

In this view, I am of opinion that in the present case the witness was in fact compelled to answer within the meaning of section 132 of the Evidence Act, and that, under the proviso to that section, the answers could not be proved against him in the criminal proceedings. For these reasons I agree in dismissing the appeal.

E. H. M.

*Appeal dismissed.*

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 J.

## PRIVY COUNCIL.

DAMODAR DAS

v.

LAKHAN DAS.

P. O.\*  
 1910  
 March 2;  
 June 7.

[On appeal from the High Court at Fort William in Bengal.]

*Limitation—Adverse possession—Dispute between senior and junior chelas as to succession to Hindu maths—Ekrarnama allotting one math to senior chela in perpetuity and the other to junior chela as adhikari—Suit instituted within twelve years from senior chela's death, but 27 years from date of ekrarnama—Hindu Law—Endowment.*

The Mohant of the temple of a Hindu idol who was in possession of two *maths*, one at Bhadrak and the other at Bibisarai, died leaving two *chelas*, or disciples, between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them. The dispute was settled by an arrangement embodied in an *ekrarnama*, dated 3rd of November 1874, executed by the senior *chela* in favour of the junior *chela*, by which the *math* at Bhadrak was allotted in perpetuity to the senior *chela* and his successors, while the *math* at Bibisarai and the properties annexed to it were allotted to the junior *chela* (described therein as an *adhikari*) and his successors for the purposes connected with his *math*, subject to an annual payment of Rs. 15 towards the expenses of the Bhadrak *math*. Less than twelve years after the death of the senior *chela*, but considerably more than that period after the date of the *ekrarnama*, the appellant, the successor of the senior *chela*, brought a suit against the junior *chela* to recover possession of the properties annexed to the Bibisarai *math*, on the allegation that they were *debutter* property dedicated to the worship and service of the plaintiff's idol, and held by the respondent (representing the junior *chela*) as an *adhikari* in charge of the Bibisarai *math*, and asserting it to be a *math* subordinate to the Bhadrak *math* :—

*Held* (affirming the decision of the High Court), that the property dealt with by the *ekrarnama* was, prior to its date, to be regarded as vested not

\* Present : LORD MACNAGHTEN, LORD COLLINS, and SIR ARTHUR WILSON.

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in the Mohant, but in the idol, the Mohant being only its representative and manager, and consequently that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of its terms, was adverse to the right of the idol, and of the senior *chela* as representing that idol, and that the suit was barred by limitation.

APPEAL from a decree (6th June 1905) of the High Court at Calcutta, which reversed a decree (30th September 1902) of the Subordinate Judge of Cuttack.

The plaintiff was the appellant to His Majesty in Council.

The suit out of which this appeal arose was brought on 17th July 1901 to establish the plaintiff's right to, and to recover possession of, a *math* called the Bibisarai *math* and property appertaining thereto, situated in pergunnah Jajpur in the district of Cuttack, as belonging to the Thakur or idol Sri Gopal Jiu, and as such being part of the endowed property of the Bhadrak *math* in the district of Balasore of which the plaintiff was the Mohant.

The plaintiff alleged that Sriram Das, his *guru* and predecessor in the mohantship of the Bhadrak *math*, had, on succeeding to that office, a dispute with the defendant, who claimed to be the successor to the mohantship; that litigation ensued which was eventually settled, at the instance of some of their mutual friends, by an agreement with the defendant, the terms of which were set forth in *ekrarnamas* executed by Sriram Das and the defendant on the 3rd November 1874, whereby the *math* and properties at Bibisarai were to be held by the defendant as an *adhikari* or manager subordinate to the Bhadrak *math*; and that the defendant had ever since so held them. The plaintiff further stated that Sriram Das died on 18th July 1889; that he had succeeded Sriram Das as Mohant of the Bhadrak *math*; and that the *ekrarnama* executed by Sriram Das being null and void as against him, he was entitled to possession of the Bibisarai *math* and the property appertaining to it. He alleged his cause of action to have accrued on the death of Sriram Das.

The defence set up was that the suit was barred by limitation, as neither the plaintiff nor his predecessor had been in

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possession of the disputed property within twelve years previous to the institution of the suit. The defendant denied that Sriram Das had died on 18th July 1889, as alleged by the plaintiff, and stated that he had been in adverse possession of the properties in suit from the 3rd November 1874, and had thereby acquired an absolute right in respect of the disputed properties, and that the alleged rights of the plaintiff and his predecessor, Sriram Das, had become extinguished.

Issues were raised on the questions raised by these pleadings.

It was established by the evidence adduced by the plaintiff, and found as a fact by both Courts in India, that Sriram Das died on the date alleged in the plaint: and it was also established that the Bibisarai property in dispute had for a long period of time been a part of the *debutter* estate of the idol Sri Gopal Jiu, and was appurtenant to the Bhadrak *math*, and that the management of the Bibisarai *math* and property had been in the hands of an *adhikari* or agent appointed by, and subordinate to, the Mohant of the *math* at Bhadrak, the *shebait* of the said idol.

As the defendant, when called upon, did not produce the *ekrarnama*, dated 3rd November 1874, which the plaintiff alleged was executed by Sriram Das in the defendant's favour, a certified copy of it, procured from the Registration office, was put in evidence by the plaintiff. This document recited that Sriram Das's *guru*, Mohant Kripasindhu Das, died in 1275 (1868), and that he (Sriram Das) was thereupon installed as Mohant, and had been ever since "maintaining the sheba and puja of the said Thakur, and performing the duties of Mohant without interruption;" that his co-disciple Lakhan Das, "the younger disciple of my deceased *guru*, had commenced litigation *in formâ pauperis* for recovery of the mohantship;" and that certain of their friends, in the capacity of arbitrators, had made a settlement of their disputes in the manner set forth in the following paragraphs:—

"1st. Subordinate to this *math* there is, within the areas of mouzahs Bibisarai and Dasabatar in pergunnah Jajpur, a *math* known as Bibisarai *math*. On the death of Mohant Ramayan Das, the founder of the *math* at Bhadrak, his elder *chela* (disciple), Ram Ratan Das, became the Mohant, and the younger

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*math*, Pursotum Das, founded the *math* at Bibisarai and acquired some lands as *debutter* of the said Thakur of the Bhadrak *math*, and set up, as substitutes of the said Thakur, the images of the Thakur Gobind Jiu and Bala Jiu, and remained in possession and occupation of the sheba, puja of the said Thakurs. On his death, Ganga Ram Das, the younger disciple of the said Ram Ratan Das, and co-disciple of my *guru's guru*, Mohant Narayan Das remained in possession as appointed by Pursotum Das. On his death, his disciple, Mohan Das, having preferred a claim in his own right, his possession was put a-stop to under a decision of the Civil Court. and the said *math* has been held in possession as subordinate to the *math* at Bhadrak. Henceforth Lakhani Das aforesaid shall, under the title of *adhikari*, remain in possession and enjoyment of the said *math* as subordinate to the Bhadrak *math*, and of the undermentioned 351 mâns, 10 gunts, 5 biswas of released and resumed lands appertaining thereto, in the same manner as the younger disciples of the former Mohant hold and enjoyed the said *math*, and shall continue to perform the sheba, puja and janijatra (festivals) of the said Thakurs Gopal Jiu and Bala Jiu established in the said *math*.

"2nd. I and my heirs shall have no right to remove *adhikari* Lakhani Das and his heirs from the possession of the said *math* and the lands appertaining thereto and subordinate to the Bhadrak *math*; and the said *adhikari* shall not be competent to exercise his own authority, and he shall not be able in any way to transfer to any one the said *math* and the lands appertaining thereto.

"3rd. That in order to show the subordinateness of the said Bibisarai *math* to the *math* at Bhadrak, the said *adhikari* shall, as a token of respect, pay annually a sum of Rs. 15 for the expenses of the Thakur at the Bhadrak *math*, and if he neglects to pay this money and allows it to fall into arrears, then I and my heirs shall bring some lands under attachment and collection of the Bhadrak *math*, a portion of the lands appertaining to the said *math* sufficient for the realization of the arrears, and after realizing the arrears restore the land to his possession. If there be any business or a litigation in connection with *math* at Bhadrak, the said *adhikari* shall, according to my direction, be present on the occasion, and shall appear at the *math*, or at any other *darbar*, or before any officer and manage the business."

Then it is stated that—

"We, both the co-disciples, regarding the said settlement made by the gentlemen as the decision and order of the High Court, shall act up to the same in every respect. We now think it proper to get the suits pending in the Civil Court decided according to the said settlement and have them struck off. *Adhikari* Lakhani Das also has executed a separate *ekrarnama* in favour of me, Mohant Sriram Das, in token of admission of this *ekrarnama* of settlement. For this purpose I, Mohant Sriram Das, have put *adhikari* Lakhani Das aforesaid in possession and enjoyment of the aforesaid *math* Bibisarai and the lands . . . . appertaining to the said *math* valued at Rs. 2,000, and have made over to him the images of the God Gopal Jiu and Bala Jiu, and I declare and give out in writing that I fully agree to this settlement *ekrarnama*. In future, neither I nor any of my heirs shall have any right or power to act contrary to this settlement *ekrarnama* in any way. If we do anything to the contrary the same shall be inadmissible."

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It was established by the evidence that the defendant was put into and held possession of the property in suit at Bibisarai as such *adhikari*, that being his description given in applications for registration of his name in the Collectorate Register (Exhibits 10, 11 and 12, dated 20th February 1877); and in the particulars given in those applications he mentioned the settlement of litigation between himself and Sriram Das by the *ekrarnama*, dated 3rd November 1874, "according to which," he said, "I obtained the lands in question along with other lands for the expense of the Thakurs Sri Gopal Jiu and Bala Jiu, established at Bibisarai," though he says he held them "by right of inheritance to the share of a brother in ancestral property."

In the course of the trial the defendant repudiated all knowledge or connection with the *ekrarnama*, maintaining that he had never admitted its existence, that its execution had never been proved, that it ought not to have been admitted in evidence against him, and that he had held the property throughout adversely to the Mohant at Bhadrak and had an absolute right thereto. He did not appear to give evidence at the trial.

The Subordinate Judge held that Sriram Das having died on 18th July 1889, as alleged by the plaintiff, the suit was not barred by limitation; that the defendant had obtained possession under the *ekrarnama*, and the onus lay on him to show how and when that possession became adverse to the Mohant of the Bhadrak *math*—an onus he had not discharged; that the *ekrarnama* could not be admitted in evidence unless satisfactory proof of its execution by Sriram Das was adduced, and no such proof had been given; and that there was no evidence of adverse possession. On the third issue (as to adverse possession) the Subordinate Judge said :—

"Had the transfer of the disputed property been void *ab initio*, it could have been contended, on the authority of the Privy Council ruling in *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1), that the transferee was a trespasser, and that his period of adverse possession commenced from the date of the transfer. But it has been held, in the case of *Arruth Misser v. Juggurnath Indraswamee* (2), that a *shebait* has got life interest, and that a lease of the endowed

(1) (1899) I. L. R. 23 Mad. 271 ;

(2) (1872)\*18 W. R. 439.

L. R. 27 I. A. 60.

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property given by him is valid to the extent of his life. Consequently, the transfer by Sriram Das was valid to the extent of his life, and was not void *ab initio*.

“The defendant ought to show when and how his adverse possession commenced. He got it by an *ekrarnama* which he suppresses and ignores. Before the defendant can be allowed to take shelter under the plea of adverse possession, he must show that he ever denied the title of the Mohant of the Sadabrata *math*. On the contrary, the defendant in his verified petitions, Exs. 10, 11 and 12, filed in the Land Registration Department, distinctly admits that an *ekrarnama* was executed between him and Sriram Das on the 3rd of November 1874 in order to avoid a ruinous litigation, and that he got the properties under that deed. If the defendant now chooses to throw the *ekrarnama* overboard, he must show what overt act was done by him from which it can be inferred that he meant to hold the land adversely to the Mohant of the Sadabrata *math*. The plaintiff’s right of action accrued when his *guru* died within twelve years before this suit, and consequently I am of opinion that the plea of adverse possession cannot be successfully pleaded against him.

“The defendant does not produce the *ekrarnama* when called upon to do so, nor does he come forward to deny its existence on oath. A copy of the *ekrarnama*, taken from the Registry Office, has been admitted to prove its existence and contents. It is urged by the defendant’s pleader that the contents of this document cannot be used as evidence against his client, unless it be proved that Sriram Das executed it. As the document is not 30 years old, I am of opinion that even if the original had been before the Court it could not have been used as evidence unless its genuineness was legally proved. The copy of the deed cannot stand upon a higher footing. But there is the evidence of Madhusudan Mahanti that the executant and all the attesting witnesses of the *ekrarnama* are dead. The original not having been produced by the defendant, no witnesses can be called to prove the signature of the attesting witnesses. Madhusudan Mahanti, however, says that he was present when the *ekrarnama* was executed, and on hearing the copy read out to him, says that this was the *ekrarnama*. This witness was not cited from before. He was present in Court on his own business, when he was brought into the witness-box to remedy this defect in the plaintiff’s case. There is no guarantee that this witness was present at the time, and I cannot rely upon his allegation of having seen the execution of the document. The plaintiff cannot, therefore, take advantage of the recital in the *ekrarnama* that the defendant was to hold the Bibisarai *math* as a dependency of the Sadabrata *math*, and to pay a homage of Rs. 15 per year. . . .

“As I have found that the defendant’s possession was not adverse to the plaintiff’s *guru*, or to the plaintiff, the defendant cannot be said to have acquired an absolute title by adverse possession.”

A decree was therefore made in favour of the plaintiff for possession of the property in suit.

On appeal, the High Court (Rampini and Caspersz, JJ.) said :—

The plaintiff, in support of the decree of the lower Court, has contended that the *ekrarnama* should have been admitted in evidence. We are of opinion

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that it should have been so admitted and presumed to have been duly executed. It is beyond question that, in November 1874, serious disputes had broken out between the defendant and the Mohant Sriram Das. They were both *chelas* of the former Mohant Kripasindhu Das. They claimed a right to succeed to the two *maths* at Bhadrak and Bibisarai. It was arranged between them that Sriram Das should continue in possession of the Bhadrak *math* and the defendant of the Bibisarai *math*. *Ekrarnamas* to this effect were exchanged between them. Now, the defendant has been called on to produce the *ekrarnama* made over to him. He has not produced it. A certified copy has been obtained from the Registration Office, and one witness, Madhu Sudan, has deposed to its execution. Most, if not all, of the attesting witnesses have been proved to be dead. This person, Madhu Sudan, may not be a very credible witness, but, under section 89 of the Evidence Act, it may be presumed, in the circumstances, that the deed was duly executed. There is no possible reason why we should have any hesitation in making this presumption. Now, if the plaintiff claims to be the successor of Sriram Das, he certainly cannot recover the Bibisarai *math*, for the *ekrarnama* provides that neither Sriram Das nor any of his heirs shall ever disturb the possession of the defendant in the Bibisarai *math*. On the other hand, if the plaintiff sues merely as the trustee of the idol, to whom the two *maths* in strict legal intendment belong, he is met by the plea of the defendant's adverse possession of 27 years. We think there can be no doubt that the defendant held the disputed *math* adversely for more than twelve years, even before the death of Sriram Das. This is apparent from Exhibits 10, 11 and 12, in which the defendant claimed, in February 1877, to hold the *math* by right of inheritance, though he admitted that possession was made over to him under the *ekrarnama* of 1874. Sriram Das died in July 1899, more than twelve years after the above claim. Furthermore, it would appear, from the Privy Council decision in the case of *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1), that the plaintiff and his preceding *shebait*s are not in the position of the holders of life estates, and that the plaintiff is not entitled to contend that his right to sue accrued to him only on the death of Sriram Das, and that the possession of the defendant, which may have been adverse to Sriram Das, was not adverse to him. The decision of the Privy Council, above alluded to, is of higher authority than the ruling of this Court in *Arruth Misser v. Juggurnath Indraswamee* (2), on which the Subordinate Judge relies. Moreover, this Court in a comparatively recent case, *Nilmoney Singh v. Jagabandhu Roy* (3), has affirmed the principle laid down by their Lordships of the Privy Council in the decision above referred to, and has held that each succeeding manager or *shebait* of an idol does not get 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 ruling in this case is further direct authority for holding that the possession of the defendant has been all along adverse, and bars the plaintiff's claim, and the decision in *Beejoy Chunder Bannerjee v. Kally Prosonno Mookerjee* (4) also supports this view."

(1) (1899) I. L. R. 23 Mad. 271 ;

(2) (1872) 18 W. R. 439.

L. R. 27 I. A. 69.

(3) (1896) I. L. R. 23 Calc. 536.

(4) (1878) I. L. R. 4 Calc. 327.

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The High Court therefore reversed the decision of the Subordinate Judge and dismissed the suit.

On this appeal, which was heard *ex parte*,

A. M. Dunne, for the appellant, contended that the High Court was wrong in deciding that the suit was barred. The appellant's case was that the property in dispute, being a part of the *debutter* property of the Thakur, could not be validly assigned or dealt with by the Mohant Sriram Das so as to affect the right of the Thakur, and that in any event no such dealing with it could be operative beyond the lifetime of Sriram Das, and that, therefore, on his death, the *ekrarnama* and arrangements made thereunder lapsed and became ineffective. The suit having been instituted within twelve years from the date of Sriram's death was, it was submitted, not barred by lapse of time. Reference was made to *Gnanasambanda Pandara Sannadhi v. Velu Pandaram* (1) and *Nilmoney Singh v. Jagabandhu Roy* (2), the latter case being distinguished on the ground that the facts of it were entirely different from the present case.

The *ekrarnama* was rightly admitted in evidence, and its effect was to show that Sriram Das was accepted by the respondent as the Mohant of the Thakur at the Bhadrak *math*, and that as such Mohant he agreed to and did appoint the respondent to a subordinate position as an *adhikari*, or manager, or agent, to be in charge of the subordinate *math* at Bibisarai, and to act in all matters of business under the orders and directions of the Mohant at Bhadrak.

The evidence in the case clearly established the title of the Thakur of the Bhadrak *math* as proprietor of the property in suit; and the terms of the *ekrarnama* did not confer upon the respondent any rights beyond those of a manager and agent of properties belonging to the Bhadrak Thakur, and subordinate to the Mohant of the Bhadrak *math*. Any rights granted to him under the *ekrarnama* came to an end on the death of Sriram Das. There was no evidence of adverse pos-

(1) (1899) I. L. R. 23 Mad. 271 :  
L. R. 27 I. A. 69.

(2) (1896) I. L. R. 23 Cal. 536.



session. The respondent took possession under the *ekrarnama*, and, if so, it was for him to show how and when his possession became adverse to the Thakur. This he had not done.

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The judgment of their Lordships was delivered by

SIR ARTHUR WILSON. This is an appeal from a decision of the High Court of Calcutta, dated the 6th June 1905, which overruled that of the Subordinate Judge of Cuttack, dated the 30th September 1902.

June 7.

The suit out of which the appeal arises was filed in the last-mentioned Court by the plaintiff appellant in his character as Mohant of the *math* or temple of a Hindu deity at Bhadrak in Balasore, and the object of the suit was to recover possession of certain properties situate at Bibisarai in Jajpur, the suit being based upon the allegation that the properties were *de-buttar* property, dedicated to the worship and service of the plaintiff's Thakur, and held by the defendant as an *adhikari* in charge of what was said to be a subordinate *math* of Bibisarai.

The first Court decided in favour of the plaintiff. That decision was reversed on appeal by the High Court on the ground that the plaintiff's suit was barred by limitation. Their Lordships are of opinion that the learned Judges of the High Court were right.

There is now no dispute as to any question strictly of fact. The former Mohant was in possession of both *maths* and of the property annexed to them. He died, leaving two *chelas*, between whom a controversy arose as to the right of succession to the *maths* and the property annexed to them. That controversy was settled by an arrangement embodied for the present purpose in an *ekrarnama* dated the 3rd November 1874, executed by Sriram Das, senior *chela*, in favour of the junior *chela*, described as *adhikari* Lakhan Das, by which the *math* at Bhadrak was allotted in perpetuity to the elder *chela* and his successors, while the *math* at Bibisarai, and the properties annexed to it, were allotted to the younger *chela* and his successors, for the purposes connected with his *math*, subject to an annual payment of Rs. 15 towards the expenses

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of the Bhadrak *math*. The parties to the present suit stand in the place of the elder and younger *chelas* respectively.

The learned Judges of the High Court have rightly held that in point of law the property dealt with by the *ekrarnama* was prior to its date to be regarded as vested not in the Mohant, but in the legal entity, the idol, the Mohant being only his representative and manager. And it follows from this that the learned Judges were further right in holding that from the date of the *ekrarnama* the possession of the junior *chela*, by virtue of the terms of that *ekrarnama*, was adverse to the right of the idol and of the senior *chela*, as representing that idol, and that, therefore, the present suit was barred by limitation.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the respondent has not appeared upon the hearing of the appeal, there will be no order as to costs.

s. v. w.

*Appeal dismissed.*

Solicitors for the Appellant: *T. L. Wilson & Co.*