SUPREME COURT OF INDIA

Balakrishna Savalram Pujari Waghmare

Vs.

Dhyaneshwar Maharaj Sansthan

C.A.Nos.220 to 223 of 1953

(P. B. Gajendragadkar, A. K. Sarkar and K. Subba Rao, JJ.)

26.03.1959

JUDGEMENT

P. B. GAJENDRAGADKAR J.:

1. These four appeals represent the last stage of a long and tortuous litigation between the appellants Waghmares (also called Guravs) who claim the rights of hereditary worshippers in the Shree Dnyaneshwar Maharaj Sansthan, Alandi, and respondents 1 to 6 who are the trustees of the said Sansthan Alandi, which is a small town situated on the banks of the river Indrayani at a distance of about 14 miles from Poona, is regarded as a holy place of pilgrimage by thousands of Hindu devotees. In the last quarter of the 13th century Shree Dnyaneshwar Maharaj, the great Maharashtra Saint and Philosopher, lived at Alandi. He was a spiritual teacher and reformer; by his saintly life and his inspiring and illuminating commentary on the Bhagvad Gita, known as Dnyaneshwari, he helped to create a popular urge and fervour for religious and social revolution which led to the foundation of a devotional cult; the followers of this cult are known as Warkaris in Maharashtra. They refuse to recognise any barriers of caste or class; and amongst them prevails a feeling of real and genuine spiritual brotherhood. Every year, in the months of July and November, thousands of them proceed on pilgrimage on foot and accompany the annual palanquin procession from Alandi to Pandharpur. Phandharpur is the chief center of pilgrimage in Maharashtra and it is regarded by devotees as the Banares of Southern India. About 1300 A. D. Shree Dnyaneshwar Maharaj took Samadhi at Alandi and since then Alandi also has become a place of pilgrimage.

2. In or about 1500 A. D. a big temple was erected in front of the idol of Shiva called Siddheshwar where the said Shree Dnyaneshwar Maharaj took his Samadhi. In due course the Mahratta Kings and the Peshwas of Poona granted the village of Alandi in inam for the upkeep of the temple and the Samadhi. About 1760 A. D. Peshwa Balaji Baji Rao framed a budget called Beheda or Taleband in order to regulate the management and worship of the shrine and provided for proper administration of its annual revenue amounting to Rs. 1,725. The appellants claim that their ancestors were then in possession of the temple and managment of its affairs especially the worship of the shrine. The budget framed by the Peshwa shows that out of the sum of Rs. 1,725 an amount of Rs. 361 was assigned to the worshippers for some of their services.

3. After the fall of the Mahratta power the management of Alandi passed into the hands of the East India Company which continued the old arrangement without any interference. In 1852, under orders from the Government of Bombay the Collector of Poona drew up a yadi or memorandum appointing six persons as punchas (trustees) with directions to them for the management of the

temple in accordance with the old tradition and practice as well as for the administration of the revenue of the village subject to the control and sanction of the Collector. This arrangement came to be described as "the scheme of 1852".

4. In 1863 the Religious Endowment Act was passed, and in consequence, in 1864 the Government of Bombay withdrew their superintendence over the affairs of the Alandi Sansthan; and the trustees continued to manage the affairs of the temple without any supervision on the part of the Government. It was during this period that the appellants' ancestors began to assert that they were the owners of the shrine while the trustees insisted on treating them as the servants of the shrine. This conflict inevitably led to several disputes between the worshippers and the trustees.

5. Matters appear to have come to a crisis in 1911 when the trustees dismissed eleven Guravs from the temple service on the ground that they were found guilty of gross misconduct. The Guravs nevertheless asserted that they were the owners of the shrine and that the trustees had no authority or power to dismiss them. Taking their stand on their ownership of the shrine some of the dismissed Guravs filed Civil Suit No. 485 of 1911 in the Court of the Subordinate Judge, Poona, against the trustees and this was the beginning of the long drawn out litigation which followed between the parties. In that suit the Guravs claimed a declaration that they were the owners of the temple and not the servants of the temple committee; and as owners they were entitled to perform the worship at the shrine and to appropriate the offerings made to the idol of the Saint. This claim was resisted by the trustees who pleaded that the Guravs were merely the servants of the temple committee and not the owners at all. On April 20, 1917, the learned trial Judge dismissed the suit because he held that the Guravs were not the owners of the shrine and were not entitled to the declarations claimed by them. Against this decision the Guravs preferred several appeals but these appeals were dismissed on August 3, 1921. While dismissing their appeals the High Court incidentally expressed the view that it was open to the Guravs to come to terms with the temple committee and that the terms on which the Guravs could be reinstated can be decided appropriately in a suit filed under S. 92 of the Code of Civil Procedure. It was also observed by the High Court in its judgment that the temple committee did not dispute the fact that the Guravs were the hereditary pujaris and that they had some rights in that capacity. No doubt the committee claimed that under the scheme framed in 1852 it was competent to dismiss hereditary servants for a substantial cause such as gross misconduct.

6. It appears that instead of adopting the course indicated in the judgment of the High Court and filing a suit under S. 92 of the Code, the Guravs chose to take the law into their own hands, and obtained forcible possession of the temple premises on July 25, 1922, and began to perform the puja and to take the offerings placed before the deity as they had been doing prior to their dismissal. This was followed by a suit filed by the trustees on September 12, 1922 (Suit No. 1075 of 1922) under S. 9 of the Specific Relief Act. This suit terminated in a decree in favour of the committee on November 4, 1922. In pursuance of this decree the committee recovered possession of the temple on November 16, 1922. Thus the Guravs had occupied the temple precincts for about three and a half months.

7. When the Guravs were thus dispossessed by the committee in execution of the decree obtained by it, some of them proceeded to file Suit No. 19 of 1922 in the District Court of Poona; this suit purported to be one under S. 92 of the Code but it claimed the same reliefs as had been claimed by the Guravs in their earlier suit of 1911. On April 25, 1927, the District Court dismissed this suit on the ground that the Guravs could not reagitate the same questions over again. It was held that their claim was barred by the decision of the earlier Suit No. 485 of 1911. Against this decision the Guravs appealed to the High Court (First Appeal No. 507 of 1927); but the High Court agreed with

the conclusion of the District Court and dismissed the Guravs' appeal on June 20, 1933. It was held by the High Court that the suit as framed was not properly constituted under S. 92 of the Code.

8. It was at this stage that a properly constituted suit No. 7 of 1934, was filed under S. 92 of the Code by the general public of Alandi along with two Guravs in the District Court at Poona. This suit claimed that a proper scheme should be framed for the management of the temple. Even so, one of the allegations made in the plaint referred to the Guravs' rights as hereditary worshippers. It was apparently apprehended that this allegation would be treated as outside the scope of a scheme suit under S. 92 and so the Guravs took the precaution of filing four separate suits on behalf of four branches in the Waghmare family one after the other. These suits were numbered as 1202 of 1933, 392 of 1935, 875 of 1936 and 900 of 1937; the plaintiffs in these suits were respectively the members of the third, the fourth, the first and the second branch of the Waghmare family. It appears that the hearing of these suits were stayed by an order of the District Judge pending the final decision of the scheme suit which was being tried by him.

9. The scheme suit was taken up for hearing in 1937. As many as 22 issues were framed in this suit and voluminous evidence was recorded. In the result the learned Judge substantially confirmed the original scheme of 1852, though he issued certain directions modifying it. This decree was passed on December 11, 1937. The trustees felt aggrieved by this decree and challenged its propriety by preferring an appeal, No. 92 of 1938 in the Bombay High Court. On November 16, 1939, the High Court dismissed the appeal though it made some amendments in the scheme framed by the District Judge by consent of the parties.

10. After the scheme suit was thus disposed of by the High Court, the four suits filed by the pujaris were taken up for trial by the learned Subordinate Judge, First Class, Poona. In all these suits the appellants claimed their rights as hereditary vatandar Pujari Gurav Servants of the Sansthan. They alleged that they were under a duty to perform worship according to certain rites in Shree Dnyaneshwar Sansthan and that they were also under an obligation to perform other incidental duties enumerated by them in their plaints. Likewise they claimed that for remuneration they were entitled to receive coins and perishable articles offered by the devotees and the committee as well as yearly emoluments from the committee. On these allegations the appellants claimed a declaration about their respective rights and an injunction permanently restraining the trustees from obstructing the appellants in the exercise of the said rights. They also claimed accounts from the trustees in regard to the offerings prior to the institution of the suit as well as those made after the institution of the suit and before the passing of the decree.

11. These allegations were denied by respondents 1 to 6. Their case was that the appellants were the servants of the temple committee and as such had no hereditary rights set up by them. In the alternative, it was pleaded by them that even if the appellants had any hereditary rights the same had been lost by their misconduct and had been otherwise extinguished by limitation. Against the appellants' claim pleas of res judicata and estoppel were also raised.

12. On these pleadings as many as 21 issues were framed in the trial Court. The trial Court found in favour of the appellants on all the issues. The learned Judge held that the Guravs had established the hereditary rights set out by them and he was inclined to take the view that the respondents could not deprive the appellants of their hereditary rights of service because of the misconduct of some of their ancestors. He also found that there was no substance in the plea of estoppel or res judicata and that the suits were not barred by limitation. In the result the appellants' suits were decreed on February 16, 1942.

13. Thereupon, the respondents challenged these decrees by preferring appeals against them in the Bombay High Court. The four suits accordingly give rise to First Appeals Nos. 183, 184, 185 and 186 of 1942 respectively. In these appeals the High Court agreed with the trial Court in holding that on the merits the appellants had established their case and that their claim was not barred either by res judicata or by estoppel. However, on the question of limitation the High Court took the view that the appellants' suits were governed by Art. 120 of the Limitation Act and that they had been filed beyond the period of six years prescribed by the said Article. That is why the High Court set aside the decrees passed by the trial Court, allowed the respondents' appeals and dismissed the appellants suits. However, in view of the special facts of the case the High Court directed that each party should bear its own costs throughout. This judgment was pronounced on April 14, 1943. Like the trial Court the High Court also dealt with all the four cases by one common judgment.

14. It appears that after this judgment was pronounced by the High Court but before it was signed, the appellants moved the High Court on July 2, 1943 for a rehearing of one of the appeal; (No. 186 of 1942). It was urged before the High Court that even if Art, 120 applied the claim made by the appellant in the said appeal (which arose from Suit No. 1202 of 1933) could not be held to be barred by limitation. The High Court was not impressed by this plea and so the motion for rehearing was discharged.

15. Subsequently a Civil Application, No. 1039 of 1944, was made by the appellant in the said appeal seeking to raise the same point over again but this application was rejected by the High Court on September 12, 1944.

16. The appellants then applied for leave to appeal to the Privy Council on August 15, 1944. Their applications were heard together and were disposed of by an order passed on March 26, 1946, whereby leave was granted to them to appeal to the Privy Council and their prayer for consolidating all the appeals was also allowed. These appeals could not, however, be disposed of by the Privy Council before the jurisdiction of the Privy Council to deal with Indian appeals came to an end and so they ultimately came to this Court and were numbered as Appeals Nos. 220 to 228 of 1953. It may be convenient to state that these appeals arise respectively from Suits Nos. 907 of 1937, 392 of 1935, 875 of 1936 and 1202 of 1933. It would thus be seen that the litigation which began between the parties in 1911 has now reached its final stage before us in the present appeals.

17. As we have already indicated, both the Courts below have found in favour of the appellants on most of the issues that arose in the present litigation; but the appellants have failed in the High Court on the ground of limitation. In the trial Court the respondents had urged that the present suits were governed by Art. 124 of the Limitation Act and that since the Guravs had been dismissed from service in 1911 and other Guravs refused to serve in 1913 and 1914 limitation began to run against them at least from 1914 and so the suits were beyond time. The learned trial Judge held that Art. 124 was inapplicable. He also found alternatively that, even if the said Article applied, the trustees did not have continuous possession of the suit properties from 1911 or 1914 for twelve years and so the suits were not barred by time. According to him the case was really covered by S. 23 of the Limitation Act, and so the plea of limitation could not succeed.

18. The High Court has agreed with the trial court in holding that Art. 124 is inapplicable. It has, however, come to the conclusion that the suits are governed by Art. 120 of the Limitation Act, and, according to its findings, limitation began to run against the appellants either from September 12, 1922, when the trustees filed their suit under S. 9 of the Special Relief Act, or in any case from November 1922, when, in execution of the decree passed in the said suit, the appellants were driven

out of the temple precincts by the trustees. The High Court has also held that S. 23 can have no application to the present case. Thai is how the High Court has reached the conclusion that the appellants' suits are barred by time under Art. 120. The question which arises for our decision in the present appeals, therefore, is one of limitation; it has to be considered in two aspects: Was the High Court right in holding that Art 120 applies and that the cause of action accrued more than six years before the dates of the institution of the present suits; Was the High Court also right in holding that S. 23 does not apply to the suits?

19. On behalf of the appellants Mr. Rege has contended that in substance, in their present suits the appellants have made a claim for possession of an hereditary office and as such they would be governed by Art. 124 of the Limitation Act. In this connection he has referred us to the relevant allegations in the plaint to show that the appellants' prayer for a declaration about their hereditary rights and for a consequential permanent injunction amount to no more and no less than a claim for possession of the said hereditary office. In support of this argument reliance has been placed on the decision of the Bombay High Court in Kunj Bihari Prasadji v. Keshavlal Hiralal, ILR 28 Bom. 567. In that case the plaintiff had made a claim to the gadi of the Swaminarayan temple at Ahmedabad and had asked for a declaration that the will of the last Acharya which purported to appoint defendant 14 as his adopted son and successor was null and void. As a consequence a perpetual injunction was also claimed restraining the defendants from offering any obstruction to the plaintiff in occupying the said gadi. The principal point which was decided in the case had reference to the effect of the provisions of S. 42 of the Specific Relief Act. The plaintiff's suit had been dismissed in the courts below on the ground that be had omitted to ask for further relief as he was bound to do under S. 42 of the said Act and the High Court held that the section did not empower the court to dismiss the suit under the said section. In considering the nature of the claim made by the plaintiff Jenkins C. J. observed that "in the plaintiff's view the suit was not one of possession of land appertaining to the gadi but to determine who was to occupy the gadi and thus as gadinishin become the human agent of the deity. If that was so, then the injunction restraining all interference with the occupancy by the plaintiff of the gadi secures in the most complete manner to him the rights he claims". The learned Chief Justice also observed that the plaintiff might in terms have asked for possession of the office he said was his", but he asked "how would practical effect be given to an award of possession of office otherwise than by preventing interference with the rights of which it was made up." Even so, having reversed the decree passed by the courts below, when the High Court remanded the case for retrial, the plaintiff was advised to amend his plaint and to define more precisely the terms of the injunction he sought. It is urged that, in the present appeals also, by asking for a declaration of their rights and for an appropriate injunction against the respondents, the appellants were in effect asking for possession of the hereditary office. It is doubtful if the claims made by the appellants in their respective suits are exactly analogous to the claim made by the plaintiff in Kunj Bihari Prasad's case (supra). The appellants have not only asked for an injunction but also for an account of the income received by the trustees from July 23, 1933, up to the date of the suit as well as for similar account from the date of the suit until the date of the decree. A claim for accounts in the form in which it is made may not be quite consistent with the appellants' contention that their suits are for nothing more than possession of the hereditary office; but in dealing with the present appeals we are prepared to assume that they have in substance claimed possession of the office. The question which then arises is: Does this claim for possession attract the application of Art. 124 of the Limitation Act?

20. Article 124 governs suits for possession of an hereditary office. The period of limitation prescribed by the Article is twelve years and the said period begins to run when the defendant takes possession of the office adversely to the plaintiff. This is explained to mean that the hereditary

office is possessed when the profits thereof are usually received or (if there are no profits) when the duties thereof are usually performed. It is clear that before this Article can apply it must be shown that the suit makes claim for possession of an office which is hereditary; and the claim must be made against the defendant who has taken possession of the said hereditary office adversely to the plaintiff. Unlike Art. 142 the fact that the plaintiff is out of possession of the hereditary office for more than twelve years before the date of his suit would not defeat his claim for possession of the said office. What would defeat his claim is the adverse possession of the said office by the defendant for the prescribed period. As the explanation makes it clear usually the receipt of the profits may amount to the possession of the office; but if the defendant merely receives the profits but does not perform the duties which are usually performed by the holder of the office, the receipt of the profits by itself may not amount to the possession of office. The cause of action for possession in suits falling under Art. 124 is the wrongful dispossession of the plaintiff and the adverse possession by the defendant of the office in question. Claims for possession of hereditary offices which attract the application of this Article are usually made by holders of the said offices against persons who claim adverse possession of the said offices; in other words, in suits of this kind, the contest is usually between rival claimants to the hereditary office in question.

21. In the present appeals the claim for possession is made by the appellants against the trustees of the Sansthan. It is significant that the persons who are actually performing the duties of the worshippers are not impleaded; and they do not claim to hold office as hereditary officers either. They have been appointed by the trustees as servants of the institution and they perform the duties of worship as such servants. The trustees, on the other hand, cannot be said to have taken possession of the office themselves adversely in the appellants. They do not take the profits themselves nor do they perform the duties associated with the said office. They have, in exercise of their authority and power as trustees, dismissed the appellants' predecessors from office and have made fresh appointments of servants to perform the worship at the Sansthan; and, in making the said appointments, have in fact destroyed the hereditary character of the office. The dispute in the present appeals is between the worshippers who claim hereditary rights and the trustees of the institution who claim to have validly terminated. the services of some of the predecessors of the appellants and to have made valid appointments to the said officer. It is, therefore, impossible to accept the argument that the claim made by the appellants in their respective suits attracts the provisions of Art. 124. It is conceded by Mr. Rege that if Art. 124 does not apply, the suits would be governed by Art. 120 which is a residuary article. It may prima facie appear somewhat strange that whereas a suit against a person claiming to hold the hereditary office adversely to the plaintiff is governed by a period of twelve years, a claim against the trustees like the respondents in the present appeals who have dismissed the hereditary worshippers should be governed by a period of six years. It may be possible to suggest that there is a substantial difference in the nature of the two disputes; but apart from it, it is well known that the artificial provisions of limitation do not always satisfy the test of logic or equity.

22. Mr. Rege, however, argued that in determining the scope of Art. 124 we need not consider the provisions of col. 3 to the said Article. His contention appears to be that once it is shown that the suit is for possession of an hereditary office, Art. 124 must apply though the claim for possession may not have been made against a person who has taken possession of the office adversely to the plaintiff. He also urged alternatively that the trustees should be deemed to have taken possession of the office adversely to the appellants. We have already held that the conduct of the trustees shows that they have not taken possession of the office adversely within the meaning of col. 3 of Art. 124; and we do not think it is possible to ignore the provision of col. 3 in deciding whether or not Art. 124 applies. It is true that in Jalim Singh v. Choonee Lall 15 Cal WN 882, while holding that the

adjustment on which the plaintiff's claim was based in that case was in time both under Arts. 115 and 120, Jenkins C. J, has observed that the function of the third column of the second schedule is not to define causes of action but to fix the starting point from which the period of limitation is to be counted; but this observation does not support the appellants' case that Art. 124 would govern the suit even though the third column is wholly inapplicable to it. That obviously is not the effect of the observations made in Jalim Singh's case (supra).

23. The question about the nature and scope of the provisions of Art. 124 has been considered by the Madras High Court in Thathachariar v. Singarachariar, AIR 1928 Mad 377. "If we take into consideration the terminology used in the three columns of Art. 124", observed Srinivasa Aiyangar J., in that case, "it is clear that the nature of the suit intended to be covered by that article must be a suit filed by a plaintiff who claims the office from a person who at that time holds the office himself." In our opinion this view is correct.

24. We may also refer to another decision of the Madras High Court in which this question has been considered. In Annasami Iyengar v. Adivarachari, ILR (1941) Mad 275: AIR 1941 Mad 81, a Full Bench of the Madras High Court was dealing with a suit in which the plaintiff had claimed an injunction restraining the trustee and the archakas of the Sri Bhuvarahaswami temple at Srimushnam from interfering with the performance of the duties of his office of mantrapushpam of the temple. This suit had been filed in 1929. The office of mantrapushpam was a hereditary office and the plaintiff had succeeded to it on the death of his father in 1906. The emoluments of the office consisted of a ball of cooked rice per diem and twelve annas per month. It appears that the plaintiff was a Vadagalai while the archakas of the temple were Thengalais and there was animosity between them; and as a result of this animosity the plaintiff had never been able to perform the duties of his office. It was common ground that the plaintiff was the lawful holder of the office and that he had been receiving its emoluments month by month until 1927. The archakas who resisted the plaintiffs claim did not claim that they were in possession of the office or that they had performed the duties of the said office. The Full Bench held that, where a person is admittedly the lawful holder of the office and he is enjoying its emoluments, he must in law be regarded as being in possession of the office itself, especially where no one else is performing the duties of the said office; and so under Art, 124 it was enough for the plaintiff to show that be had been in receipt of the emoluments of the office to save his claim from the bar of limitation. The Full Bench also rejected the contention that under Art. 120 the suit was barred because it was held that every time the trustee and the archakas prevented the plaintiff from performing his duties as a hereditary officer a fresh cause of action arose and so there can be no bar of limitation under Art.120. It would be noticed that the basis of this decision was that, in the eye of law, the plaintiff was in possession of the hereditary office since he was receiving the emoluments of the said office month by month, and so every act of obstruction on the part of the archakas and the trustee was in the nature of a continuing wrong which have rise to a fresh cause of action to the plaintiff from time to time. In other words, on the facts the Full Bench held that S. 23 helped the plaintiff and saved his suit from the bar of limitation. As we will presently point out there is no scope for applying S. 23 to the facts of the present cases, and so the decision in Annasami Iyengar's (supra) cannot assist the appellants.

25. In this connection it is relevant to consider the decision of the Privy Council in Jalandhar Thakur v. Jharula Das, ILR 42 Cal 244: (AIR 1914 PC 72), in which it was held that Art. 124 was inapplicable. The defendant Jharula Das had obtained a decree for money on a mortgage which had been executed in his favour by Mst. Grihimoni, the widow of the shebait of the temple. In execution of the said decree the defendant had caused 3 1/2as. share of the judgment-debtor including her rights in the net income of the daily offerings made before the idol to be put up for sale and had

himself purchased it at the auction sale. As such purchaser he was in possession of the income of the said share. The judgment-debtor attempted to challenge the said sale by two suits but her attempts failed and the auction purchaser continued to be in possession of the income. On the death of Mst. Grihimoni, Bhaiaji Thakur, who succeeded to the office of the shebait, sued the defendant for possession of certain lands and claimed a declaration that he was entitled to receive the 31/2 as, share of the net. income from the offerings to the temple with other reliefs. This claim was resisted by the defendant Jharula Das. In regard to the plaintiff's claim in respect of the said 3 1/2 as. share, the High Court had held that Art. 124 applied and that the claim was barred under the said Article. That is why the decree passed by the trial court in favour of the plaintiff in respect of the said income was reversed by the High Court. This decision was challenged by the plaintiff before the Privy Council and it was urged on his behalf that Art. 124 did not apply. The Privy Council upheld this contention. It was clear that the office of the shebait of the temple was a hereditary office which could not be held by anyone who was not a Brahmin Panda. Jharula Das was not a Brahmin Panda. He was of an inferior caste and was not competent to hold the office of the shebait of the temple, or to provide for the performance of the duties of that office. On these facts the Privy Council held that the appropriation from time to time by Jharula Das of the income derivable from the said 31/2as. share did not deprive Mst. Grihimoni, and after her death, Bhaiaji Thakur, of the possession of the office of the shebait although that income was receivable by them in right of the shebaitship. The basis of this decision is that, on each occasion on which Jharula Das received and wrongfully appropriated to his own use a share of the income to which the shebait was entitled, he committed a fresh actionable wrong in respect of which a suit could be brought against him by the shebait; but it did not constitute him a shebait for the time being or affect in any way the title of the office. Thus this decision emphasises that for the application of Art.124 it is essential that the defendant to the suit must be in adverse possession of the hereditary office in question. We must, therefore, hold that Art. 124 does not apply to the suits filed by the appellants; and as we have already observed, if Art. 124 does apply, Art. 120 does.

26. The next point which arises for our decision is whether under Art. 120 the suits are barred by limitation. Under Art. 120 time begins to run against the plaintiffs when the right to sue accrued to them, and that naturally poses the question as to when the right to sue accrued to the appellants? In deciding this question it would be necessary to recall briefly the material facts in regard to the past disputes between the appellants and the trustees. These disputes began in 1911. On January 31, 1911, the trustees wrote a yadi (memorandum) to the Collector of Poona asking his permission to dismiss eleven Guravs from service. They set cut in detail several items of misconduct of which the said Guravs were guilty; and they expressed their opinion that for the proper management of the affairs of the institution it was necessary to terminate the services of the offending Guravs (Ex. 407), On April 1, 1911, the Collector sent a reply to the trustees and told them that, as a result of the Government Resolution No. 4712 passed on November 29, 1864, it was unnecessary for the trustees to obtain the Collector's sanction because it was competent to the trustees to settle their own affairs without any such sanction. The trustees then met in a committee on September 18, 1911, and decided to dismiss from service the said eleven Guravs. In its resolution the committee stated that the Guravs were violent and arrogant and it was likely that they may commit riot at the time when the committee would seek to take charge from them. The committee also apprehended that the rest of the Guravs would make a common cause with those who had been dismissed from service and would refuse to serve the Sansthan. Even so the committee decided to appoint six Brahmins temporarily to perform the service, because the committee was prepared to allow the rest of the Guravs to render service to the Sansthan if they were ready to act according to the orders of the committee and were willing to enter into a formal agreement in that behalf. In accordance with this

resolution the committee served notice on the eleven Guravs on October 13, 1911, terminating their services and calling upon them to hand over to the committee all articles in their charge and forbidding them from entering the temple in their capacity as servants. Notice was likewise served on the rest of the Guravs calling upon them to agree to serve the Sansthan on conditions specified in the notice. These terms were not acceptable to the Guravs and so, on behalf of two Guravs Eknath and his brother Ramchandra, notice was served on the trustees on October 26, 1911, complaining against the trustees conduct in forcibly removing the Guravs from the temple and thereby wrongfully denying their rights. The notice warned the trustees that unless they retraced their steps and gave possession to the Guravs as claimed in the notice legal steps would be taken against them.

27. This notice was followed by the Guravs' suit No. 485 of 1911. In the suit the plaintiff's claimed declaration about their rights of ownership and asked for consequential reliefs. This claim was denied by the trustees who claimed the right to dismiss the Guravs. It was alleged on their behalf that some of the plaintiffs had been dismissed and others had resigned their employments and so all of them had lost their rights. This suit was seriously contested but in the end the Guravs lost and their suit was dismissed on January 31, 1918.

28. The Guravs then preferred appeals in the High Court but these appeals were also dismissed on August 3, 1921. We have already pointed out that, while dismissing the said appeals, the High Court made certain observations about the Guravs' hereditary rights of worship and suggested that these rights could be adjudicated upon in a suit filed under S. 92 of the Code. Thus at the time when the Guravs' appeals were dismissed the position was that the claim of ownership set up by them had been rejected; but the question as to whether they were entitled to the lesser rights of hereditary worshippers was left open.

29. The Guravs then obtained forcible possession of the temple and that led to the trustees' suit under S. 9 of the Specific Relief Act. No. 1075 of 1922, on September 12, 1922. In this suit the trustees specifically alleged that the relationship of the defendants as servants of the Sansthan had ceased as from September 1911, and they averred that the defendants had, therefore, no right to obtain possession of the temple. The defendants no doubt disputed this claim and pleaded that they were the hereditary vatandar pujari servants but their claim was negatived and a decree for possession was passed on November 4, 1922. In execution of this decree the defendants were dispossessed.

30. On these facts the High Court has held in favour of the appellants, and rightly, we think, that it was difficult to accept the respondents contention that the cause of action for the present suits which were expressly based upon the status of the Guravs as hereditary servants arose in 1911. But, the High Court felt no doubt that the cause of action to file the present suits had accrued either on September 12, 1922, when the trustees filed their suit under S. 9 of the Specific Relief Act or in any event on November 4, 1922, when the said suit was decreed and the Guravs were consequently dispossessed. In our opinion this conclusion is also right. One of the Guravs who was examined in the present litigation has stated that, "if in any year when it is the turn of any takshim to serve, if a person outside the Gurav family is appointed by the trustees, all the takshims have a right to object." There is also no dispute that since the dismissal of eleven Guravs in 1911 till the institution of the present suits none from the Gurav family has served the temple except for 3 1/2 months in 1922 when the Guravs had wrongfully obtained possession of the temple. In 1922 the Guravs knew that their claim of ownership had been rejected and that the only right which they could set up was as hereditary worshippers of the temple and not its owners. This right was specifically denied by the trustees in their plaint while it was specifically set up in defence by the Guravs in their written

statement; and the decree that followed upheld the trustees' case and rejected the defendants' claim. On these facts the conclusion is irresistible that the right to sue accrued to the Guravs at the latest on November 4, 1922, when a decree was passed under S. 9 of the Specific Relief Act. If not the plaint in the suit, at least the decree that followed clearly and effectively threatened the Guravs' rights as hereditary worshippers and so the cause of action to sue on the strength of the said rights clearly and unambiguously arose at that time. If that be the true position it follows that the present suits which have been filed long after the expiration of six years from 1922 are barred by time under Art. 120.

31. It is then contended by Mr. Rege that the suits cannot be held to be barred under Art. 120 because S. 23 of the Limitation Act applies; and since, in the words of the said section, the conduct of the trustees amounted to a continuing wrong, a fresh period of limitation began to run at every moment of time during which the said wrong continued. Does the conduct of the trustees amount to a continuing wrong under S. 23? That is the question which this contention raises for our decision. In other words, did the cause of action arise de die in diem as claimed by the appellants? In dealing with this argument it is necessary to bear in mind that S. 23 refers not to a continuing right but to a continuing wrong. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that S. 23 can be invoked. Thus considered it is difficult to hold that the trustees' act in denying altogether the alleged rights of the Guravs as hereditary worshippers and in claiming and obtaining possession from them by their suit in 1922 was a continuing wrong. The decree obtained by the trustees in the said litigation had injured effectively and completely the appellants' rights though the damage caused by the said decree subsequently continued. Can it be said that, after the appellants were evicted from the temple in execution of the said decree, the continuance of their dispossession was due to a recurring act of tort committed by the trustees from moment to moment? As soon as the decree was passed and the appellants were dispossessed in execution proceedings, their rights had been completely injured, and though their dispossession continued, it cannot be said that the trustees were committing wrongful acts or acts of tort from moment to moment so as to give the appellants a cause of action de die in diem. We think there can be no doubt that where the wrongful act complained of amounts to ouster, the resulting injury to the right is complete at the date of the ouster and so there would be no scope for the application of S. 23 in such a case. That is the view which the High Court has taken and we see no reason to differ from it.

32. We would now like to refer to some of the decisions which were cited before us on this point. The first case which is usually considered in dealing with the application of S. 23 is the decision of the Privy Council in Maharani Rajroop Koer v. Syed Abdul Hossein, 7 Ind App 240. In order to appreciate this decision it is necessary to refer, though briefly, to the material facts. The plaintiff had succeeded in establishing his right to the pyne or an artificial watercourse and to the use of the water flowing through it except that which flowed through the branch channel; he had, however, failed to prove his right to the water in the tal except to the overflow after the defendants as owners of mouzah Morahad used the water for the purpose of irrigating their own land. It was found that all the obstructions by the defendants were unauthorised and in fact the plaintiff had succeeded in the courts below in respect of all the obstruction except two which were numbered No. 3 and No. 10. No. 3 was a khund or channel cut in the side of the pyne at a point below the bridge whereas No. 10

was a dhonga also below the bridge and it consisted of hollow palm bees so placed as to draw off water in the pyne for the purpose of irrigating the defendants' lands. It was in regard to these two obstructions that the question about the continuing wrong fell to be considered; and the Privy Council held that the said obstructions which interfered with the flow of water to the plaintiff's mehal were in the nature of continuing nuisance as to which the cause of action was renewed de die in diem so long as the obstructions causing such interference were allowed to continue. That is why the Privy Council allowed the plaintiff's claim in respect of these two obstructions and reversed the decree passed by the High Court in that behalf. In fact the conduct of the defendant showed that whenever he drew off water through the said diversions he was in fact stealing plaintiff's water and thereby committing fresh wrong every time. Thus this is clearly not a case of exclusion or ouster.

33. Similarly, in Hukum Chand v. Maharaj Bahadur Singh, 60 Ind App 313: (AIR 1933 PC 193), the Privy Council was dealing with a case where the defendants' act clearly amounted to a continuing wrong and helped the plaintiff in getting the benefit of S. 23. The relevant dispute in that case arose because alterations had been made by the Swetamvaris in the character of the charans in certain shrines and the Digambaris complained that the said alterations amounted to an interference with their rights. It had been found by the courts in India that the charans in the old shrines were the impressions of the footprints of the saints each bearing a lotus mark. "The Swetambaris who preferred to worship the feet themselves have evolved another form of charan not very easy to describe accurately in the absence of models or photographs which shows toe nails and must be taken to be a representation of part of the foot. This the Digambaris refused to worship as being a representation of a detached part of the human body". The courts had also held that the action of the Swetambaris in placing the charans of the said description in three of the shrines was a wrong which the Digambaris were entitled to complain. The question which the Privy Council, had to consider was whether the action of the Swetambaris in placing the said charans in three of the shrines was a continuing wrong or not; and in answering this question in favour of the plaintiffs the Privy Council referred to its earlier decision in the case of Maharani Rajroop Koer (supra) and held that the action in question was a continuing wrong. There is no doubt that the impugned action did not amount to ouster or complete dispossession of the plaintiffs. It was action which was of the character of a continuing wrong and as such it gave rise to a cause of action de die in diem. In our opinion, neither of these two decisions can be of any assistance to the appellants.

34. On the other hand the decision of the Patna High Court in Bibhuti Narayan Singh v. Mahadev Asram, ILR 19 Pat 208: (AIR 1940 Pat 449) as well as that of the Full Bench of the Punjab High Court in Khair Mohammad Khan v. Mst. Jannat, ILR (1941) 22 Lah 22: (AIR 1940 Lah 359) support the respondents' contention that where the impugned act amounts to ouster there is no scope for the application of S. 23 of the Limitation Act. We are, therefore, satisfied that there is no substance in the appellants' contention that S. 23 helps to save limitation for their suits.

35. The result no doubt is unfortunate. The appellants have succeeded in both the courts below in proving their rights as hereditary worshippers; but their claim must be rejected on the ground that they have filed their suits beyond time. In this court an attempt was made by the parties to see if this long drawn out litigation could be brought to an end on reasonable terms agreed to by them, but it did not succeed. In the result the appeals fail and are dismissed. We would, however, direct that the parties should bear their own costs throughout.

Appeals dismissed.

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