SUPREME COURT OF INDIA

Sarangadeva Periya Matam

Vs.

Ramaswami Goundar

C.A.No.544 of 1963

(K. Subba Rao, J. R. Mudholkar and R. S. Bachawat, JJ.)

23.09.1965

JUDGEMENT

BACHAWAT, J.:

1. Shri Sarangadeva Periya Matam of Kumbakonam was the inamholder of lands in Kannibada Zamin, Dindigul Taluk, Madurai District. In 1883, the then mathadhipathi granted a perpetual lease of the melwaram and kudiwaram interest in a portion of the inam lands to one Chinna Gopiya Gounder, the grandfather of the plaintiff-respondent on an annual rent of Rs. 70. The demised lands are the subject-matter of the present suit. Since 1883 until January 1950, Chinna Gopiya Goundar and his descendants were in uninterrupted possession and enjoyment of the suit lands. In 1915, the mathadhipathi died without nominating a successor. Since 1915, the descendants of Chinna Gopiya Gounder did not pay any rent to the math. Between 1915 and 1939 there was no mathadhipathi. One Basavan Chetti was in management of the math for a period of 20 years from 1915. The present mathadhipathi was elected by the disciples of the Math in 1939. In 1928, the Collector of Madurai passed an order resuming the inam lands, and directing full assessment of the lands and payment of the assessment to the math for its upkeep. After resumption, the lands were transferred from the "B" Register of inam lands to the "A" Register of ryotwari lands and a joint patta was issued in the name of the plaintiff and other persons in possession of the lands. The plaintiff continued to possess the

suit lands until January 1950 when the math obtained possession of the lands. On February 18, 1954, the plaintiff instituted the suit against the math represented by its present mathadhipathi and an agent of the math claiming recovery of possession of the suit lands. The plaintiff claimed that he acquired title to the lands by adverse possession and by the issue of a ryotwari patta in his favour on the resumption of the inam. The Subordinate Judge of Dindigul accepted the plaintiff's contention, and decreed the suit. On appeal, the District Judge of Madurai set aside the decree and dismissed the suit. On second appeal, the High Court of Madras restored the judgment and decree of the Subordinate Judge. The defendants now appeal to this Court by special leave. During the pendency of the appeal, the plaintiff-respondent died and his legal representatives have been substituted in his place.

2. The plaintiff claimed title to the suit lands on the following grounds: (1) Since 1915 he and his predecessors-in-interest were in adverse possession of the lands, and on the expiry of 12 years in 1927 he acquired prescriptive title to the lands under S. 28 read with Art. 144 of the Indian Limitation Act 1908; (2) By the resumption proceedings and the grant of the ryotwari patta a new tenure was created in his favour and he acquired full owner ship in the lands; and (3) in any event, he was in adverse possession of the lands since 1928 and on the expiry of 12 years in 1940 he acquired prescriptive title to the lands under S. 28 read with Art. 134-B of the Indian Limitation Act, 1908. We are of the opinion that the first contention of the plaintiff should be accepted, and it is, therefore, necessary to consider the other two grounds of his claim.

3. In the absence of legal necessity, the previous mathadhipathi had no power to grant a perpetual lease of the math properties at a fixed rent Legal necessity is neither alleged nor proved. But the mathadhipathi had power to grant a lease which could endure for his lifetime. The lease of 1883, therefore, endured during the lifetime of the previous mathadhipathi and terminated on his death in 1915. Since 1915, the plaintiff and his predecessors-in-interest did not pay any rent to the math, and they possessed the lands on their own behalf adversely to the math. Before the insertion of Art. 134-B in the Indian Limitation Act, 1908 by Act I of 1929, the suit for recovery of the lands from the defendants would have been governed by Art. 144. The controversy is about the starting point of limitation of a suit for the recovery of the math properties under Art. 144. Did the limitation commence on the date of the death of the previous mathadhipathi, or did it commence on the date of election of the present mathadhipathi ?

4. On behalf of the appellants, Mr. Ganapathy Iyer contended that the right to sue for the recovery of the math properties vests in the legally appointed mathadhipathi and adverse possession against him cannot run until his appointment. In support of his contention, he relied upon the minority judgment of a Full Bench of the Madras High Court in Venkateswara v. Venkatesa, ILR (1941) Mad 599: (AIR 1941 Mad 449 (FB)). Kameswara Rao v. Somanna, (S) AIR 1955 Andhra 212 and Manikkam Pillai v. Thanikachalam Pillai, AIR 1917 Mad 706 (1). He argued that this view has received legislative sanction in Art 96 of the Indian Limitation Act, 1963. He relied upon the following observations in Jagadindra Nath Roy v. Hementa Kumari Debi, (1904) ILR 32 Cal 129 at p. 141 (PC), "the possession and management of the dedicated property belongs to the sebait. And this carries with it the right to bring whatever suits are necessary for the protection of the property.

Every such right of suit is vested in the sebait and not in the "idol". Relying on Murray v. East India CO., (1821) 5 B and Ald 204 at p. 207 and Meyappa Chetty v. Supramanian Chetty, 43 I. A. 113 at p. 120: (AIR 1916 PC 202 at p. 205), and several decisions under Arts. 120 and 110 of the Indian Limitation Act, 1908, he submitted that the cause of action does not accrue and time does not commence to run unless there is someone who can institute the suit. Relying on Radhmoni Debi v. Collector of Khulna, (1900) 27 Ind App 136 (PC), and Srischandra Nandy v. Baijnath Jugal Kishore, ILR 14 Pat 327: (AIR 1935 PC 36), he contended that before possession can be adverse there must be a competitor who by due vigilance could avoid the running of time.

5. Mr. Garg on behalf of the respondents contended that adverse possession commenced to run against the math on the death of the mathadhipathi who granted the lease and the operation of the Limitation Act is not affected by the fact that there was no legal manager of the math. In support of his contention, he relied upon the majority judgment of the Full Bench of the Madras High Court in Venkateswara's case, ILR (1941) Mad 599: (AIR 1941 Mad 449) (FB), Manmohan Haldar v. Dibbendu Prasad Roy, ILR (1949) 2 Cal 263: (AIR 1949 Cal 199) and Administrator-General of Bengal v. Balkissen Misser, ILR 51 Cal 953 at pp. 957-960: (AIR 1925 Cal 140 at pp. 142-143). Relying on Pramatha Nath Mullick v. Pradhyumna Kumar Mullick, 52 Ind App 245 at p. 250: (AIR 1925 PC 139 at p. 140), he submitted that a math, like an idol, has a juridical status with the power of suing and being sued. He argued that in the absence of a legally appointed mathadhipathi, a de facto manager could institute a suit for recovery of the math properties, and the beneficiaries of the endowment could take appropriate steps for the recovery, and, in any event, the mere absence of machinery for the institution of the suit would not suspend the running of limitation.

6. We are inclined to accept the respondents' contention. Under Art. 144 of the Indian Limitation Act, 1908, limitation for a suit by a math or by any person representing it for possession of immovable properties belonging to it runs from the time when the possession of the defendant becomes adverse to the plaintiff. The math is the owner of the endowed property. Like an idol, the math is a juristic person having the power of acquiring owning and possessing properties and having the capacity of suing and being sued. Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency. See Babajirao v. Luxmandas, (1904) ILR 28 Bom 215 (223). It may acquire property by prescription and may likewise lose property by adverse possession. If the math while in possession of its property is dispossessed to if the possession of a stranger becomes adverse, it suffers an injury and has the right to sue for the recovery of the property. If there is a legally appointed mathadhipathi, he may institute the suit on its behalf; if not, the de facto mathadhipathi may do so, see Mahadeo Prasad Singh v. Karia Bharti, 62 Ind App 47 at p. 51: (AIR 1925 PC 44 at p. 46), and where, necessary, a disciple or other beneficiary of the math may take steps for vindicating its legal rights by the appointment of a receiver having authority to sue on its behalf, or by the institution of a suit in its name by a next friend appointed by the Court. With due diligence, the math or those interested in it may avoid the running of time. The running of limitation against the math under Art. 144 is not suspended by the absence of a legally appointed mathadhipathi; clearly, limitation would run against it where it is managed by a de facto mathadhipathi. See Vithalbowa v. Narayan Daji, (1893) ILR 18 Bom 507 at p. 511, and we think it would run equally if there is neither a de jure nor a de facto mathadhipathi.

7. A mathadhipathi is the manager and custodian of the institution. See Vidya Varuthi Thirtha v. Balusami Ayyar, 48 Ind App 302 at pp. 311, 315: (AIR 1922 PC 123 at pp. 126, 128). The office carries with it the right to manage and possess the endowed properties on behalf of the math and the right to sue on its behalf for the protection of those properties. During the tenure of his office, the mathadhipathi has also large beneficial interests in the math properties, see Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Srirur Mutt, 1954 SCR 1005 at pp. 1018-1020: (AIR 1954 SC 282 at pp. 288-289). But by virtue of his office, he can possess and enjoy only such properties as belong to the math. If the title of the math to any property is extinguished by adverse possession, the rights of all beneficiaries of the math in the property are also extinguished. On his appointment, the mathadhipathi acquires no right to recover property which no longer to the math. If before his appointment limitation under Art. 144 has commenced to run against the math, the appointment does not give either the math or the mathadhipathi a new right of suit or a fresh starting point of limitation under that Article for recovery of the property. In the instant case, the present mathadhipathi was elected in 1939 when the title of the math to the suit lands was already extinguished by adverse possession. By his election in 1939 the present mathadhipathi could not acquire the right to possess and enjoy or to recover properties which no longer belonged to the math.

8. In Jagadindra Roy's case, (1904) ILT 32 Cal 129 (PC), the dispossession of the idol's lands took place in April 1876. The only shebait of the idol was then a minor, and he sued for recovery of the lands in October 1889 within three years of his attaining majority. The Privy Council held that the plaintiff being a minor at the commencement of the period of limitation was entitled to the benefit of S. 7 of the Indian Limitation Act, 1877 (Act XV of 1877) corresponding to S. 6 of the Indian Limitation Act, 1908, and was entitled to institute the suit within three years of his coming of age. This decision created an anomaly, for, as pointed out by Page, J. in ILR 51 Cal 953 at p. 958: (AIR 1925 Cal 140 at pp. 142-143), in giving the benefit of S. 7 of the Indian Limitation Act, 1877 to the shebait, the Privy Council proceeded on the footing that the right to sue for possession is to be divorced from the proprietary right to the property which is vested in the idol. We do not express any opinion one way or the other on the correctness of Jagadindra Nath Roy's case, (1904) ILR 32 Cal 129 (PC). For the purposes of this case, it is sufficient to say that we are not inclined to extend the principle of that case. In that case, at the commencement of the period of limitation there was a shebait in existence entitled to sue on behalf of the idol, and on the institution of the suit he successfully claimed that as the person entitled to institute the suit at the time from which the period is to be reckoned, he should get the benefit of S. 7 of the Indian Limitation Act, 1877. In the present case, there was no mathadhipathi in existence in 1915 when limitation commenced to run. Nor is there any question of the minority of a mathadhipathi entitled to sue in 1915 or of applying S. 6 of the Indian Limitation Act, 1908.

9. For these reasons, we hold that the time under Art. 144 of the Indian Limitation Act, 1908 commenced to run in 1915 on the death of the mathadhipathi, who granted the lease, and the absence of a legally appointed mathadhipathi did not prevent the running of time under Art. 144. We therefore, agree with the answer given by the majority of the Judges to the third question referred to the Full Bench of the Madras High Court in Venkateswara's case, ILR (1941) Mad 599 at pp. 614-615, 633-634: (AIR 1941 Mad 449 at pp. 455-456, 461). We express no opinion on the interpretation of Art. 134-B of the Indian Limitation Act, 1908 or Art. 96 of the Indian Limitation

Act, 1963. Under Art. 96 of the Indian Limitation Act, 1963, the starting point of limitation in such a case would be the date of the appointment of the plaintiff as manager of the endowment, but this Article cannot be considered to be a legislative recognition of the law existing before 1929.

10. We hold that by the operation of Art. 144 read with S. 28 of the Indian Limitation Act, 1908 the title of the math to the suit lands became extinguished in 1927, and the plaintiff acquired title to the lands by prescription. He continued in possession of the lands until January, 1950. It has been found that in January, 1950 he voluntarily delivered possession of the lands to the math, such delivery of possession did not transfer any title to the math. The suit was instituted in 1954 and is well within time.

11. In the result, the appeal is dismissed with costs.

Appeal dismissed.