PATNA HIGH COURT

Mahant Biseshwar Dass

Vs

Sashinath Jha

(Manohar Lall, J.)

28.10.1942

JUDGMENT

Manohar Lall, J.

1. This is an appeal by the plaintiff, the present Mahant of Rampur Asthal, who is aggrieved by the decision of the learned Subordinate Judge of Muzaffarpur dated 10th May 1938 by which he dismissed his suit for recovery of possession of two properties appertaining to this asthal which were transferred by the previous mahant several years ago in the following circumstances. Rampur Asthal situated in the district of Darbhanga has considerable properties attached to it and has a subsidiary asthal known as Tajpur Asthal and a number of jhopras attached to it which are all managed by the mahant who is installed in the gaddi at Rampur Asthal according to its usage and custom. The mahants belong to Sri Ramanandi Bairagi Sampradaya.

2. According to the custom prevailing in this asthal succession to the gaddi on the death of the reigning mahant is hereditary from guru to chela--the eldest chela succeeds. So far as it is relevant to state for the purposes of this case we need not travel beyond the date when Mahant Narain Das was admittedly the mahant in possession of this asthal and its dependencies and appurtenances in 1902. He died in February 1903 leaving a number of chelas including Jaikaran Das and Lal Behari Das.

3. On the very day of the death of the mahant disputes arose between these two chelas, the former claimed to succeed to the gaddi because he was the senior chela, the latter put forward the claim to succeed1 to the mahantship on the basis of a will which was said to have been executed by Mahant Narain Das in June 1898. Both parties claimed to perform the funeral obsequies of the late mahant and a number of disputes arose between them which were carried to the criminal Courts and to the Land Registration Department as is usual in such cases Lal Behari Das also filed an application for letters of administration in the Court of the District Judge of Darbhanga in order to claim the asthal properties by virtue of the will of 1898 to which a caveat was entered by Mahant Jaikaran Das.

4. At this stage at the intervention of well-wishers and in order to stop complete ruination of the estate belonging to this asthal, these two disputants wisely entered into a compromise which was evidenced by an ekrarnama dated 5th June 1908. The effect of this ekrarnama will have to be considered in its due place hereinafter. It is sufficient to state here that by this ekrarnama, Ex. 2

(only a small extract from which is printed at p. 1, but the learned advocate handed to us a typed copy of the whole of this ekrarnama) after reciting the events which I have stated above, it was agreed that Mahant Jaikaran Das will be the owner in possession of Rampur Asthal and the other villages appertaining to that asthal specified in schedule Alef and Mahant Lal Behari Das would be the absolute owner in possession of the Tajpur Asthal and the villages appertaining thereto as specified in schedule Be.

5. It was also agreed that neither of the parties will have any right to transfer any of the asthal properties with a slight exception in favour of Jaikaran Das and further that if Mahant Jaikaran Das predeceased Mahant Lal Behari Das all the properties in Schedule Alef shall belong to Mahant Lal Behari Das in his absolute ownership and both the asthab shall be united as one. Similarly, if Mahant Lal Behari Das prede-ceased Mahant Jaikaran Das all the properties of Schedule Be shall come into the possession of Mahant Jaikaran Das who shall be then the absolute owner.

6. As a result of this agreement, the executants divided the Rampur Asthal and took separate possession of the two asthals and the properties attached thereto. On 27th June 1908 Mahant Lal Behari Das executed a perpetual mokarrari lease (Ex. P) of 22 bighaa of zerait land in village Murtazapur Dumri (one of the villages which was given to him by the ekrarnama) on a salami of ₹ 300 at a fixed rental of ₹ 22 in favour of Sashinath Jha, who is defendant 1 in the action. This transaction is impeached in this suit. The two mahants continued in possession of the respectively allotted properties till November 1915. On 30th November of that year another ekrarnama was entered into between the two mahants in which it was provided that Mahant Lal Behari Das and Mahant Jaikaran Das had full power to alienate as absolute owners the properties which came, into their possession by the earlier agreement of June 1908. On 3rd December 1915 Mahant Lal Behari Dos sold eight annas milkiat share in Lakheraj Tauji No. 445(b) village Murtazapur Dumri to defendant 1--this is the second transaction which is impeached in this suit. On 9th April 1920 Mahant Lal Behari Das died and the Tajpur Asthal and the properties appertaining thereto with the exception of the properties which were transferred by Mahant Lal Behari Das by the deeds of 1903 and 1915 already referred to came into the possession of Mahant Jaikaran Das.

7. On 21st September 1922 Mahant Jaikaran Das abdicated in favour of the plaintiff Mahant Biseshwar Das who was his chela--the question whether there was a valid abdication in law will have to be considered hereinafter. In order to have a clear record of the abdication and the right of the plaintiff to be the succeeding mahant, Mahant Jaikaran Das executed a registered tamliknama on 26th March 1924 in which he recited the events which culminated in the dispute and compromise between him and Mahant Lal Behari Das and the fact of the abdication in favour of the plaintiff. Mahant Jaikaran Das died on 2nd December 1924, but a few days before his death the plaintiff filed applications in the Land Registration Department to have his name entered in respect of the asthal properties in place of Mahant Jaikaran Das. These applications were still pending consideration when Mahant Jaikaran Das died.

8. The plaintiff instituted the suit giving rise to this appeal on 19th February 1936 for a declaration that the transfers by the mukarrari of 27th June 1903 and by the sale of 3rd December 1915 were wholly void and for no legal necessity whatsoever. He, therefore, asked for recovery of possession of the properties covered by these two deeds from defendants 1 to 9 and 10 to 15. Defendants 9(a) and 10(a) were added as party defendants on the prayer of the plaintiff for

amendment of the plaint on 18th March 1937 upon the ground that these defendants were interested in the property as alleged by the defendants in their written statement which they had filed.

9. The claim of the defendants to the pro-perties covered by the two deeds may be conveniently stated at the outset. In the mukarrari lease of 27th June 1903 defendant 1 claimed a four annas share, defendants 2 and 8 four annas share, defendants 8 and 9 four annas share And the remaining four annas is claimed by defendant 9(a). In the village sold by the sale deed of 3rd December 1915, defendant 1 claimed one anna share, defendants 2 and 3 one anna share, defendants 8 and 9 one anna share, defendant 9(a) one anna share and defendants 10 to 15 four annas share. It was alleged that although the documents stood originally in the name of defendant 1 but he was a trustee for the other defendants whose interests in the two properties covered by these documents was recognized by a registered ekrarnama dated 23rd April 1924.

10. The main defence was that the transactions sought to be impeached were for valuable considerations and for legal necessities binding on the Rampur Asthal and therefore, they cannot be avoided by the plaintiff. It was also pleaded that the suit of the plaintiff was barred by limitation because the original agreement between Mahant Jaikaran Das and Mahant Lal Behari Das dated 5th June 1903 was itself a void transaction so that the possession adverse to the asthal commenced from the date of the execution of that document; in other words, it was contended that the possession of Mahant Lal Behari Das became adverse from 5th June 1903 so that the claim of Mahant Jaikaran Das himself to recover possession became time-barred long before he died. It was contended that it follows that the possession of a transferee from Mahant Lal Behari Das was also adverse to the asthal. It was also pleaded as a fact that the plaintiff became the real mahant on 21st September 1922 and, therefore, the suit of the plaintiff which was instituted beyond 12 years of that date was barred by limitation. On behalf of defendants 9(a) and 10(a) it was further contended that in any case the suit against them must be held to have been instituted on 6fch April 1937 which was beyond 12 years of the date of the death of Mahant Jaikaran Das.

11. In order to get over the serious bar of limitation thus put forward on behalf of the defendants, the plaintiff sought to rely upon the amendment of Section 10, Limitation Act, and contended that as the result of an amendment in 1929, the suit against the defendants cannot now be held to be barred by any length of time, that the mahant is now for the purposes of the Limitation Act an express trustee within the meaning of Section 10. It was also contended on behalf of the plaintiff that Mahant Jaikaran Das did not abdicate effectively but continued to exercise all the functions and powers of a mahant even after 21st September 1922 and that the recitals in the tamliknama were deliberately inserted t in order to remove the difficulties which were anticipated to be put in the way of the plaintiff by a false claim by Kunjbehari who was for some time a chela of the old mahant before he went back to Grihastha Ashram and before the plaintiff was installed as a chela.

12. In other words the case of the plaintiff was that the plaintiff's right to institute this suit only arose after 2nd December 1924 as he became a mahant only then on ascending the gaddi on 14th December of that year. With regard to the plea of defendants 9(a) and 10(a) the plaintiff's argument was that these defendants were merely added for the sake 4 of form and they were effectively represented in the suit by the other defendants. I should have stated that the defendants also pleaded that the property which appertained to the asthal actually vested in the

mahant as the owner and not in the asthal and further that the principal asthal was not the Rampur Asthal but the Tajpur Asthal. The defendants had also challenged the case of the plaintiff that Rampur Asthal was a mourusi asthal to which the seniormost chela would succeed.

13. The learned Subordinate Judge came to the conclusion that the Rampur Asthal was the principal asthal to which Tajpur Asthal was subsidiary and that succession to the gaddi was hereditary, the seniormost chela always succeeding. He also held in the first place that the settlement by Mahant Jaikaran Das with Mahant Lal Behari Das evidenced by the ekrarnama of June 1903 was a settlement for valuable consideration as the settlement put an end to a bona fide dispute between the two executants. With regard to the question that the transfers in dispute were executed by Mahant Lal Behari Das for legal necessity and for the benefit of the endowment as was the defendants' case, he held that the transfers were for consideration. It will be convenient to give his findings separately regarding each document. With regard to the mukarrari patta first he accepted the evidence that the consideration of ₹ 300 was paid, but he also held that it has not been proved that there was any existing necessity of an unavoidable character at the time when the alienation was made. The kobala dated 3rd December 1915 was for a sum of ₹ 14,995. Out of this ₹ 1636 was said to have been paid in cash to Mahant Lal Behari Das at the time of its execution for cultivation expenses of the zerait land, for repairs of the asthal building and for necessary expenses of the asthal. The balance, ₹ 13,359 was advanced to pay off the previous dues of some creditors including the mortgagee. The learned Subordinate Judge after examining the oral and documentary evidence at length came to the conclusion that ₹ 1636 was not proved to his satisfaction to have been paid at all.

14. With regard to the balance all that he found was that ₹ 1079 only was paid for purposes binding upon the asthal or for legal necessity. He, therefore, concluded that as the bulk of the consideration was for purposes which could not be said to be binding upon the asthal this was not a good alienation in law and was liable to be set aside.

15. The learned Subordinate Judge further held that the plaintiff came to the mahanti gaddi on 15th Aswin 1330 Fasli corresponding to 21st November 1922 and became the mahant on that date and was put in possession of the asthal properties by Mahant Jaikaran Das who abdicated in his favour so that in the view of the learned Subordinate Judge adverse possession of the alienees began to run from that date, but as the suit giving rise to this appeal was instituted on 19th February 1936 the suit of the plaintiff was barred by the 12 years rule of limitation. He further held that the suit against defendants 9(a) and 10(a) was also barred by limitation. The learned Subordinate Judge also overruled the contention of the plaintiff that the amendment of the Limitation Act by Act of 1929 applied to this case. In the result the suit of the plaintiff was dismissed but he did not award any costs to the defendants inasmuch as both the transactions sought to be impeached were found by the learned Subordinate Judge to be without legal necessity. Hence the appeal by the plaintiff.

16. Mr. S.N. Bose appearing for the appellant contested the finding of the learned Subordinate Judge with regard to the date when the plaintiff ascended the gaddi. He argued that the recitals in the tamliknama should not have been relied upon and that from the subsequent conduct of Mahant Jaikaran Das it should have been held that the old mahant was in actual possession of the

asthal and its properties till the date of his death.

17. In other words, he contended that the so-called abdication was not established to have been really effected. He also contended that the suit of the plaintiff was not barred by limitation because the provisions of Section 10 of the amended Act 1 of 1929 should have been applied to this suit which was instituted after the Amending Act came into force, and that the defendants could not avail themselves of the exception provided therein because they were not assignees for value but were assignees from an assignee of the Mahant Jaikaran Das who had given no consideration to Mahant Jaikaran Das. Mr. L.K. Jha, appearing for the respondents, did not challenge the findings of the learned Subordinate Judge regarding the want of legal necessity of the mukarrari and the sale deed and accepted the findings of the Subordinate Judge on all questions of fact, but he contended that the provisions of the Amending Act 1 of 1929 have no application to this suit because the right of the plaintiff to recover became time-barred long before the Amending Act came into force. He also contended that adverse possession began from the very date from which the first agreement was executed in June 1903 relying upon the well-known case in *Damodar Das v. Lakhan Das*[1]

18. It will be convenient to dispose of the questions of fact which have been agitated in appeal before proceeding to consider the questions of law. [After considering the evidence his Lordship proceeded.] On a review of the entire oral and documentary evidence in this case, I unhesitatingly come to the conclusion in agreement with the learned Subordinate Judge that it must be held that the plaintiff was not initiated as a chela in 1330 Pasli (15th Asin 1330) as he wants to make out but that he was made the mahant on that date when he was over 20 years of age, that he then ascended the gaddi in fact and in law and was placed in possession of the properties of the asthal, that the old mahant abdicated effectively from that date even though in some documents the name of the old mahant still appeared as the mahant of Rampur Asthal. It must, therefore, be held that the plaintiff had a right to sue as a mahant from 21st September 1922 and not from 2nd December 1924.

19. To come now to the question of limitation. What is the effect of the ekrarnama dated 5th June 1903? Was this a void or a voidable transaction and was the transfer to Mahant Lal Behari Das a transaction for valuable consideration? In *Damodar Das v. Lakhan Das*[2] the facts were almost identical. In that case the former mahant of an asthal died leaving two chelas between whom a controversy arose as to the right of succession to the maths and the properties annexed to them. That controversy was settled by an arrangement made by an ekrarnama dated 3rd 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 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 pay. ment of ₹ 15 towards the expenses of the Bhadrak math.

20. It was held by their Lordships that the property dealt with by the ekrarnama was prior to its date to be regarded as vested not in the mahant but in the legal entity, the idol, the mahant being only his representative and manager and that it followed from this 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 with the result that the suit which was instituted in July 1901 within 12 years of the date of the death of the

senior chela was barred by limitation. This case was considered by their Lordships of the Judicial Committee in later cases. In *Ram Charan v. Naurangi*[3], Lord Russell of Killowen in delivering the judgment of the Board observed at page 129 that their Lordships must point out that *Damodar Das v. Lakhan Das (10) 37 Cal. 885(SUPRA)*, was a case in which the assignment or disposition consisted of an assignment or disposition of the math and its properties and that such an assignment was void and would in law pass no title, with the result that the possession of the assignee was perforce adverse from the moment of the attempted assignment. In *Mahadeo Prasad Singh v. Karia Bharti*[4], Sir Shadi Lal who delivered the judgment of their Lordships had again to consider this case and observed at page 52:

> The learned Counsel for the appellants has cited the case in *Damodar Das v. Lakhan Das (10) 37 Cal. 885(SUPRA)* in support of his argument that the possession of Rajbans became adverse from the date of the compromise, but that case is clearly distinguishable. The document dealt with therein was an assignment of the math as well as its properties, and as observed by this Board in *Ram Charan v. Naurangi, AIR 1933 PC 75 : 1933 AWR (P.C.) 1 418 : 1933-37-LW 516* (SUPRA)already referred to, such an assignment was void and would in law pass no title, with the result that the possession of the assignee was adverse from the moment of the attempted assignment.

21. Sir George Bank in had again to refer to this case when delivering the judgment of their Lordships in *Daivasikhamani Ponnambala Desikar v. Periyanan Chetti*[5], he observed that the case in *Damodar Das v. Lakhan Das (10) 37 Cal. 885(SUPRA)* was e in a different class as explained by the Board in *Ram Charan v. Naurangi, AIR 1933 PC 75 : 1933 AWR (P.C.) 1 418 : 1933-37-LW 516* (Supra)as depending on the fact that the transfer was not of a mere item of the property of the institution, but of the institution itself and its properties.

22. Such then being the true view of the effect of the transaction similar to that which was entered into on 5th June 1903 between the two disputing mahants there is no reason why it should not be held in this case also that the possession of Mahant Lal Behari Das became adverse from that very date. Mr. S.N. Bose attempted to distinguish that case on two grounds. He argued in the first place that in this case Tajpur Asthal was not an asthal at all and had no properties attached to it but was a mere jhopra, and secondly he urged that the transfer in the present case was a transfer for the lifetime of Mahant Lal Behari Das, only with the clear stipulation that on the death of either of the two mahants the two asthals--if Tajpur Asthal is considered to be an asthal--would again become re-united. In my opinion, the distinctions sought to be made out do not exist.

23. The basis for the first argument appears to be the remark of the learned Subordinate Judge at p. 50 in his judgment where he has observed that the case in *Damodar Das v. Lakhan Das (10) 37 Cal. 885(supra)* has no application to the facts of the present case because the property here does not vest in the deity but belongs to the math and because no property appertained to Tajpur Asthal. The learned Subordinate Judge is wrong in his first observation as a matter of law as appears from a large number of cases decided by their Lordships of the Judicial Committee which I have referred to above. He is also wrong as a matter of fact in his second observation. The learned Subordinate Judge here appears to overlook the clear recitals in a number of documents which he himself had referred to and on which he relied in the earlier parts of his

judgment. [After going through various documents his Lordship proceeded.]

24. In view of these clear repeated recitals, it is impossible to hold that Tajpur Asthal was a mere jhopra. I would hold that while Bampur Asthal is the chief asthal, Tajpur is a subordinate asthal with a number of properties attached to it. The learned Subordinate Judge seems to have made a slip when making the observation which is found at p. 50 because in other parts of his judgment he appears to have held that Rampur Asthal was the principal asthal and Tajpur asthal was a subordinate asthal.

25. The second argument advanced by Mr. Bose can now be disposed o very shortly. When once it is held that Tajpur Asthal is subordinate to Rampur Asthal and a number of properties are attached to Tajpur Asthal the case is on all fours with *Damodar Das v. Lakhan Das (10) 37 Cal. 885(supra).* The initial transaction of 5th June 1903 is void because the Mahant had no right to transfer the institution and its properties and, it does not make any difference whether the transfer was for a few years or in perpetuity. The transaction itself was a void transaction, and adverse possession of Mahant Lal Behari Dag began from the very day. (This matter may be looked at from another angle. The second ekrarnama of 30th November 1915 by its terms authorised the two mahants to transfer their respective proper, ties thus removing the restriction which was nominally imposed in the earlier ekrarnama of June 1903. Therefore, the adverse possession began certainly from that day and the transferee by the sale of 3rd December 1915 began to possess adversely from that day. His adverse possession would not be interrupted by the abdication or the death of the mahant, and, therefore, the suit against him would be barred in December 1927. It will be recalled that the transfer by the mukarrari was already made on 27th June 1903 and the possession of the mokarraridar also became adverse at least from 30th November 1915. The result is that in any view of the case the suit of the plaintiff would be barred by limitation.

26. But it was argued by Mr. Bose that the provisions of Section 10, Limitation Act, as amended in 1929 are applicable to this case. But, I have found that the adverse possession began in91903 and 1915 so that the right of the institution to recover possession became barred in 1915 a ad in 1927 so the amendment could not revive any rights which had be come extinct. Mr. Bose referred us to the observations of Sir Lancelot Sanderson who delivered the judgment of the Board in *Allah Rakhi v. Mohammad Abdur Rahim*[6]*,* to the effect that the suit which is the subject of the appeal before their Lordships was brought on 29th January 1926 and the question whether it was then barred by limitation must depend upon the law of limitation which was applicable to the suit at that time, and that the provisions therefore of the Act of 1929 were not applicable. But these observations are of no help to Mr. Bose because the suit itself was instituted before the amending Act and the cause of action was subsisting then. He has not cited a single case where although the right of the plaintiff had become barred by limitation before the amending Act was passed, yet by the mere institution of the suit after 1929 his right was held to have revived.

27. One Calcutta case was cited in support of this argument *Ram Kishore Das v. Ganga Gobinda Pati*[7]*,* In that case, the transfer sought to be impugned was a mukarrari lease of the year 1868. The mahant died in 1869 but his successor recognised the tenancy and went on receiving the rent till he died in May or June 1929. Such a case would obviously be governed by the amending Act, because the right of the plaintiff to bring a suit did not arise before May or June 1929 by which time the amending Act had come into force. It will be observed that this was not a case where the

mukarrari lease was void ab initio but it was a voidable transaction on the allegation that there was no legal necessity for granting such a mukarrari lease. The observations of the learned Judges of the Calcutta High Court at p. 246 are against the contention of Mr. Bose. In dealing with the argument of the plaintiff, based on the authority in *Gopeshwar Pal v. Jiban Chandra Chandra*[8], it was observed:

> The plaintiff contends that where in accordance with the provisions of the amending Act a suit could be brought after the passing of the amending Act, it may be that the amendment would apply but when it could not, then the amendment would have no application and that the facts in *Soni Ram v. Kanhaiya Lal*[9] did not involve the second of these positions. In the case before the Special Bench however plaintiff's right of suit accrued before the amending Act. By the amending Act the plaintiff in that suit was deprived of a right of suit vested in him at the date of the passing of the amending Act. Under these circumstances, the Special Bench held that the amending Act did not apply to the suit. In the case before us however the plaintiff's right of suit accrued after Act 1 of 1929 came into force. There is no question in the present case of confiscation of any vested right of the plaintiff as he had none when the amending Act came into force. It is however contended by the plaintiff, that, though the plaintiff had no right of suit before the amending Act came into force, the idol had the right to eject the lessee and that right would be confiscated if the amending Act be not applied to the transfer in the present case. The obvious answer to this contention is that the right to recover possession from the transferee was vested in the mahant and not in the idol: see *Jagadindra Nath Roy v. Hemanta Kumari Debi*[10] Gokuldas had no right to eject the transferee during his lifetime as he had recognised the tenancy by acceptance of rent from the tenant. The idol therefore had no right of suit before the amending Act came into force.

28. For these reasons, I am of opinion that the amending Act has no application in this case. But as the matter has been argued it is necessary that I should give my opinion on the assumption that Section 10 applies. By reason of the amendment the property comprised in a Hindu religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof. Therefore, Mr. Bose contends that no suit against the assigns of Mahant Jaikaran Das in whom the properties in suit had become vested in trust for a specific purpose is barred by any length of time unless the assigns are for valuable consideration. To support this argument, Mr. Bose contends that the transfer to Mahant Lal Behari Das or the assignment to Lal Behari Das by the document of 5th June 1903 was a transfer without consideration. I am unable to accept this argument. The settlement of a bona fide dispute be-tween the two mahants which was raging since the death of Mahant Narain Das was a transfer for valuable consideration. In *Girijanund Dutta Jha v. Sailajanand Dutt Jha*[11] an agreement to settle the dispute between the rival claimants to the office of the priest of an idol was held to be a settlement of a bona fide dispute for good consideration. The settlement of a dispute in this case must be held to be valuable as a num. ber of villages appertaining to Rampur Asthal were transferred to Mahant Lal Behari Das. These properties admittedly are of value.

29. Mr. L.K. Jha on behalf of the respondents argued that even if it was assumed that the first

transfer to Mahant Lal Behari Das was not for valuable consideration the transfer by Mahant Lal Behari Das to the defendants was a transfer for value. To this argument Mr. Bose replied that Section 10 does not contemplate the case of an assign other than the assign from the original mahant. If this argument of Mr. Bose is sound then Section 10 has no application at all. I am, however, of the opinion, that the assigns contemplated in Section 10 are not only assigns from the mahant but also assigns from the transferee or assignee from the mahant. The object of inserting the words "valuable consideration" is to distinguish the case of a transferee who is a mere volunteer and in e whose favor no equity could be brought to play and to hit only those transferees who are in possession of the trust property without having paid any consideration for it. Mr. Jha relied upon the statement in the well-known book "Lewin on Trusts," 1928 Edn., at p. 905 that in cases falling within Section 25, English Beal Property Limitation Act, 1833, the effect of that Section is that as between the trustee and any person claiming through him and the cestui que trust and any person claiming through him, time does not run until there has been a conveyance to a purchaser for valuable consideration, j and that the trust estate may, therefore, be followed by the cestui que trust, not with* standing acquiescence by him, not only as against the trustee, but as against all volunteers claiming under him; but so soon as the estate is conveyed to a purchaser for valuable consideration (as if it be made the subject of a marriage settlement), the time will begin to run. Section 25 is given at page 901. The relevant provisions are:

> When any land or rent shall be vested in a trustee upon any express trust, the right of the cestui que trust, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before, the time at which such land or rent shall have been conveyed to a purchaser for valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him.

30. He also relied upon the case in *Petre v. Petre* [12] where the effect of Section 25, English Beal Property Limitation Act, was considered by Vice-Chancellor Kindersley at p. 502. But, in my opinion, it will be worse than useless to construe the terms of a Section of an Indian Statute by the terms of some remotely i kindred English Statute.

31. For these reasons, I would hold that even if it is assumed that Section 10 as amended by Act 1 of 1929 applies, the plaintiff is still barred by limitation because the defendants are assignees for valuable consideration and are therefore free from the mischief of that section. It should be stated here that Mr. Bose at one stage of the argument contended that the mukarrari for a salami of ₹ 300 and. for an annual rent of ₹ 22 was at a ridiculously low rate of rent and therefore should not be held to be for "valuable consideration" and relied upon the observations of Mr. Ameer Ali in the well-known case in *Vidya Varuthi Thirtha Swamigal v. Balusami Ayyar*[13] where his Lordship observed at p. 327 that "valuable consideration" forms the essence of both Section 10, Limitation Act, and of Article 134 of Schedule l, and that even if this were a Specific trust, which it was not, it would be ridiculous to hold that the rent reserved in the grant to plaintiff 2 was "valuable consideration." The lands in suit in that case were granted in permanent lease on a small quit rent of Hs. 24 a year and his Lordship as a question of fact held in that case that the amount of rent reserved could not be held to be "valuable consideration." But, in the present

case, it cannot be held that a salami of ₹ 300 and an annual rental of ₹ 22 was so ridiculous as to amount to no "valuable consideration." We have no means to ascertain what the produce of the 22 bighas of land, was at the time when the transaction was entered into. The learned Subordinate Judge has found that ₹ 300 was actually paid. In my own experience a mukarrari settlement on a salami of ₹ 10 to 15 a bigha and ₹ 2 to 3 a bigha as annual rental is not unusual for lands which are situated in remote villages.

32. Mr. L.K. Jha also argued that the plaintiff himself has accepted mukarrari rent from the defendants and, therefore, he is estopped from challenging this transaction. He relied upon the finding of the learned Subordinate Judge to the effect that the patwari of the plaintiff granted some receipts to the defendant for 4 bighas and 16 kathas of mukarrari lands which fell to the patti of the plaintiff in 1332 Fasli. It will be recalled that the area of the lands granted in mukarrari was 22 bighas and no evidence has been produced to show that the plaintiff authorized recognition of this tenancy. It has been well settled in this Court that a, patwari or even a gomasta, unless he is spe. cially authorised to do so by the proprietor, has no Aght to inflict a new tenancy on the landlord by recognition or by acceptance of rent. I, therefore, overrule this contention of the respondents and hold that the plaintiff is not estopped by the fact that his patwari granted receipt for the year 1332 Fasli to the defendants for 4 bighas 16 kathas out of 22 bighas of the mukarrari lands.

33. It was lastly contended by Mr. Bose that by the operation of Section 22(2), Bihar Tenancy Act, it should be held that the tenancy rights which the defendants acquired by reason of some kabuliats within the ambit of the mukarrari area became merged in the mukarrari rights which they possessed, and, therefore, the learned Subordinate Judge was wrong in deciding issue 7 that even if the mukarrari transaction was not binding on the plaintiff, the defendants would still retain their tenancy rights. But in my opinion this question is purely academic because I have held that the mukarrari transaction cannot be avoided by the plaintiff in the present suit.

34. However, I do not see how the plaintiff can, at the same time, be allowed to allege that the mukarari transaction is good and, therefore, the defendants' tenancy rights which they subsequently acquired disappeared by being merged in their mukarrari right and at the same time argue that the mukarrari right is bad and should be held to be not binding on him. Section 22(2) only applies where the tenant acquired, a good title as a landlord also. Further, several other facts would have to be investigated, for instance, whether these defendants who acquired a tenancy right had full rights as mukarraridars or only fractional; these facts have not been investigated and cannot be satisfactorily investigated on the evidence as it stands. In the result I am satisfied that the decision of the learned Subordinate Judge dismissing the suit of the plaintiff must be affirmed.

35. I would dismiss this appeal with costs payable to the contesting respondents in this Court but only one hearing-fee.

Harries, C.J.

36. I agree.

1(10) 37 Cal. 885
2(10) 37 Cal. 885

3AIR 1933 PC 75 : 1933 AWR (P.C.) 1 418 : 1933-37-LW 516,
4AIR 1935 PC 44 : 1935-41-LW 291
5AIR 1938 PC 183
6AIR 1934 PC 77 : 147 Ind. Cas. 887
7 AIR 1937 Cal 305
8AIR 1914 Cal 806 : (1914) ILR 41 Cal 1125
9(13) 35 All. 227
10(05) 32 Cal. 129
11(96) 23 Cal. 645
12 (1853) 1 Drew. 371
13A.I.R. 1922 P.C. 123

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