that he risked, nothing. It would be
 very difficult to say that such a contract could be allowed to
 stand for more than the *bond fide* advances. The decree
 will be that the fund in the hands of the Administrator-
 General stand as security for Rupees 2,200 with interest at
 12 per cent. from the date of the first agreement. There will
 be no costs.

Messrs. Branson and Branson, Attorneys for the
 plaintiff.

Messrs. Prichard and Barclay, Attorneys for the
 defendants.

Appellate Jurisdiction(a)

Civil Miscellaneous Special Appeal No. 363 of 1871.

RANI KATTAMA NA'TCHIA'R, ZAMIN- } *Appellant.*
 DARNI' OF SHIVAGANGA..... }

MUHAMMAD MI'RA RAVUTAN..... *Respondent.*

Certain idols and vessels of copper were discovered accidentally by one Shaik Mira and his brother, while digging for stones, in a masonry building underneath the ground in a rather elevated part of the bed of the tank of Anandúr which belongs to the Zamindari of Shivaganga. No intimation of the discovery was given by the finders to any public authority, but the Sub-Magistrate being informed of it by the Police, proceeded to the spot and recovered the idols on the 3rd or 4th day after they were found. They were then sent by the Magistracy to the Court of the Principal Sadr Amín of Madura to be dealt with under the provisions of Regulation XI of 1832. Proclamation inviting claimants was made and petitions asking for possession of the idols were presented by three parties.—1st by the Rání of Shivaganga, on the ground that she was trustee of the Dévastánams on her estate, on which the idols had been found, 2nd by the Stanikam of a temple in the village of Anandúr, and 3rd by the finder. The Principal Sadr Amín adjudged the idols to be the property of the Rání and directed that they should be delivered to her. The finder appealed to the Civil Court, which reversed the

(a) Present : Innes and Kernan, JJ.

decision of the Principal Sadr Amín and directed delivery to the appellant. Against this order the Rání appealed to the High Court on the grounds—1st, that Reg. XI of 1832 only applies to cases in which the ownership of the property is undiscovered and that, in the present case, the Rání was presumably the owner of the property found; 2nd, that a trespasser could not benefit by the finding. *Held*, that the Rání had no title to what had been hidden in former times in the soil now belonging to her: that it had been found that these idols were *hidden* in a stone chamber specially appropriated to that purpose and that she could not, therefore, claim a title as owner.

As to the objection that the finder, being a trespasser, could not benefit. *Held*, that it was unnecessary to consider this objection unless the Rání had some right or title to the *treasure*, the same as she had in the soil of the tank. That she had not such right and, therefore, that the contention as to the right to the property found lay between the finder and the State, which had made no claim.

An objection, not before taken, was allowed to be argued at the hearing, viz., that the formalities prescribed by the Regulation had not been complied with. *Held*, that though immediate notice had not been given by the finder, the property was within 3 or 4 days of its discovery in the hands of the authorities, who might be said, therefore, to have supplied the necessary notice.

THIS was an appeal against the order of J. D. Goldingham, the Civil Judge of Madura, dated the 13th September 1871, passed on Civil Miscellaneous Appeal Petition No. 342 of 1871, reversing the order of the Court of the Principal Sadr Amín of Madura, dated 11th July 1871.

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Miscellaneous Petition No. 1,129 of 1870 was presented to the Principal Sadr Amín's Court of Madura on behalf of the Rání Kattama Náthiar, Zamindární of Shivaganga, and trustee of the dévastánams situated on the said estate, praying that certain idols and vessels which had been found hidden beneath the ground within the limits of the village of Anandúr attached to her estate, might be delivered to her for the use of the dévastánams under her management.

Miscellaneous Petition No. 70 of 1871 was presented on behalf of one Nagunatha Gurukal, Stanikam of the temple of Thirumaninatha Sámi situated in the village of Anandúr, asking that the said idols, &c., might be delivered to him, as they belong to a ruined temple of the said village.

Miscellaneous Petition No. 341 of 1871 was presented, under Regulation XI of 1832, on behalf of one Muhammad Míra Ravutan, praying that the said idols, &c., which were discovered by his brother (since deceased) in the back yard of his house while digging for stones, might be delivered to him

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Upon reading these Petitions and also the report of a Commissioner deputed to ascertain the exact locality where the said idols were discovered, the Principal Sadr Amín made the following order :—

“ On the 10th July 1870 one Shaik Míra (since deceased) and his brother Muhammad Míra and others were digging for stones when they discovered copper idols and vessels, specified in the schedule received with the Magistrate’s letter of the 12th September 1870. Though intimation of the discovery was not given to any public authority by the finders immediately after the discovery, the Sub-Magistrate of Tiruvadáni on receiving information of the discovery through the police, proceeded to the locality where the idols were found, and recovered them on the 3rd or 4th day after they were found. They have since been sent up to the Court by the Magistracy to be dealt with under the provisions of Regulation XI of 1832. The prescribed proclamation inviting claimants has been given ; and the said Muhammad Míra, the surviving finder, and Rání Kattama Náitchiar have preferred claims to the said idols. It is in evidence that the idols in question were discovered in a building underneath the ground in a rather elevated part of the bed of the tank of Anandúr, close to a garden belonging to the said Muhammad Míra, who tried to prove that the locality was included in his garden, but failed in the attempt, as all the witnesses examined in the matter concur in stating that the building in which the said idols were discovered was situated without the wall by which the said garden was enclosed. The report of the Commissioner who was deputed to make a local enquiry into the matter clearly shows that the idols were discovered, not in the garden of the said Muhammad Míra, but in the bed of the said tank. Muhammad Míra’s witnesses, who are Muhammadans, claimed the said tank as the property of the Muhammadan community of Anandúr who owned the mosque which is contiguous to the tank ; but the Commissioner’s report places it beyond a doubt that the tank is the property of the Zamindár of Shivaganga, being one of the sources of irrigation on which the wet lands of Anandúr depend for a supply of water. The act of the said Muhammad

Míra in excavating the bed of the tank for stones to build a mosque was itself not a lawful act, since the tank did not belong to him ; and he had, therefore, no right to remove any stones or other valuable things from the bed of the said tank without previously obtaining the permission of the Zamindár, in whom the right of maintaining such works in a state of repair and of using them to her own and her tenant's advantage is vested. The discovery of the idols, followed by the commission of an act which is in itself illegal, would not give the said Muhammad Míra and his late brother any right to appropriate to themselves the idols so discovered. These appear to have been carefully secured under-ground in a masonry building covered with a roof of flat stones, and in all probability appertained to a temple which was dedicated to Vishnu, but which is now no more. The witnesses examined by the Rání speak to there being at the present day a stone idol of Narasingaswámi, though now neglected, near the place where the copper idols were discovered ; and the existence of this idol, coupled with the discovery of the copper idols, &c., in question, carefully secured in a subterranean building, satisfactorily proves that they belonged to an ancient temple now no more, and as such should be viewed to be the property of the Hindu population by whom they are worshipped : and the Rání, as the head and representative of the Hindus residing in the zamindári, and as the recognised manager of all the Hindu religious institutions situated in the estate, entitled to have charge of these idols, to be by her deposited in one of the temples of the village for the use of the said community, on the double ground of the same having been found in the bed of a tank belonging to her, and of their having once appertained to a temple in the zamindári, of the pagodas situated in which she is the sole recognised manager.

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For these reasons, I direct that the idols, &c., be made over to Rání Kattama Náthiar, on the condition of her paying all the expenses incurred in sending them to Court and guarding them whilst in Court."

From this decision Muhammad Míra Ravutan, the Petitioner in No. 341 of 1871, appealed to the Civil Court.

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The Civil Judge delivered the following judgment, reversing the order of the Principal Sadr Amín :—

“Taking the facts as found by the Lower Court to be that the idols in question were discovered by Muhammad Mira Ravutan and his deceased brother, while digging for stones (whether with or without the Zamindárni’s permission is immaterial for the purposes of this case) in the bed of the tank of Anandúr in the Shivaganga zamindári, the point I have to determine is, of the parties before the Court, to whom should they be adjudged; that is to say, whether to the finders, or to the Zamindárni claiming as general trustee of the dévástánams in her zamindári.

Upon a consideration of Regulation XI of 1832 I think two propositions are incontestible; 1st, that the provisions of this Regulation extend to the whole Presidency of Madras, whether to Ayen lands or to districts permanently settled; and 2nd, that the owner of the soil, *quá* owner, has no inherent right of ownership in the thing or things discovered.

At the preliminary hearing of this petition I was disposed to think (and indeed I so expressed myself) that the right to hidden treasures followed the rule in the case of minerals or other natural products of the earth, but further argument and consideration of the law which obtains in England satisfies me that this impression was unfounded. Section 2 of the Regulation under which these Proceedings were conducted seems to point out distinctly that the right to hidden treasure of the nature therein described, should, subject to certain limitations in value, vest in the finder thereof, if the actual owner be not discoverable, and the question, therefore, is whether the Zamindárni’s claim of right on behalf of the Hindu worshippers is clearly established.

Now upon this subject the evidence adduced goes no further than this,—that there is a strong presumption that the idols once belonged to an ancient temple dedicated to Vishnu and now non-existent, and it is upon this ground that the Principal Sadr Amín, considering them to be the property of the whole Hindu community, has adjudged them to the

Zamindárni as trustee of the dévastánams in the Shivaganga zamindári. With this conclusion I am unable to concur;— 1st, because there is nothing in principal (and my authority is derived from analogy to what would obtain in Christian countries) to lead me to suppose that the idols of any given temple became, on its chance abandonment, the property of the whole Hindu community, for if they did, where, with any degree of certainty, could the limit be defined in the continent of India; and 2nd, because there is nothing in evidence to connect the Zamindárni with the trusteeship of this particular temple; which, for all we know, might have existed long before the hereditary zamindári system was extended to this part of India, and whereas, as matter of fact, we all know that there are some temples in the Shivaganga zamindári with which the Zamindárni has no concern. If, therefore, this be so, and if, as I have observed before, ownership in the soil carries with it no absolute right to the subject-matter of the claim, it follows that the claim preferred by the Zamindárni wholly fails; and that being so, I do not see how the idols can be adjudged otherwise than to the finder. For these reasons I think the order appealed against must be reversed and the property ordered to be made over to Muhammad Míra Ravutan.”

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Against this order the Rání appealed to the High Court upon the following grounds:—

I.—Regulation XI of 1832 only applies to cases where no owner can be ascertained for the property found.

II.—In this case the Rání of Shivaganga was presumably the owner, inasmuch as the idols were found in the bed of a tank which is between and close to two pagodas and 1½ miles from a third, of all of which the Zamindárni is trustee and manager.

III.—The Regulation does not apply to cases where the finding is itself an act of trespass upon the lands of a third person.

At the first hearing of the appeal, on the 18th March 1872, the question was referred to the Civil Court whether the land on which the idols were found did in fact form part of the

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assets of the zamindári of Shivaganga. The Civil Judge answered in the affirmative and stated that the idols were found in a subterranean building on the bund of the tank of Anandúr, close by the finder's chilli garden, and that the village of Anandúr in fact formed part of the assets of the Shivaganga zamindári.

The appeal came on again for final hearing on the 14th August.

Mayne, for the appellant.

Nevins Pillai, for the respondent.

The Court delivered the following judgments:—

INNES, J.—This was a Special Appeal from an order of the Civil Judge of Madura, passed in appeal from the order of the Principal Sadr Amín, who had awarded certain idols to the Rání of Shivaganga on a contention as to the right to them arising between her and the finder. The Stanikam of the temple of Thirumaninatha Swámi also put in a claim, but is not now before the Court.

The Civil Judge, on appeal, reversed this decision and decided in favor of the finder. It is now contended by the Rání of Shivaganga; 1st, that Regulation XI of 1832 only applies to cases in which the ownership of the property is undiscovered, and that the Rání of Shivaganga is in this case presumably the owner of the property found; 2nd, that a trespasser cannot benefit by the finding. A third ground was also admitted at the hearing, viz., that the formalities prescribed by the Regulation had not been complied with. With regard to this latter point it may be observed that the objection was not taken at the original enquiry nor in appeal, nor did it form one of the original grounds of Special Appeal. The Regulation requires immediate notice by the finder, but, from the facts found by the Principal Sadr Amín, it would appear that within 3 or 4 days of the property being discovered it was in the hands of the authorities, who may be said, therefore, to have supplied the necessary notice, which, if given on the third or fourth day after the discovery, would probably be early enough to satisfy the requirements of the Regulation. Now, as to the 1st ground

the Civil Judge is right in his view that the Rání has no title to what has been hidden in former times in the soil now belonging to her. It seems to be sufficiently found that the idols were *hidden* in a stone chamber appropriated specially to that purpose, and not accidentally buried in the position which they would ordinarily occupy in a Hindu temple. The Rání could not, therefore, claim a title as owner. Then, as to the objection that the finder is a trespasser, it may be that the legislature did not intend that the right should arise to the finder if the discovery were made in the course of a wilful trespass upon the lands of another with an immediate view to such discovery. (See as to this the provisions of the Roman Civil Law, Code X, Tit. XV.) But in this case the finding was accidental, and there appears to be nothing in the language of the Regulation to restrict the benefit it holds out to cases in which the property is found hidden in the soil of the finder. But supposing it were so, it is difficult to see how the special appellant, if held to have no title to the property found, could contest the right of the finder. She might, possibly have an action for trespass, but the contention as to the right to the property found would be between the finder and the Crown.

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I would dismiss the Special Appeal.

KERNAN, J. :—The Principal Sadr Amín has found as a fact (and I am not aware that the finding has been questioned) that the copper idols “were discovered in a building underneath the ground in a rather elevated part of the bed of the tank,” and that, “they appear to have been carefully secured under-ground in a masonry building covered with a roof of flat stones.” It is admitted before us that they are of the value of about 5,000 Rupees.

It has been scarcely questioned in argument that they come within the meaning of the words “or other valuable property” in Regulation XI of 1832. I am of opinion that they do fall within the meaning of those words and that they are Treasure within the meaning of that Regulation.

It was contended before us that they were not within the meaning of that Regulation “hidden treasure,” and that they

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were not found buried in the earth, or otherwise concealed. To support this contention it was *alleged*, that a temple formerly stood over, or at, or near the spot where they were found, and that these idols had been used in that temple during worship there. There is, no doubt, evidence that a stone idol, now neglected, of Narasingaswámi, exists near the place (in the tank I assume) where the idols in question were found. It has been found as a fact that some temple did exist at one time at, or near the spot where these idols were found. It was then alleged that the chamber in which they were found was part of that temple, and was in fact the place of deposit, or underground strong room of the temple in which they were kept. This is mere matter of conjecture. No evidence has been given that it is usual in temples to have such underground chambers for keeping the idols, and, if such was the custom, ample evidence of the fact should be easily adduced. I cannot, therefore, agree that this chamber was the usual place of deposit of the idols.

If this temple has been abandoned, is it likely that these idols, valuable intrinsically and probably still more valuable as idols, should be allowed to remain undisturbed in what is said to be their place of usual deposit, when not in use for worship? I think it much more likely they should, after abandonment of the temple, be removed.

In my opinion, therefore, the facts found lead to the conclusion that these idols were buried beneath the ground and concealed, hidden, in fact, by whoever had the possession of them, to prevent them from falling into other hands. Whether such hiding was for safe custody during a time of disturbance, or for any other cause, is immaterial.

It is then contended for the Rání of Shivaganga that, whether they were hidden treasure or not is immaterial, inasmuch as the Rání is, in her capacity of Zamindár, trustee for the Hindu communities of all the temples on her estate, and, as such trustee, is quasi the owner of the idols in the temples. It is not pretended that the Rání, or any of her ancestors, as trustees or otherwise, had possession at any time of the idols,

or that she, or they, were really the owners, or had hidden them.

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No evidence was laid before us to prove that the Rání, or those whom she represents, were or acted as such trustees, or had any claim to the temples on their estates, much less to the temple whose former existence is alleged.

The final question raised for the Rání is whether the finder can, under the Regulation, acquire any right to the idols, inasmuch as the land in which they were found buried, or concealed, is the land of the Rání, on which the finder had not a right to enter, and from which he had not a right to remove any portion of the land. It is, in fact, alleged that he was a trespasser at the time he became the finder, and cannot derive any advantage from his own wrong. It is not necessary to consider this objection, unless the Rání had some right or title to the Treasure, the same as she had in the soil of the tank. But it is quite clear that to this *Treasure* the Rání had not any title whatever, although the finder may be liable for trespass on the land. The hidden treasure belongs either to the State or to the finder. The Regulation gives to the finder the treasure, the real owner not being known or found, on his performance of certain requisites of notice to the authorities immediately after the finding. This notice was, in fact, given, and the State does not claim them. I am of opinion, therefore, that the finder is entitled to them, and that the decree of the Civil Judge must be sustained and the appeal dismissed, but, considering the novelty of the question, I think each party should bear his and her own costs of the appeal.

I should add that the finding of the treasure appears to be quite fortuitous, and the decision of this case does not involve the supposed proposition that any trespasser may wilfully commit trespass on the lands of another in search of treasure.

Appeal dismissed.