Privy Council Appeal No. 75 of 1934.

Srimath Daivasikhamani Ponnambala Desikar and another - *Appellants*

v.

Periyanan Chetti and another - - - - *Respondents*

and 10 connected Appeals

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 24TH MARCH, 1936.

Present at the Hearing:

LORD THANKERTON.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN.]

Eleven appeals are before the Board. Twelve ejectment suits were brought on 25th November, 1918, by a Receiver appointed to manage certain Hindu temples and their endowments. One of these temples is dedicated to a deity Sri Subrahmanyaswami at a village called Kunnakudi, and to this temple belongs the village Uyyakondan part of which is a hamlet which goes by the name Murugan Endal. In 1865 the then manager of the temple granted a perpetual lease or cowle of Murugan Endal at a rent of Rs.20 per annum to two Chettis called Palaniappa and Subrahmanyam, the lessees professing to act with the intention of dividing the profits of the land equally between two Chetti temples. The plaintiff in the present suits claimed (*inter alia*) that on his becoming entitled by his appointment as Receiver to the management of the Kunnakudi temple, the lease of 1865, even if binding theretofore upon the temple and its managers, ceased to have any validity or effect. Eleven of the suits reached the High Court of Madras on second appeal and were dismissed. The defendants were sued as persons who had taken title by sub-leases under the cowle of 1865 but in none of the suits has the plaintiff impleaded the persons in whom the leasehold interest created in 1865 is vested.

It would appear that the persons who direct the affairs of the two Chetti temples have for some years past provided the rent reserved by the cowle and possessed the lands. The manager who granted the cowle is said to have died in 1875 but the history of the Kunnakudi temple and its affairs has

not been properly proved. Between him and Arumuga there may have intervened one or more managers. Arumuga died in 1893 and was succeeded by Thandavarya who died in 1902. From 1902 until he was removed by decree of the High Court of Madras in 1913, one Nataraja was the *de facto* manager. The plaintiff was appointed Receiver on 31st March, 1917.

In or about 1897 the managers of the two Chetti temples who were in possession of Murugan Endal as cowledars began to alienate portions thereof for building purposes and since that date a considerable number of buildings have been erected thereon though not upon the land of the defendants to the present suits.

Thandavarya, having come to hear of the building and having visited the village in 1898, brought seven suits in 1900 against persons claiming to hold portions of Murugan Endal from the cowledars. The present defendants or their predecessors in title were not among the persons then sued. Of the seven suits four were compromised but in the other three the judgments of Subordinate Judge, District Judge and High Court have been put in evidence in the present case. These documents show that the persons in whom the leasehold interest of 1865 was vested were not impleaded but only certain grantees from them of portions of the land. Also that Thandavarya had purported on 1st September, 1899, to grant to one Raman Chetti (co-plaintiff in the suits) a lease of the whole village of Uyyakondan and another village as well. The suits were not brought upon the footing that the cowle of 1865 was void or was no longer binding: the averment was that the defendants without any right, title or interest wrongfully entered on the suit land in February, 1900, and began to raise buildings in spite of the plaintiffs' objection. The defendants by their written statements pleaded (*inter alia*) the cowle of 1865 and also that the two Chetti temples had acquired the ownership of Murugan Endal by adverse possession and had sold sites for building purposes to the defendants in 1897; that the plaintiffs had known of this all along and had consented to the defendants erecting the buildings.

From the judgment of the Subordinate Judge it would appear that the plaintiffs' objection to this averment of title by the defendants was not that the cowle of 1865 was bad as being a permanent interest granted for a fixed rent but (*a*) that it was granted for agricultural purposes only and (*b*) that the defendants had not taken registered documents for their purchases thereunder. It appears from the judgment of the District Judge that there was or was thought to be a difficulty in that the cowle of 1865 was not registered: the counterpart, however, may be proved, although not registered, under the law obtaining in 1865.

The Subordinate Judge in 1902 considered that under the cowle there was no right to erect buildings but that in

view of the delay no injunction could be granted. He gave Rs.2,000 in each case as damages but refused to give the plaintiff possession " because he has let it under permanent cowle to the persons under whom the defendants claim ". The District Judge in 1903 dismissed the suits altogether, holding that even if the defendants were trespassers they could not be ejected by plaintiffs " unless plaintiffs can prove that they are entitled to possession; and this they are not entitled to so long as the lease to Palaniappa Chetty and Subrahmanyan Chetti subsists ". Shortly before the judgment of the Subordinate Judge delivered on 16th April, 1902, Thandavarya had died and Nataraja was brought on the record in his stead, and was a party to the proceedings before the District Judge. Raman Chetti alone, however, appealed to the High Court and that only in one of the three suits. In March, 1907, this appeal was withdrawn.

There is in the evidence in the present case no information whatever as to whether during the pendency of these suits of 1900 the rent reserved by the cowle of 1865 was being paid by the persons acting for the Chetti temples or was being refused by Thandavarya. The cowledars were not parties to the suits.

Save for his entry upon the last scenes of this litigation there is no evidence of any actings by Nataraja, save that Periyanan Chetti, the first witness for the defendants in the present case, gives evidence that in 1908-9 and again in 1912-3 when he was acting for one of the two Chetti temples he caused the rent of Rs.20 under the cowle to be paid. It was paid by the monigar of the Chetti temple to the man who came to collect it—no doubt in ordinary course.

After the original plaintiff in the suits now before the Board was appointed Receiver in 1917 he issued in January, 1918, a notice or notices stating that " the trustee has no authority to grant a perpetual cowle in respect of trust properties without any necessity, against the interest of the trust for an improper consideration and for an inadequate tirwa. The said cowle will not be binding upon me. Further, ownership right is set up on the cowle lands contrary to the terms of the cowle, buildings, etc., are raised thereon in violation of the agreement for the cultivation thereof. . . . Hence I cancel the said cowle through this notice ". The notice goes on to demand possession of " the said lands " within one month from the date of receipt of the notice.

So far as appears this is the first intimation of any intention on the part of the Kunnakudi temple or its manager to treat the cowle of 1865 as cancelled or determined. Their Lordships notice that from the reported case of *Palaniappa* v. *Sreemath Devasikhamony*, I.L.R. 40 M. 709, it would appear that Nataraja in a suit of 1905 as manager of this same temple succeeded before this Board in March of 1917 in having set aside a permanent cowle in respect of lands not now in suit granted by his predecessor in 1897.

Nataraja having been declared by the Board in June of 1920 to have no right to be manager of the temple, the persons entitled, Annamalai, and on his death Ponnambala, were added as plaintiffs in the present cases before they were heard by the High Court.

In the present suits, before the Trial Court and the Subordinate Judge as well as before the High Court on second appeal, the plaintiffs claimed relief not only on the ground that the cowle was no longer binding but also on the ground of forfeiture, by reason that the defendants were erecting buildings on the land contrary to the intention of the cowle. The latter contention was, however, abandoned before the Board who are concerned only with the claim for possession in respect that the permanent interest granted by the cowle is invalid and not binding upon the plaintiff or the temple.

To this claim the sole defence is limitation under article 144 of the First Schedule to the Limitation Act (IX of 1908).

The High Court has held that the Limitation Act has to be applied to these suits on the footing that the cowle of 1865 was void from the commencement, not being valid even for the lifetime or tenure of office of the manager who granted it. It is matter of decision that in the case of the head of a math a permanent lease granted or an alienation by sale made by him is valid during his tenure of office (*Vidya Varuthi* v. *Balusami* (1921) 48 I.A. 302. *Mahantram Charan Das* v. *Naurangi Lal* (1933) 60 I.A. 124). But it is contended that the manager or dharmakarta of a temple (which is really the present case) is in a different position, as he has, substantially speaking, no personal interest or right in the income of the temple properties but only the right or duty to apply them properly for the purposes of the idol. Accordingly, it is said, a permanent lease granted by him is altogether bad, and adverse possession runs from the date of the lease.

Their Lordships cannot accept this conclusion. It is clear that a permanent lease or absolute alienation of debutter property is beyond ordinary powers of management whether in the case of the head of a math, the sebait of a family idol or the dharmakarta of a temple : such alienations can be justified only by proof of necessity for the preservation of the endowment or institution. The principle upon which such transfers have been held good for the period of office of the manager making the transfer has seldom been elaborately considered; though it has at times been suggested that this result is accounted for by a personal bar or estoppel which prevents the manager from taking steps to avoid his own grant. Language pointing towards this principle but in no very certain or considered way may be found, e.g., in *Nainapillai* v. *Ramanathan* (1923) 51 I.A. 83, at 96-7. As, however, it is now clear that the property is not vested in the manager, by whatever name he be called, but in the idol or institution, it is difficult to accept the notion of personal bar

as regulating the validity or invalidity of the transaction. Even if this were accepted, however, it would still remain obscure why personal benefit claimable by the manager in respect of the idol's property should be held to decide the existence or non-existence of an estoppel. One can appreciate the view that the extent of a manager's authority may depend on the extent of his personal interest; but when once he has exceeded his authority the absence of personal interest seems hardly to determine that his act should be held void altogether. In all classes of religious institution the objection to alienation beyond the lifetime or tenure of office of the manager is equally clear: the offence lies entirely in the unnecessarily great interest which has been parted with. To treat the act of the dharmakarta as completely void *ab initio* would be to go beyond what is required to correct his failure to keep within acts of proper management.

Their Lordships do not find that the distinction now taken between the head of a math and the manager of a temple—a distinction valid as regards their personal interest in or accountability for the debutter income—has been recognised in previous cases as carrying the consequences now contended for. It was not so considered in *Mahomed* v. *Ganapati* (1889) I.L.R. 13 M. 277, which was cited by Mr. Ameer Ali in delivering the judgment of the Board in *Vidya Varuthi's* case (cf. 48 I.A. at 318). The cases of *Gnanasambanda*, 27 I.A. 69 and *Damodar Das*, 37 I.A. 147, are in a different class: they were explained by the Board in *Mahantram Charan Das* v. *Naurangi Lal* (*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. The illustrations given by Sir John Edge in the case of *Nainapillai* v. *Ramanathan* (already cited) show that he is recognising no such distinction as is now maintained. Their Lordships are not of opinion that for the present purpose it is necessary to recognise any difference in the consequences which flow from a permanent lease or complete alienation of the debutter property in the case of a math or temple or family idol. In all the position is as stated by Lord Buckmaster (*Subbaiya* v. *Mustapha* (1923) 50 I.A. 295) when, referring to *Vidya Varuthi's* case and another, he said (p. 299):—

> In each case they relate to the effect of an attempt on the part of a trustee to dispose of the property by a permanent mukurrari lease. This he has no power to do, though he is at liberty to dispose of it during the period of his life and a grant made for a longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he assumed the office.

Save that the period in question is not the period of the manager's life but of his tenure of office the language of Lord

Russell of Killowen in *Ram Charan Das's* case (60 I.A. at 132) is to the same effect :—

> "Whatever the intended duration of the attempted grant may be, it is good, but good only for the limited period indicated."

Moreover the right of each successive manager to authorise, create or continue a new tenancy for the period of his managership must be taken in the case of a public temple or a family idol to be the same as in the case of a math.

Accordingly their Lordships are of opinion that the principles laid down in *Vidya Varuthi's* case are not inapplicable to the present, in so far as article 144 of the Limitation Act is concerned. That decision was pronounced by the Board on 5th July, 1921—that is after the present case had been heard and decided by the trial Judge (District Munsiff) in 1920, and before the hearing of the first appeal by the Subordinate Judge in February, 1924.

The conclusion of the High Court upon this aspect of the case was thus expressed :—

> "Whether the proper date from which adverse possession generally runs in cases of permanent lease by Dharmakartas be taken as the date of alienation or some subsequent date such as the death of the Dharmakarta, or his resignation or removal from office, we have no doubt that on the facts of this case, adverse possession began from before 1902, and that the suits for possession were therefore barred under Article 144."

Now what was laid down in *Vidya Varuthi's* case (48 I.A. 302 at 327-8) (*supra*) with reference to article 144 was as follows :—

> In view of the argument it is necessary to discover when, according to the plaintiff, his adverse possession began. He was let into possession by mahant No. 1 under a lease which purported to be a permanent lease, but which under the law could endure only for the grantor's life-time. According to the well settled law of India (apart from the question of necessity which does not here arise) a mahant is incompetent to create any interest in respect of the math property to endure beyond his life. With regard to mahant No. 2, he was vested with a power similarly limited. He permitted the plaintiff to continue in possession and received the rent during his life. The receipt of rent was with the knowledge which must be imputed to him that the tenancy created by his predecessor ended with his predecessor's life, and can, therefore, only be properly referable to a new tenancy created by himself. It was within his power to continue the tenancy during his life, and in these circumstances the proper inference is that it was so continued, and consequently the possession never became adverse until his death.

So far as regards the successive dharmakartas down to and including Arumuga, who died in 1893, it is difficult to discover in the evidence anything to take them out of the operation of these principles.

It may perhaps be noted—if the manager by whom the lease was granted be called manager No. 1 and his successors referred to by numbers—that as time goes on the question whether the lease was originally justified by necessity will

become less easy to answer; and that after a time even if manager No. 4 or 5 knows of the absence of necessity for the lease, it may be necessary to consider whether he also knows of and can be taken to rely upon the presumption which imputes such knowledge to all of his predecessors. When Nataraja succeeded in 1902 what was the position? The cowle of 1865 was 37 years old and three or four managerships had intervened. The Chetti temples or the cowledars had since 1897 been alienating parcels of land for building purposes and building had been begun. Thandavarya's suits of 1900 did not challenge the cowle as being then invalid though upon the footing that it still subsisted the suits were misconceived. The defendants to those suits were sued as trespassers and not as persons having taken title under the cowle. It was the defendants who set up the cowle. They set up also that by acts of possession the cowledars had added by prescription to their rights under the cowle—most probably a vain contention, but the case made by Thandavaraya was that they had no registered transfers from the cowledars, and that the cowle did not authorise building. The suits were dismissed on the ground that as the cowle subsisted the plaintiff had no *locus standi* to sue in ejectment whether the defendants were trespassers or not. The cowledars were not impleaded at all.

When Nataraja succeeded in 1902 the first thing that happened was that he was substituted for Thandavarya in the suits shortly before the trial Court gave judgment dismissing them on the ground that the permanent cowle subsisted—a finding which was repeated in November, 1903, by the District Judge. Nataraja took the case no further. We hear no more of any objection by him whether on the score of building operations or otherwise. During his tenure of office—or rather his *de facto* managership—from 1902 to 1913 the cowledars continued to make alienations of sites for building purposes and buildings were from time to time erected under the cowle, as is proved by the defendants' witness Periyanan Chetti. That these events could escape the knowledge or attention of Nataraja cannot reasonably be suggested. The evidence in the case as contained in the paper book before their Lordships does not make clear whether the lease of the two villages given by Thandavarya to Raman Chetty continued in the time of Nataraja nor does the proof of payment of the cowle rent by the Chetti temples in Nataraja's time extend backwards beyond 1908.

The plaintiffs are in no stronger position if they try to repudiate Nataraja as not being *de jure* the manager: this indeed would establish the defendants' case. The question for decision is as to the proper inference to be drawn from these facts—whether it is that Nataraja, knowing of the infirmity of the cowle, accepted the cowle rent as payable in respect of a new tenancy which it was in his power either to create for the period of his own managership or to create

for a shorter period and to continue from time to time, or whether on the other hand it is that he accepted it as payable in respect of a permanent right which it was no longer in the power of his temple to repudiate. Their Lordships are of opinion that the latter of these alternatives is the only one of which the facts permit. There is no doubt that from 1902 until the original plaintiff in these suits was appointed Receiver in 1917 the position of the cowledars in no way altered : their adverse possession under the cowle thus extended over twelve years. The claim to eject the defendants fails in all the suits.

Their Lordships will humbly advise His Majesty that these appeals should be dismissed. The appellants must pay the costs.

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