

Privy Council Appeal No. 70 of 1917.

Ambalavana Pandara Sannidhi Avergal - - - - *Appellant*

v.

Sri Meenakshi Sundareswaral Devasthanam of Madura and others - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 27TH APRIL, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALL.

[*Delivered by* LORD MOULTON.]

This is a suit brought by the *Pandara Sannidhi* of an important Mutt situated in Tanjore to recover possession of four villages situated in the Madura District. He alleges that he is *hukdar* or trustee of the *Thanappa Mudali Kattalai*, which is an endowment for the performance of certain ceremonies in a Temple at Madura, and that these villages form part of that endowment, and that, therefore, as such trustee he is entitled to their possession. The defendants are the manager of the Temple and the members of the Temple Committee appointed by the Government under Act XX of 1863. They deny that the plaintiff is trustee of the endowment, or that he has any right either to the management or to the possession of the properties in question, and they further allege that if he had at any time such right his claim is barred by limitation.

In the Court of First Instance the Subordinate Judge decided in favour of the defendants on the ground that the plaintiff had failed to prove that he was trustee of the endowment, and also on the ground of the Statute of Limitations. On appeal to the High Court, both Judges agreed with his finding that the plaintiff's

suit was barred by limitation, but they differed in opinion as to whether the plaintiff had proved his claim to be trustee of the endowment. In the result, therefore, the plaintiff's suit was dismissed in both Courts, and from these decisions the present appeal is brought.

The history of the villages in suit has been examined in great detail in the proceedings in the Courts below, and certain points in that history may be taken to have been established. The documents relating to the creation of the *Kattalai* appear to be lost, but it is agreed that the founder was Thanappa Mudali, who was Prime Minister to the Ruler of Trichinopoly between the years 1704 and 1735. It is not clear at what date or how these villages became connected with the endowment, but it must have been at an early date because very shortly after the foundation of this *Kattalai* the Muhammudan Government attached these villages, and retained possession of them until about 1790, when the Madras Government assumed possession of the Madura District. Ultimately, in 1801, the villages came into the possession of the East India Company, and remained in their possession until 1849, when the general manager of the Temple at Madura (who had been appointed by the Company in 1842 in exercise of the powers given them under Regulation VII of 1817) was placed by the Company in possession of the villages.

The income derived from the villages in suit has been applied in various ways during this period. During the time that they remained under attachment by the Muhammudan Government it would seem that a portion of the income was applied to the uses of the endowment, and the remainder was appropriated by that Government. There is no evidence as to what happened between 1790 and 1801. From 1801 to 1849, while the villages in question were in the possession of the East India Company, the revenue from them was applied in whole or in part by the Company to the uses of the endowment. In the earlier years it appears to have been handed over as a whole, but from the year 1817 the Government followed the practice of settling each year a budget showing the amount necessary for the expenses of the *Kattalai* for that year, paying over only so much of the income as was sufficient to satisfy that budget, and retaining the remainder. Since 1849, the villages have been in the hands of the predecessors of the defendants, and the whole of the revenue has been used for the purposes of the endowment (including the expenses of the Temple) according to the directions of the temple manager and the Temple Committee.

Throughout the whole of the history of these villages from the date of the Muhammudan attachment to the present time, there is one fact that is clear from the evidence, *i.e.*, that these villages have never been in the possession of the plaintiff or his predecessors. Other villages form part of the property of the endowment, and these have been in the possession of the plaintiff and his predecessors throughout. These latter villages appear not to have been attached by the Muhammudan Government,

but to have been left in the possession of the predecessors of the plaintiff on behalf of the endowment. But in all the records relating to possession the contrast between those that relate to the villages in suit and those that relate to these other villages is marked. The latter are entered as being in the possession of persons representing the predecessors of the plaintiff. This is never the case with regard to the villages in suit.

The argument in favour of the plaintiff's claim is therefore in reality an argument which is not founded on evidence relating to the past history of the villages, but is of a legal nature. It avers that he and his predecessors have held the position of general trustee of the endowment, and that as such the villages in suit whose revenues form part of that endowment must, as a matter of law, be his and he must therefore be entitled to possession. The people who manage the villages and collect the revenues are, he contends, acting for him, and cannot set up an adverse title, so that their possession has been, in the eye of the law, his own. In their Lordships' opinion, there is a fallacy in this reasoning. The property of an endowment may consist partly or wholly in the right to enjoy the revenues of property which is in the possession of persons who have the right and the duty to manage the property, collect the revenue and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such persons may even have certain rights of apportionment of the revenue so handed over by them among the several purposes of the endowment. All this is compatible with there being a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee would not be entitled to the possession of the properties out of which this portion of the revenue comes. His rights do not commence until after the collection of the revenues by and under the management of those who hold possession. It must be remembered that after all the general trustee is only a representative of the Idol who is a juridical personage, and who is the true owner, and there is nothing legally incongruous in that personage having other subordinate representatives who have the right to manage certain special portions of his property, and pay over the income so collected to the endowment, and even to some degree to control its use. Such rights would, as has been said, not be inconsistent with the existence of a general trustee, but they would be fatal to his claim to possession of the properties from which these revenues are derived. Possession would be in the hands of those entitled to manage these special properties and their possession would be adverse to his.

Their Lordships therefore do not consider it necessary to decide whether the claims of the plaintiff to be *hukdar* or general trustee of the endowment are or are not well founded. The history of these villages from the year when they came into the possession of the Company, and even from a far anterior date, indicates that their relationship to the endowment was such as has been just described.

The possession was always in some other person than the predecessor of the plaintiff or any person appointed by him, or, indeed, any other person claiming title from the foundation of the endowment. The sole interest of the endowment in them has been an interest in the revenues collected from them by such other persons who were in possession of and managed the villages themselves. Their Lordships would be very unwilling to value lightly the testimony of a long course of dealing with the possession of these villages such as the history of this case has disclosed, which, as already stated, indicates that the relationship of the villages to the general endowment has throughout been of this nature. But they consider that it is not necessary to base their decision on the testimony of the earlier history. It suffices to consider the events that have happened from 1849 onwards.

In the year 1849 the Government, which was undoubtedly then in possession of the villages in suit, handed them over to the manager of the Temple of Madura (the appointment of whom was in their hands), and there is no doubt that from that time they have been in the possession of such manager and the Temple Committee which is also appointed by Government. The *Pandara Sannidhi* made no opposition to their being so handed over. From that time forward it is beyond question that the plaintiff has been out of possession of these villages. If he has any right to claim possession in his suit he undoubtedly had the same right in 1849, and therefore, as at the date of the suit he had been out of possession of these villages for nearly sixty years, his claim is barred by the Statute of Limitations, and this appeal fails.

Originally a claim for some alternative relief was included in this action, but no case has been made out for it.

Their Lordships will therefore humbly advise His Majesty that this appeal should stand dismissed, and that the appellant should pay the costs.

In the Privy Council.

AMBALAVANA PANDARA SANNIDHI AVERGAL

v.

SRI MEENAKSHI SUNDARESWARAL DEVAS-
TANAM OF MADURA AND OTHERS.

DELIVERED BY LORD MOUTTON.

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