Privy Council Appeal No. 25 *of* 1948

Mahanth Sudarsan Das - - - - - - - - *Appellant*

v.

Mahanth Ram Kirpal Das and others - - - - *Respondents*

AND

Mahanth Sudarsan Das - - - - - - - - *Appellant*

v.

Sri Thakurji and others - - - - - - - *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST NOVEMBER, 1949

Present at the Hearing:

LORD SIMONDS
LORD RADCLIFFE
SIR LIONEL LEACH

[*Delivered by* LORD RADCLIFFE]

These are two appeals from the High Court of Judicature at Patna. They have been consolidated, and the central point upon which each appeal turns is the same: which of the parties is to be treated as the lawful owner of the piece of property in dispute? That piece of property is a four annas undivided share out of a fourteen annas partitioned share of an estate called Touzi No. 7893 in Mouza Awari, Pargana Lautan, District Darbhanga, and it is hereinafter referred to as "the disputed property".

The two suits out of which the appeals arise were respectively a Partition Suit (No. 89 of 1932) filed by the appellant on 16th September, 1932, and a Title Suit (No. 72 of 1933) filed by the Respondents in the second appeal on 7th November, 1933. The appellant, who is the Mahanth of a Math or Asthal called the Birpur Asthal, sought by the Partition Suit to obtain a declaration of his title to the disputed property and an order for partition of the lands of which that property was an undivided share. He was met by a Defence on the part of those respondents who formed the defendants first party to his suit to the effect that on various grounds, some of which will be noticed later, he had no title to the disputed property. These respondents were the Mahanth and the Deities (acting through the Mahanth) of another Math or Asthal known as the Pokrauni Asthal and it was they who instituted the title suit in which they asked for a declaration against the appellant that the disputed property is devottar property of the Pokrauni

Asthal and that the appellant had no right to any interest in it. As it is plain that the real question at issue is, to which of these two religious institutions does the disputed property belong, it will be convenient to use the term respondents to refer to the respondents Mahanth Ramkirpal Das and the Idols Sri Thakurji, Ramji, Lachhmanji and Jankiji.

In their Lordships' view, as will appear later, the appellant has a good defence to the Title Suit under the Indian Limitation Act (IX of 1908) as subsequently amended, and, although other grounds of appeal were argued before them, it is upon this ground that they think that the appeals should be allowed. So much of the narrative of the complicated history of this case as follows is recorded therefore in order to explain how the question of limitation arises rather than to give any comprehensive account of the various issues in the suits.

The appellant's claim to the disputed property comes through his predecessor as Mahanth of the Birpur Asthal, one Priya Das. In the year 1910, Priya Das had lent 500 maunds of grain to the then Mahanth of the Pokrauni Asthal, Damodar Das. The loan was not repaid and on 16th May, 1913, Priya Das obtained a Decree against Damodar Das in the Court of the Munsiff at Muzaffarpur ordering Damodar Das to pay him the sum of Rs. 1562-8-0, the monetary equivalent of the loan, together with costs and interest. This was followed by a sale of the disputed property at public auction in execution of the decree. Priya Das was himself the purchaser, and on 6th April, 1915, he received the usual Court certificate confirming his purchase. One of the questions that was in issue in the present suits was the question whether this loan of 500 maunds was for any "justifying necessity" of the Pokrauni Asthal itself. The relevance of the enquiry was that, had the loan been made for any such necessity, the disputed property, even if it did belong to the Asthal, instead of being the private property of the Mahanth, would have been validly disposed of by an execution sale pursuant to the Decree for payment of the value of the loan. The Subordinate Judge, after reviewing the evidence, decided that Damodar Das did not "run into the debt in question for any justifying necessity of the Asthal." On appeal the High Court expressed their agreement with the trial court on this finding. The appellant sought to challenge the High Court's decision on this point: but in their Lordships' view there are concurrent findings of fact in the two Courts without any apparent misapplication of the relevant law to those facts, and, that being so, an appeal cannot be entertained on that ground.

In the year 1918 a Suit (No. 1 of 1918) was instituted against Damodar Das in the Court of the District Judge at Darbhanga. It was a suit under the provisions of Section 92 of the Code of Civil Procedure and in it Rajkumar Das, a former claimant to the office of Mahant then held by Damodar Das, and certain other persons interested in the proper administration of the Pokrauni Asthal claimed that Damodar Das ought to be removed from the Mahantship, a new Mahant appointed in his place, and a scheme of administration settled by the Court for the Asthal. It is not necessary to go into the details of these proceedings. In the end, on 16th March, 1922, judgment was delivered in the District Court holding that the properties of the Asthal were not devottar and that, accordingly, the Court was not entitled to entertain the suit under Section 92. An appeal from this decision was taken to the High Court, but while the appeal was still pending Damodar Das died, being succeeded in the Mahantship by the present respondent Ramkirpal Das, and Rajkumar Das abandoned the appeal.

The dates of three events incident to this Suit should be mentioned. On 10th September, 1918, the Court appointed a receiver of the Asthal properties. On 28th August, 1919, an ex parte decree was made declaring that the Pokrauni Asthal had trust properties and removing Damodar Das from the Mahantship. On 12th September, 1919, Rajkumar Das was appointed Mahant in his place. These steps in the proceedings were however set aside on appeal to the High Court and the judgment given

on the rehearing in the District Court on 16th March, 1922, was inconsistent with the basis on which they were made. It follows that after that judgment Damodar Das must have resumed his Mahantship.

While the 1918 Suit was in progress the appellant, who had by that time succeeded Priya Das, instituted a Suit (No. 226 of 1919) in the Court of the Subordinate Judge at Darbhanga asking for a declaration of his title to the disputed property (of which Priya Das had apparently been dispossessed) and for possession. Damodar Das was made a defendant to this suit, but no other person who could possibly be said to represent the interest of the Pokrauni Asthal. Since Damodar Das had been removed from the Mahantship by Court Order on 28th August, 1919, Rajkumar Das being installed in his place, and Damodar Das could not have returned to the position of Mahant until the Order removing him had been upset, it seems clear that during much, if not all, of the progress of the Suit No. 226 of 1919 there was no party to it who could act on behalf of the Pokrauni Asthal. However that may be, judgment was given in the Suit on 26th June, 1920, declaring that the appellant was entitled to the disputed property and ordering that he should get possession over it with Damodar Das and another defendant interested in other undivided shares. An appeal against this judgment was dismissed, and on 23rd September, 1920, the appellant was given formal possession of " the property mentioned in the writ of delivery of possession " by the officer of the Court. It is difficult to tell from the actual form of the officer's report whether he is certifying that he delivered possession of the property comprised in the whole 14 annas share (which would be a joint possession of all co-owners) or of the undivided four annas share of that property. But, whatever form the delivery itself took, there is no reasonable doubt as to the nature of the possession that the appellant in fact enjoyed thereafter.

The appellant based part of his defence in the present suits upon the contention that the respondents' claim that the property in dispute was devottar property of the Asthal was barred by res judicata. The res judicata, he said, arose out of the decision in Suit No. 1 of 1918 or the decision in Suit No. 226 of 1919. This contention was rejected by the trial Court and by the High Court on appeal. It was relied upon in argument during the appeal before the Board but their Lordships do not find it necessary to express any decided view upon it. They will content themselves with observing that there appear to be formidable difficulties to be surmounted before it could succeed.

The question of limitation has now to be dealt with. Limitation was an issue both in the Partition Suit and in the Title Suit. In both cases the trial judge held that there was no bar by limitation and, so holding, decided the Title Suit in favour of the respondents, since he came to the conclusion that the property in dispute was devottar property of the Pokrauni Asthal and that the execution sale of 1914 had been ineffective to deprive the Asthal of its title to the property. This being his decision as to title, he dismissed the appellant's Partition Suit as misconceived. The High Court upheld his view that the Title Suit was not barred by limitation and that the Pokrauni Asthal was entitled to recover the disputed property as its own. They did not have before them the question whether the Partition Suit had been correctly decided not to be barred by limitation. Nor have their Lordships. No argument was placed before them on behalf of the respondents to this effect, and limitation as a bar to the Partition Suit needs, therefore, no further consideration.

The Schedule to the Indian Limitation Act contains several Articles that might be thought to have an application to the Title Suit. The first important question is, which is the governing Article? The Subordinate Judge rightly, as their Lordships think, took the view that he was faced with a choice between Article 134B, which was introduced

by amendment in 1929, and Article 144. He decided wrongly, as their Lordships think, in favour of applying Article 134B. That Article runs as follows :—

> " By the manager of a Hindu, Mohammedan or Buddhist religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration. Twelve years from the death, resignation or removal of the transferor."

Article 144 on the other hand runs :—

> " For possession of immoveable property or any interest therein not hereby otherwise specifically provided. Twelve years from the time when the possession becomes adverse to the plaintiff."

Treating the execution sale of 1914 as a transfer by a previous manager for valuable consideration, he held that the relevant date for the commencement of the bar by limitation was the death of Damodar Das, namely, 13th September, 1922. As the Title Suit was brought in November, 1933, it was, on that basis, within time. The learned judge also held that, even if Article 144 applied, the period of limitation would not begin to run until the death of the " vendor ", namely, the occupying Mahant, Damodar Das. He regarded the decision of their Lordships' Board in *Mahadeo Prasad Singh* v. *Karia Bharti,* L.R. 62 I.A. 47, as establishing this. He seems to have thought that in any event adverse possession for the purpose of Article 144 did not begin until Ramkirpal Das succeeded Damodar Das. In the result he considered the only relevant date to be 13th September, 1922.

The High Court dealt only briefly with this issue in their judgment. They regarded *Mahadeo Prasad Singh's* case (*supra*) as authority for the view that limitation would begin to run from the death of the Mahant and not from the date of alienation.

Their Lordships cannot accept that the death of Damodar Das is the commencing date for limitation in this case. No doubt it would be if Article 134B were to be applied. But to apply it involves a reading of that Article which would construe the words " transferred by a previous manager for a valuable consideration " as covering an execution sale under Court process, and the word " transferor " as extending to the judgment debtor whose land is sold. In their view such a construction cannot be adopted. It is not only that the words themselves do not properly bear that meaning. Apart from that, what is in all essentials the same question was considered on several occasions by Courts in India before Articles 134A and 134B had been added to Article 134. That Article contains the analogous phrase " transferred by the trustee or mortgagee for a valuable consideration ", and there was a uniform current of decision to the effect that these words were incapable of applying to an execution sale. See, for instance, *Ahamed Kutti* v. *Raman Nambudri,* I.L.R. 25 Mad. 99 ; *Charu Chandra Pramanik* v. *Nahush Chandra Kundu,* I.L.R. 50 Cal. 49. Accepting this construction their Lordships are unable to hold that Article 134B has any application to the present suit.

The consequence is that Article 144 is the governing Article, since the rejection of Article 134B involves also the rejection of Articles 134 and 134A. At what date then did the possession of the appellant become adverse to the respondents? The reasoning of the Courts below answers this question by selecting the date of the death of Damodar Das, since they draw an analogy between what would have been the position had Damodar Das, for instance, himself sold the disputed property to provide money for the payment of Priya Das's loan and the position that in fact arose when the disputed property was sold in execution to satisfy the judgment decree for the value of the loan. In the former case, it is said, adverse possession of the disputed property would not have begun during the incumbency of the existing Mahant. This last contention is based on the decision of their Lordships in *Mahadeo Prasad Singh's* case,

(*supra*): hence the reference to that case both in the judgment of the trial judge and of the High Court. The decision had nothing to do with a sale in execution: but the next step in the argument is that there is no difference in principle between a sale by the Mahanth to pay his debts and a sale by the Court to pay his debts for him. And indeed Lord Buckmaster so stated when delivering the judgment of the Board in *Subbaiya Pandaram* v. *Mahamad Mustapha Maracayar*, L.R. 50 I.A. 295.

This argument has much force, but in their Lordships' view it is not open to them to entertain it. To what extent there is a difference in substance, if there is not a difference in principle, between a voluntary sale by a debtor and an execution sale of his property by the Court, it would be otiose at this date to enquire. For the very judgment to which the respondents refer for the observation of Lord Buckmaster in support of their contention contains a decision by the Board that in the case of an execution sale of devottar property it is not the death of the incumbent but the date of alienation (if accompanied, of course, by possession) that is the commencing date for adverse possession for the purposes of Article 144. At page 299 of that judgment Lord Buckmaster, after stating that the trustee in office has no power to dispose of trust property by a permanent mukurrari lease proceeds as follows: ". . . 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 from the time when he assumed the office. Such an argument has no relation to the case where, as here, property has been acquired under an execution sale and possession retained throughout". The view that, where land devoted to charitable purposes is sold under an execution decree against the trustee of the charity, the ensuing possession of the purchaser is adverse from the date of sale, was repeated by this Board in *Ram Charan Das* v. *Naurangi Lal*, L.R. 60 I.A. 124 at 131. In the face of these authorities their Lordships are bound to hold that adverse possession in this case did not begin with the death of Damodar Das but began at whatever date after the sale in 1914 Priya Das or his successor the appellant obtained effective possession of the disputed property.

Now it is the respondents' case—it is in fact their main contention on this issue—that the appellant has never at any time had "adverse" possession against them because, the disputed property being a four-anna undivided share, his possession has been throughout no more than a joint possession with them. And the joint possession which co-parceners enjoy in respect of the undivided property involves that, prima facie, the exclusive possession of any one of them is not adverse to the others. Their Lordships have no doubt of the validity of this general rule: but they are unable to think that it will be in any way departed from if they hold that in respect of the disputed property itself the appellant's possession has been adverse to the owners of the other shares. In truth there is some confusion involved in the argument. What is in question here is not adverse possession of the block of property in which the various undivided interests subsist but adverse possession of one undivided interest. Article 144 certainly extends the conception of adverse possession to include an interest in immoveable property as well as the property itself: nor was it disputed in argument by the respondents that there could be adverse possession of an undivided share, given the appropriate circumstances. What they maintained was that such circumstances were lacking in this case. Their Lordships cannot accept this, for the history of the long wrangle over the disputed property suggests a very different conclusion.

It seems clear that at the time of Suit No. 226 of 1919 the appellant was out of possession. His complaint was that Priya Das had been dispossessed after his purchase and the relief that he (the appellant)

asked for in the suit was vindication of his title and recovery of possession of the disputed property. This relief the Court gave him by its Decree of 26th June, 1920, which was affirmed on appeal. It is true that the Decree says that he is to get possession over the share claimed by him "with" Damodar Das and another party to the suit claiming under Damodar. But there seems to be no doubt, when the judgment itself is read, that what that meant was that the appellant was to have possession of his share, the disputed property, without the necessity of claiming an actual partition of the undivided property. It could mean nothing else in the light of the declaration of his sole title to the disputed share which the Court granted to him at the same time. Everything that followed is consistent with this.

On 23rd September, 1920, he was formally installed in possession by the officer of the Court. From that date until some time in the year 1934 he remained in actual possession of the disputed property. That is established by the findings of the Additional Subordinate Judge at Darbhanga, to whom, pending the final decision of the High Court appeal, the case had been remitted with an instruction that he should try certain issues, and should endeavour to ascertain the period during which the appellant was in actual possession. It appears from these findings (which must be treated as displacing the indeterminate findings as to the facts and period of possession which are contained in the original judgment of the Subordinate Judge) that the acts of possession consisted in the collection, whether by legal proceedings or by other means, of the appellant's share of the rents arising from the undivided property. The collection of this share could not have taken place on behalf of those interested in the undivided property generally, including those interested in the other undivided shares. On the contrary, the quantum of total rent taken was taken because the appellant had vindicated his title to the disputed property (whether or not he had succeeded in making parties to the 1919 suit persons who would properly represent the Pokrauni Asthal) and was now insisting upon his right to receive and retain for the Birpur Asthal a four-anna share of the total rent. It appears to their Lordships that such possession was plainly an adverse possession for the purposes of Article 144.

If this is so, it follows that when the Title Suit was instituted on 7th November, 1933, the appellant had been for over 12 years in adverse possession. Consequently the suit must be treated as barred by limitation. If the respondents are thus precluded from disputing the appellant's title to his share, it follows that the Partition Suit must succeed.

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed and that the two Decrees of the Additional Subordinate Judge at Darbhanga dated 30th June, 1935, and the two Decrees of the High Court at Patna dated 20th March, 1942, should be set aside and that the respondents should pay to the appellant his costs in those Courts. In place of these Decrees the Title Suit should be dismissed and the Partition Suit remitted to the Court of the Additional Subordinate-Judge at Darbhanga with instructions to proceed with the case in accordance with this Judgment. Their Lordships will humbly advise His Majesty accordingly. The respondents must pay the appellant's costs of this appeal.

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In the Privy Council

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DELIVERED BY LORD RADCLIFFE

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