Privy Council Appeal No. 151 *of* 1917.

A. R. R. M. V. Arunachellam Chetty and others - - - *Appellants*

v.

Venkatachalapathi Guruswamigal - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JUNE, 1919.

Present at the Hearing:

VISCOUNT CAVE.
LORD SHAW.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

This is an appeal from a judgment of the High Court of Judicature at Madras, dated the 10th August, 1914, which varied a decree of the Subordinate Judge of Madura, dated the 19th October, 1908. The exact terms of these judgments will be afterwards referred to. It is necessary, however, in order to understand them to keep clearly in view the form and nature of the suit as brought.

The suit was brought by the present respondent "to declare that the defendants have no right to the village of Patharakudi, and that the plaintiff, as head of the mutt, is entitled to the possession of the village . . . and to receive the income of the same from the hands of the Receiver."

The village is part of the property of a mutt. It has been long administered by the appellants, who are Nagara Chetties. Broadly speaking, the contest in the case—and for the purpose of stating this contest colourless terms are employed—is between the head of the mutt on the one hand, who claims in virtue of

his office to be entitled to the management and possession of the entire property of the mutt; while, on the other hand, the appellants claim that they are entitled as trustees or managers of the part of the property of the institution which is in suit to be continued in the possession and management thereof. The form of the action brought in these circumstances is a suit for possession instituted by the head of the mutt, who does not have that possession, against the trustees or managers, who and whose predecessors for very many years have had it.

In such circumstances there naturally arises a subsidiary question of limitation, but their Lordships are unwilling to have the suit disposed of merely on the latter ground, and the case was argued before the Board with much fulness on its merits. In the Courts below this appears also to have been done, and in these Courts judgments of much elaboration were pronounced. Again, however, it must be stated that the suit is one the substantial aim of which is the eviction of the present possessors at the instance of the respondent, with the substitution in lieu thereof of possession and enjoyment by the respondent of the property in question, and of its entire income.

In the village of Patharakudi there are :—

(1) A temple of the god specially revered by the Nagara community, of which the appellants are members and have acted as representatives. This community forms a sub-caste of the Chetties ;

(2) A residence for the Nagara priest or *gurukkal ;*

(3) A shelter house or *matam*, for the use of Nagarathars when they resort to the place for religious exercises ;

(4) A *choultry*, where food is distributed to Brahmins ; and

(5) A street of houses forming part of a great enlargement made in recent times by the Chetties—that is, by the appellants and their predecessors. This street of houses is an *agraharam.* It is said to be the usual adjunct of a Hindu temple, and to be for the accommodation of Brahmins or Brahminical worshippers ; while

(6) There is the village itself and the lands belonging to it, the income of which falls into the general revenue of the mutt as an institution.

In consequence of a certain assumption throughout the evidence of the knowledge of distinctions between these various parts of the property, there is a lack of clearness on that subject notwithstanding the voluminous evidence ; but, speaking generally, their Lordships may assume that the temple or place of worship, together with the residence of the respondent as spiritual head of the institution, the shelter house, and the *choultry*, or place for the feeding of Brahmins, stand on one side, while on the other stands the remainder of the property.

The latter is now in the hands of the Receiver, and has been so for some years. Their Lordships are relieved of difficulty in

regard to the distinctions referred to by this fact of a Receivership. The suit has reference, and reference alone, to the property which is in the Receiver's hands. His management has not interfered with the purely spiritual functions of the *gurukkal* and with those parts of the property, like the place of worship and his own residence, which naturally attach to the performance of such functions by him.

In the plaint the respondent treats the other parts of the property under the general term "village," and this is quite a convenient term. His position on the pleading is that he, the *mohunt*, was all along in the possession and enjoyment of the village. In the course of the case, however, no substantial denial could be offered to the fact, which was notorious, that the actual possessors were the Chetties. The averment is that "the Chetties were managing the affairs of the mutt only as agents under the plaintiff and under his supervision, and were at no time in possession of the village of Patharakudi, the same having all along remained in the possession and enjoyment of the plaintiff." This is the case attempted to be set up by the respondent and by certain witnesses whom he produced, but they were disbelieved.

The respondent was appointed Head of the Mutt in the year 1867. There seems little reason to doubt that a decree in the terms sought by him would, to say the least, involve a very considerable subversion of the mode of occupation, possession and management which have obtained during his entire term of office. Under a decree in terms of his plaint he could dismiss the Chetties from office, and assume possession and management himself or by his nominees. Of course, if he had hitherto been, as is alleged in his suit, in possession and management himself, the demand made in the plaint would have been the natural relief sought. It is, therefore, important to see how the facts on this point stand.

Their Lordships have very carefully considered the evidence; and they see no reason to doubt the soundness of the conclusion thereon arrived at by the learned Subordinate Judge in that part of his pronouncement which is now cited. It is as follows:—

> "Except the vague and meagre oral evidence, there is not much evidence, on the plaintiff's side in this period, while considerable documentary evidence, consisting of accounts, receipts, official correspondence and other papers, has been adduced on the defendants' side to prove their management as trustees and *hukdars*. I may at once state here that the general effect of the entire evidence of this period is to show, beyond all doubt, the full and complete management, control and supervision of the endowments and their income by some Chetties or others to the knowledge of the plaintiff, who appears to have all through acquiesced in the same and not to have interfered with the Chetties in such management. The plaintiff has virtually conceded this state of things, not only in the present case, but has also done so in his previous depositions (Exhibits IV, VI and VI A), in all of which he has unequivocally admitted the management of the Chetties,

and the fact of the accounts, etc., being kept, checked and controlled by them. His explanation for this state of things, which his witnesses also try to make out, and which, he contends, is corroborated by a few documents on his side, is that the Chetties did all that business only under his orders, and that their management was never independent and exclusive of his rights as the proprietor and head of the mutt and its sole beneficiary entitled to appropriate the income as he wished. . . . .

"The Chetties constructed the houses and the new *matam*, etc. (Exhibits VI, XVI, XXI, VII, VIIIE, VIIIF, XXVIIIA, and the defendant's 1st, 7th and 10th witnesses), repaired tanks, etc., paid road-cess, etc., and in fact did everything which an owner or manager or trustee must do for the management and administration of the property. It is also shown by the same evidence that money and paddy payable to the plaintiff's house and to the plaintiff for *poojah* were treated as amounts standing to their credits and were paid accordingly; that moneys for the plaintiff's expenses for his trips to Chidambaram immediately after the installation, for his visit to Sringeri Swamigal at Kunnakudy, and for his Benares trip on pilgrimage, were all paid after correspondence between the servants and the Kariakkar Chetties. . . . .

"The Revenue and Zemin officers also seem to have recognised the Chetties as *hukdars* and issued the road-cess *pattas* and notices, etc., sometimes generally, to *hukdars* or managers without names, and sometimes to Nachiappa Chetty, one of the eight persons already referred to as *hukdar*."

Other portions of the learned Judge's opinion deal with the case attempted to be made by the plaintiff that all this possession and management by the *hukdars* was as his agents. He brings that matter to a point by saying, "In this case the Chetties were in management in their own right as *hukdars* before the plaintiff's appointment, and continued as such afterwards also. The plaintiff does not prove his case of their management as his agents, or the commencement of their management with his or his predecessors' permission." It might, in the view of the Board, have been open upon the evidence to make upon the allegation of agency a much more emphatic pronouncement in the negative, but it is not necessary for their Lordships to go into that; they are in agreement with the learned Subordinate Judge that the case of agency is not made out, and that accordingly the attempt of the plaintiff either to ground or to fortify his right on possession either by himself or by others has entirely failed. They see no reason to differ from the view of the Judge, who holds that the evidence of the plaintiff and his witnesses upon this topic cannot be believed.

The period of time over which the possession referred to extends covers more than half a century. But the documents in this case are of an important public character, and carry the record of this mutt much further back. As already stated, the plaintiff's appointment to the headship took place in the year 1867. But the *Inam* Register for the year 1864 has been produced, and to it their Lordships attach importance. It is true that the making of this Register was for the ultimate purpose of determining whether or not the lands were tax free. But it must not be forgotten that the preparation of this Register was a great act of state, and its preparation and contents were

the subject of much consideration under elaborately-detailed reports and minutes. It is to be remembered that the *Inam* Commissioners through their officials made enquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a Report would not displace actual and authentic evidence in individual cases; yet the Board, when such is not available, cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the *Inam* Register.

From that it appears as follows:—

"Villages of Variyanendal, Surakudi, Kanjiram Kurchi Yendal and Hamlet Padattanendal.

"I. These are the four villages in the Zemindary of Sivaganga. These were granted by Savundara Pandiyan King in column 11 for the support of a *matam* in Patharakudi Village. This has no *patta*. This is an ancient grant. It appears by the tradition that the object of the grant is to keep the *matam* which is presided by the Priest of Yalayattangudy Nattukottai Chetties efficiently by feeding Brahmins in *a chattram* situated close to the *matam*, by worshipping the Swamy in Palambady Nader Koil situated close to the *matam*, and by maintaining the dignity of the priest or *guru*. Now the object of the grant is efficiently kept up by doing all the above things. The Chetties, who are very rich, spend considerable sum annually for feeding Brahmins, etc. The priest of the *matam* died about fifteen months ago. The Chetties are in contemplation in electing a priest for the *matam*. It appears that when the priest was alive, some of the principal Chetties, whose names are given in column 16, were managing the affairs of the *matam* and of the villages attached to it. The managers or trustees are elected by the Chetty community itself. Thus, the grant falls under Rule III, Clause 1. Tax free.

"This is a hereditary grant. This is in uninterrupted possession of its holders since the date of the grant. The village is entered as Patharakudi *matam* village in all the accounts in column 12. The persons in column 16 are now trustees of the *matam*. They are managing the affairs thereof."

In further observations made by the Deputy Collector who signs the Register it is stated that "the trustees in column 16 added 126½ acres of wet and 280 acres of dry to the area entered in the account"; and in another note it is added, "The *matam* is under the management of the trustees with their villages." Further, a matter of not inconsiderable importance is contained in these words:—"The Zamindar has no objection to registering the names of the trustees here." The names of the trustees are duly set forth in the column headed "Particulars regarding present owner"; and these particulars are headed "Patharakudi *Matam* Trustees." Eight trustees who are Chetties, beginning with Natchiappa Chetty, are then mentioned, the name and age of each Chetty being given. As to the title to the property, that is set forth in a further column as "To be confirmed under Rule III, Clause 1. Tax free."

This makes it of importance to consider the rule thus referred to. It is one of the "Rules for the adjudication and settlement

of the *inam* lands of the Madras Presidency," being part of Order 116 printed at page 211 of the Standing Orders of the Board of Revenue. It is in these terms :—

> "If the *inam* was given for religious or charitable objects, such as for the support of temples, mosques, colleges, *choultries*, and other public buildings or institutions ; or for services therein, whether held in the names of the institutions or of the persons rendering the services ; it will be continued to the present holders and their successors, and will not be subject to further interference, so long as the buildings or institutions are maintained in an efficient state, and the services continue to be performed according to the conditions of the grant."

It thus appears to their Lordships to be quite clear that the eight Chetties named, who are stated to be trustees, were in 1864 confirmed, after enquiry and in terms of the Rule, as holders of the village. And unless the Rule was to be departed from, the *inam* " will be continued to the present holders and their successors and will not be subject to further interference " so long as two things happen, namely, the buildings are efficiently maintained and the services are continued. Both of these things have happened, and accordingly the adjudication stands : the Chetties were the holders, they were continued as such, and they were not to be interfered with.

Two points may be mentioned in connection with this adjudication. In the first place, the most important person, apart from the institution itself, was the Zamindar, from whose predecessors undoubtedly the original title to the lands had flowed; and it will be noted that the Zamindar had no objection to the registration of the trustees as proposed. In the next place, it is a mistake to treat the transactions of 1864 as merely bearing upon that year. They form, in their Lordships' judgment, a record of an anterior state of matters, from which record of possession, etc., a conclusion is formed by the Commissioner as to what was the real state of the title.

Following the Report, a title deed was granted by the *Inam* Commissioner, on the 3rd June, 1864, to the Dharmakartha of Patharakudi Mutt, that is to say, to the trustee or manager of the charity, and in this title deed it is stated, first :—

> "On behalf of the Governor-in-Council of Madras I acknowledge your title to a religious endowment *matam* or *inam*, situated in . . . held for the support of the pagoda called . . . in that village . . .
>
> "(2) This *inam* is confirmed to you and your successors, subject to the existing quit rent of Rs. 132–11–1 per annum, to be held without interference so long as the conditions of the grant are duly fulfilled."

But at least one further section of the earlier history of this mutt can be found. Their Lordships attach weight to the transactions of the year 1832. On the 30th of April of that year a petition was presented by the Zamindar, narrating that the Nagara Chetties originally came from the Tanjore Division and settled long ago in his zamindari and that their family deities are in that jurisdiction. He stated that " on account of the performance of those charities, the said Chetties have been paying the

poruppu due to the Sircar in respect of the villages in our zamindari jurisdiction, managing the said temples, *matam*, etc., and by spending certain moneys out of their own pocket in addition to the income . . . are conducting in the said temples, *matams*, etc.," the worship, and that " they have constructed tanks and have been performing the feeding charity and other charities." He then sets forth that the Chetties had reported to him that the *Amildar* had contrary to practice appointed *Monegars* and *Samprathis* and called for accounts. Then follows the petition in these terms :—

> " We therefore beg to submit that orders may be issued to the Head Tahsildar to the effect that *poruppu* amount in respect of the said *Devastanams, matams,* etc., may be collected as was being done up to last year, that the *Monegars* and *Samprathis* now newly appointed therefor may be recalled, and that no trouble be caused by calling for any account whatsoever, so that the Chetties may, day by day, do on a grand scale the established *poojah, annadanam* (feeding charity), etc., in the said temples and *matams.*"

The Board again notes the significant fact that the Zamindar is himself the petitioner.

On the 25th June of the same year a petition was presented on behalf of the Nagarathars by Venkatachallam Chetty to the Principal Collector of the Madura District, which narrated that " We ourselves have been managing the said temples, *matams*, etc., from the days of our ancestors up to date, spending large sum of money from our private funds," and it prayed that orders might be passed " to the effect that, in accordance with the provisions of Act VII of 1817, we alone should without violating the *mamul* (practice) have claim over the said charities and conduct them, and that the *Monegars* and *Samprathis* now newly appointed by the said *Amildar* be recalled."

It is important to observe what was the Regulation founded upon. It was that of the 30th September, 1817, passed by the Governor-in-Council of Fort St. George " for the due appropriation of the rents and produce of lands granted for the support of mosques, Hindu temples and colleges, or other public purposes ; for the maintenance and repair of bridges, *choultries* or *chuttrums*, and other public buildings." Under the tenth head of the Regulation it was provided that the local agents should ascertain and report " the names of the present trustees, managers or superintendents of the several institutions, foundations or establishments above described, together with other particulars respecting them, and by whom and under what authority they have been appointed or elected." Then follows the thirteenth branch of the Regulation, which is in the following terms :—

> " On the receipt of the report and information required by the preceding clause, the Board of Revenue shall either appoint the person or persons nominated for their approval, or shall make such other provision for the trust, management or superintendence, as may to them seem right and fit, with reference to the nature and conditions of the endowment, having previously called for any further information from the local agents that may appear to them to be requisite "

The Regulation of 1817 seems to have been complied with in terms. The language of the petitions by the Zamindar and the Chetties was adopted in the decree issued, namely, that the Chetties should be left in their possession and that they would perform the charities according to *mamul*. The operative words were these: "Let orders be issued to the effect that, in accordance with *mamul*, the temples, *matams*, etc., and their villages mentioned above, belonging to the said Nagara Chetties, be delivered over to them alone, without *Monegars* and others being appointed thereto."

This is the most remote period to which the authentic history of this mutt can be said to reach. From the fact that it was a mutt it follows that it must have had a Head as such, with all that that implies, as hereinafter to be referred to. But with regard to the village which is now under receivership, and which is a part of the endowment of the mutt, the management and possession thereof were in the hands of the Nagara Chetties at least for a period of about eighty years prior to the institution of this suit, and their dispossession and the substitution for such management and possession of that of the plaintiff would, as already said, be a subversion of the history of the property. Such subversion may be a necessity of the case on account of the nature of the institution; and this, which is an important point, will be dealt with. Apart from that point, the right of the plaintiff either to the eviction of the Chetties or to possession for himself is not supported by the history of the lands.

No question arises in this case of misappropriation by the defendants; such a thing is not suggested against them. On the other hand, they admit that their administration must be, not for their personal ends, but entirely for and on behalf of and in the interests of the mutt itself. This is the settled rule of administration with regard to such institutions under the law of India.

In the circumstances above set forth the demand made in the plaint does not appear to their Lordships to be warranted by law. It may be difficult to trace the origin of the property under receivership in the sense of ascribing its acquisition either to gifts from the Chetties out of their own private resources, or to offerings of worshippers, or to accumulations of income; but however that may be, the case of possession by the Chetties in their own right, and not as agents for the *gurukkal*, appears to be made out and is not indeed challenged in the Courts below. The difficulty on this head which the learned Judges in the Courts below have experienced arises from two causes, which will now be dealt with: first, in regard to the rights of the *gurukkal* or *mohunt*, which are construed as necessarily equivalent by law to the ownership of the village: and second, in regard to the possession itself, which, although protracted and undoubted, is treated, particularly in the judgment of the High Court, as being ineffective because it was not, according to the view that Court takes, adverse possession.

With reference to the first point, the Board has recently had occasion to deal with the position and rights of a *mohunt* of an *asthal*, or, as in this case, of the *gurukkal* of a mutt, in the two cases of *Ram Parkash Das* v. *Anand Das and others* (43 I.A. 73), and *Sethuramaswamiar and others* v. *Meruswamiar and others* (45 I.A. 1). In the former of these cases the body of authority upon this subject was dealt with. Two propositions may be cited as now expressing the general state of the law with regard to these institutions. In the first place, the nature of the ownership is an ownership in trust for the institution itself. Secondly, while it may no doubt be true that the ownership in the general case is with the spiritual head of the institution, still, to use the language of Sir Charles Turner in *Sammantha Pandara* v. *Sellappa Chetti* (I.L.R. II, Madras, 179), "We do not, of course, mean to lay it down that . . . the property may not in some cases be held on different conditions and subject to different incidents." As pointed out in *Ram Parkash Das*' case, there are varieties of circumstances and tenure, and in respect to these the usage and custom of the mutt falls to be determined. Once that usage and custom are clear they form the law of the mutt.

In the opinion of their Lordships, it would be a contravention of the usage and custom of this mutt, as disclosed by the evidence during the long course of its history, to affirm that the ownership of the village in suit was in the *gurukkal*. It is in the Chetties, whose title has been officially and apparently quite properly recognised as the "holders." But even this latter proposition is not in truth necessary for the determination of the case, for if the plaintiff's own title as owner fails, and the Board is clearly of opinion that it does, the suit as laid by him cannot be maintained.

With regard to the second point mentioned, namely, that the possession by the Chetties has not been adverse to the *gurukkal*, their Lordships fail to understand on what the difficulty of the Court below rests. Here was possession, not as in right of the *gurukkal*, but as in the Chetties' own right, with all the incidents of possession, namely, the purchase of lands, the borrowing on lands, the erection of buildings, the letting of holdings, the making payments to the priest for his support and spiritual services, the keeping of the village accounts. The *mohunt* was presumably aware of these transactions, extending now in his own time for over half a century, yet the first real challenge thereof appears to be the institution of this suit itself. This is a very ordinary case of possession *nec vi nec clam nec precario*. The person now claiming to be owner has stood by while others continued to possess not by any derivative title but in practical contravention of his alleged rights. The law does not require that the claimant to ownership must in such circumstances be shown to have protested that his rights were being violated, and that the possession went on adversely to his

protests. In short, their Lordships cannot agree with the legal view upon this subject of possession adopted by the Court below.

In these circumstances there seems to the Board no reason why the law of limitation should not apply. In *Balwant Rao Bishwant Chandra Chor* v. *Purun Mal Chaube* (10 I.A. 90) it was held that limitation applied to cases where the defendant admitted he was a trustee, and the plaintiff, without proving misapplication, brought a suit more than twelve years after the cause of action arose, the object of the suit being to obtain control of the management. As Lord (then Sir Arthur) Hobhouse observed, in words which are applicable to the present case :—

> "Here there is no question of recovering the property for the trusts of the endowment, because the defendant admits that he is a trustee and says that he is applying the property to the trusts of the endowment. There is no evidence that he is not applying the property to the trusts of the endowment, and there is no reason to conclude that the property would be more applied to those trusts if the plaintiff were to succeed in his suit than it is at this moment. The plaintiff is suing only for his own personal right to manage, or in some way to control the management of, the endowment."

The present case is still stronger for the application of the rule of limitation, as the assertion is made not only of the right to management, but of the right of beneficial ownership. But while, in their Lordships' opinion, the suit would be excluded by the twelve years' limitation, they have, on the ground already stated, thought it right to deal with the whole breadth of the argument presented.

Their Lordships desire in conclusion to say that no objection was made out to the *personnel* of the defendants as true successors of the Chetties to whom the rights of ownership for the benefit of the mutt were confirmed as already narrated ; and no challenge is made of the substantial accuracy of the narrative on that subject contained in the evidence of Annamalai Chetty, the son of Natchiappa Chetty, on page 703 of the Record.

By the judgment of the Subordinate Judge it was declared that the plaintiff, as the *gurukkal* and head of the institution, and "consequently as a trustee and manager of the same conjointly with" the Chetties, was entitled to the possession and management along with them, "without prejudice to the rights of the latter to continue in actual possession and direct management of the same as they have been holding and managing them till now from 1863." Underlying this part of the judgment it is plain that the learned Judge desired to make clear the propriety of continuing the Chetties' possession, but the decree given does not appear to be in workable form. A further objection thereto arises from the latter portion thereof, under which it is declared that the *gurukkal* "is further entitled to the entire beneficial enjoyment of the income of the said villages during his life and continuance as the spiritual head of the institution, subject only to the maintenance of the said institution," etc.

A ready test of the application of this is with regard to the accumulated income, amounting to Rs.20,000 or thereby, now in the hands of the Receiver. Under the decree quoted the *gurukkal* would be entitled to instant possession and entire beneficial enjoyment of that sum. If the present purposes of the mutt did not consume it, he could employ it for his personal use quite apart from the dignity of his office. It is plain to their Lordships that this would be not only a subversion of the usage and custom of the mutt, but would be a violation of the law applicable to such institutions. A fair test to be applied in such cases is to demand what is the true principle or nature of the administration of surplus income. It is, of course, the duty of a trustee to refrain from the personal enjoyment of such surplus and to add the same to the capital of the estate to be administered; and this law also applies to the property of a mutt or asthal, and that whether the title to the same is in the *gurukkal* as spiritual head of the institution—which is an ordinary case—or is in trustees like the Chetties according to the usage and custom of the institution as in the present case. This law appears to have been complied with by the defendants and their predecessors during the past history of this institution, and should be continued. This would not be done by an affirmance of the decree of either of the Courts below.

The view of the High Court on this topic was even stronger than that of the Subordinate Judge. The plaintiff was declared to be entitled solely to possession and enjoyment of the village, and as head of the mutt to be "entitled to draw the surplus income realised by the Receiver and deposited by him to the credit of the suit, and also to receive from the Receiver any further surplus income which may have been realised by him subsequently." In their Lordships' opinion this declaration cannot be made.

Their Lordships will accordingly humbly advise His Majesty to recall both of the decrees of the Courts below and to dismiss the suit, the appellants being entitled to a decree for costs of the suit and of this appeal against the respondent, and failing payment thereof, to be entitled to charge the same against the funds and property now in the hands of the Receiver.

In the Privy Council.

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