# Padmanabha Bhatta and Others Vs H. Ramachandra Rao and Others

**Court:** Madras High Court

**Date of Decision:** Feb. 19, 1953

**Acts Referred:** Limitation Act, 1908 â€" Article 142, 144, 10

**Citation:** AIR 1953 Mad 842 : (1953) 66 LW 457 : (1953) 2 MLJ 382

**Hon'ble Judges:** Govinda Menon, J; Basheer Ahmed Sayeed, J

**Bench:** Division Bench

**Advocate:** K. Srinivasa Rao and T. Krishna Rao, for the Appellant; M.K. Nambiar and A. Narayana Pai, for the Respondent

**Final Decision:** Dismissed

## Judgement

Govinda Menon, J.
These two second appeals arise out of O. S. No. 113 of 1944 on the file of the Subordinate Judge''s Court of South

Kanara. The appellants in each of these appeals are persons who allege themselves to be the owners of the properties which are the subject-

matter of dispute. Defendants 10, 11 and 8 are the appellants in S. A. No. 2 of 1949 and defendants 2 and 4 are the appellants in S. A. No. 47 of

1949. The plaintiffs, who are the contesting respondents, are the trustees of the suit temple appointed by the Hindu Religious Endowments Board

and they seek to recover possession of the plaint properties from the defendants on the ground that they are temple properties. The appellants in

these appeals originally belonged to one family which became divided long ago and they put forward the contention that the properties are not

temple properties but belonged to the joint family of which they constituted members, though there was an obligation fastened on them, viz., that

with part of the income from the properties certain ceremonies in the temple should be conducted. Both the lower Courts found that the temple is

the owner and directed surrender of possession of the properties by the defendants. Hence these second appeals.

2. The first argument put forward is that the plaint temple is not the owner of the properties mentioned in Schedules. A to C and in support of it

counsel for the appellants in each of these appeals relied upon certain documents which, according to them, have been misconstrued by both the

lower Courts. It is the admitted case that the family of the appellants was at one time the trustee of this Sri Mahalingeshwara Mahadevaru

Devastanam and it had also the right of archakatvam i.e., performing the pooja in the temple. Both Messrs. K. Srinivasa Rao and T. Krishna Rao

for the appellants contend that the lower Courts are wrong in interpreting the expression ""Mahalinga Devaru Uttara"" occurring in Exs. P. 1 and P. 2

as meaning absolute ownership of the temple. The learned Judges in the Courts below have understood the expression in these documents as

signifying that there have been admissions by the managers of the defendants'' family as early as 1858 and 1863 that the plaint properties are the

deity''s properties. It is now contended that the word ""uttara"" does not connote any absolute right in the temple but that what is meant is only that

the temple has some sort of right over the income of the properties to be utilised for the performance of the religious ceremonies. In Ex. P. 2 Ram

Bhatta, the then head and manager of the defendants'' family, styles himself as the mokthessor or trustee of Srimath Pervaje Mahalinga Devaru and

the property dealt with therein is described as ""Mahalinga Devaru''s uttara"". There is no word mentioned anywhere in the judgment of either of the

lower Courts that this expression means anything other than complete ownership of the temple. Both the trial Judge and the appellate Judge have

understood the expression as vesting the ownership in the temple. Moreover, Ex. p. 4, the settlement register, describes the temple as ""wargdar"" or

the owner of these properties- The contest in both the lower Courts was that the defendants'' family is the owner as contradistinguished with the

ownership of the temple. Some recent documents were produced on behalf of the defendants Justifying their contention that the temple cannot be

said to have absolute rights over the properties. D.W. 1 who is defendant 1 and one of the chief contesting defendant, did not depose that the

expression ""uttara"" meant anything other than absolute rights. The learned Subordinate Judge in paras. 17 and 18 of the judgment discusses the

meaning and import of the expression ""uttara"" occurring in Exs. P. 1 and P. 2 and nowhere do we find any statement by him that the defendants put

forward the contention that the exoression ""uttara"" meant any thing except ""full fee simple"". In view of the admissions contained in Exs. P. 1 and P.

2 and the fact that in the settlement register the properties are described as temple properties, whatever might have been the assertions made by

the members of the defendants'' family who were the trustees of this temple as well as to the effect that they are the owners of the properties, we

have no hesitation in agreeing with both the lower Courts that the properties mentioned in Schedules A to C are endowed properties belonging to

the temple. Even if the word ""Uttara"" meant anything other than absolute rights we cannot say that Ex. P. 2, not being a deed of dedication, can be

interpreted as limiting the rights which the temple had. Ess. P, I and P. 2 can by no means be called ""deeds of dedication"". At the time Exs. P. 1

and P. 2 came into existence there was the basic fact that the family was both the trustee as well as the archaka. In Ex. P. 3 also there is the

description that the properties granted in mulgeni belong to Mahalinga Mahadevaru. As stated by the learned District Judge, the few documents on

the defendants'' side in which private ownership of the properties is claimed are of very recent origin and cannot therefore outweigh the effect and

importance of the earlier documents. In such circumstances, it seems to us that both the lower Courts were right in coming to the conclusion that

the temple is the owner of the properties.

3. The next question that has been elaborately argued relates to the acquisition of ownership in the family by adverse possession. The earliest

document by which an arrangement was made for the enjoyment of some of the properties is Ex. P. 1 by which the two branches of the family

agreed to keep some properties for the performance of the ceremonies and the festivals in the temple and divided the rest of them among the

branches, with a stipulation that since the properties belong to the deity as ""uttara"" property, the branches to whom the same have been allotted

should not alienate them at all. This state of things continued till about the year 1917 when one of the branches divided the properties it got

possession of without any reference to the temple and treated them as its absolute properties. The other branch also, later on, divided the

properties in the same manner and some of the properties have been alienated to third parties as well. What is now urged is that when in 1863

some properties alone were retained for the performance of the ceremonies in the temple and the others were divided between the two branches

and only the manager of one branch was made responsible for the performance of the ceremonies, at Jeast over the properties allotted to the other

branch, the persons in possession dealing with them subsequently, must be deemed to have acquired ownership by adverse possession and

prescription. Exs. D. 2, D. 3 and D. 4 which are partition deeds In the respective branches dealt with the properties on the footing that the temple

has no rights over them at all.

4. Strong reliance was placed upon the decision in -- T.R. Rajagopala Chettiar, Trustee of Chinna Ramanuja Kootam Vs. D. Anjaneya Sastri, ,

where this Court, following -- AIR 1937 185 (Privy Council) , held that if property dedicated for a public charity, of which the father of a joint

Hindu family was the trustee for the time being was treated by the father and son together as belonging to the family for more than 12 years,

disclaiming thereby the right of the public trust to that Property, then, so far as the son was concerned, his claim was adverse to the trust and as

such he had acquired an interest to the extent of one-half, we do not think that the principle enunciated there should be applied to the present case.

In the original partition in tne family evidenced by Ex, P. 1 there is a clear recital that the property is the deity''s uttara property incapable of being

alienated; and the subsequent treatment of the property on the footing that it is joint family property would not be an assertion of claim adverse to

the trust as such. The trusteeship is vested in the family. There are observations in -- (Vedavyasa) Alasinga Bhattar and Others Vs. (Vedavyasa)

Venkatasudarsana Bhattar and Others, CO., wherein Venkataramana Rao J. states:

So far as the trust is concerned, whoever manages the office by turns must be deemed to be managing on behalf of all and management by one of

them in rotation is not considered to be adverse or exclusive to other co-trustees.

At page 299 also the learned Judge observes:

In every case of partition where several branches enjoy the office by turns there is no surrender or renunciation. It is always subject to the implied

condition that the resumption of actual management can be availed of either by consent of parties or through Court and there is no question of

divesting themselves of all control over the offices.

Such being the case, it cannot be contended for a moment that by dividing the trust properties between themselves the members have in any way

disclaimed the interest of the trust in the properties.

5. Mr. T. Krishna Rao for the appellants in S. A. No. 2 of 1949 would put his case in this way. Section 10, Limitation Act cannot apply to the

facts of the present case because the various branches among whom the properties have been divided cannot be said to be assignees as

contemplated u/s 10, Limitation Act and therefore the principle that a trustee or his assignee, not being assignee for valuable consideration, cannot

prescribe against the trust, will not be applicable to the present case. Learned counsel develops his argument by stating that under the

circumstances of the present case, Article 134 B, Limitation Act will also be inapplicable, for this Article applies only to transferees for

consideration. Therefore the only provision of the Indian Limitation Act which could properly be applied is Article 144 and since more than twelve

years had elapsed after the oldest of the partitions between the family, the suit with regard to the properties set apart to the various branches other

than those specifically assigned for the performance of the oeremonies in the temple will be barred by limitation. In order to show that partition is

not an assignment as contemplated, u/s 10, Limitation Act, our attention was drawn to a recent judgment in -- Gutta Radhakristnayya minor, by

mother and guardian Nagarattamma Vs. Gutta Sarasamma, ; where the learned Judges -held that partition is really a process in and by which joint

enjoyment is transformed into an enjoyment in severally. It cannot, therefore, be considered to be an assignment at all with the usual requisites of a

transferor and a transferee. In our opinion the various branches to which the properties have been allotted under the different partitions still form a

family and the trusteeship is vested in them all though by arrangement between them one individual performs the functions, of the trustee and hence

it is unnecessary to invoke the use of the word ""assigns"" occurring in Section 10, Limitation Act in order that the same might be made applicable to

them. In addition to the above case, a decision of the Privy Council in -- AIR 1950 44 (Privy Council) , was also brought to our notice. What

happened there was that property belonging to a trust was sold in execution of a decree against the trustee and a third party purchased the same

and continued in possession for more than twelve years. In a suit by a succeeding trustee, the question as to whether Article 134-B or Article 144

was applicable was mooted and their Lordships held that it was Article 144 that applied, because adverse possession against the trust starts under

Article 144 from whatever date after the sale the purchaser obtained effective possession of the disputed property and not from the date of the

death of the trustee.

When once we hold that each of the branches amongst whom the properties were divided still continued to be the family of trustees, it is

Impossible to hold that any one of them can prescribe adversely to the trust. It has been held that the word ""person"" in Section 10, Limitation Act

includes Joint family and therefore if the properties are impressed with the character of trust, the trustee family, by becoming sub-divided, cannot

throw out that character. If, by the arrangement in the family, one person is to discharge certain religious duties, that does not mean that the family

as such renounced the trusteeship and the other members can claim to be holding trust properties adversely to the trust. By mere assertion it is

impossible to prescribe a hostile title against the trust because the assertion must be against a person who would be entitled to face the opposition

and get rid of that assertion. In this case, since the trusteeship is vested in the family, the members of the family cannot assert a hostile title against

themselves. In the present suit, the written statements of defendants 1 and 2 had not disclaimed the trusteeship of the family. In para. 15 of the

written statement of defendant 1 he admits that this family had both the hereditary mokthessorship and the hereditary archakaship of the plaint

temple. Defendant 2 in his written statement also says that he learns and verily believes that his family had the mokthessorship and the archaka vrltti

In the suit temple. It is, therefore, plain that there is no claim that apart from the family as such any member had a right of trusteeship. If that is so,

the members of the family in whom the trusteeship is vested cannot, by mere declaration that the property belongs to them, assert a hostile title

against the family as such and prescribe a right to adverse possession.

The evidence of D.W. 3 who is defendant 10, also brings out the fact that his branch has also the liability to perform some of the viniyogas in the

temple and the C list in Ex. D. 32 shows properties out of the income from which devata viniyogas have to be performed. The learned District

Judge in paragraph 11 of his Judgment discusses the question regarding the delegation of the actual management of the institution to one branch

and the appropriation of the income of some properties by the other branches as remuneration for the performance of the archakatwam in the

temple. We are in entire agreement with him that the partitions cannot be said to be assertions of hostile title against the trust as such. That

archakas cannot acquire proprietary rights in the lands as against the temple to which the properties had been granted, because they should; be

deemed to have been in possession in a fiduciary capacity, and as such could not claim adverse possession is clear from -- Yelamanchili

Venkatadri and Another Vs. Vedantam Seshacharyulu and Others, The learned Judges refer to various cases and concluded that the archakas in

possession cannot claim adverse title against the trust. In the present case, the holding of the property by the various branches can also be related

to their status as archakas of the temple. To the same effect are the observations in --''Abdul Rahim Khan v. Fakir Mohammad Shah'', AIR 1946

Nag 401 (G)'', regarding the inability of a person in a fiduciary capacity to claim prescriptive rights against the trust. As we are of opinion that by

the various partitions the branches have not lost or disclaimed the hereditary right of trusteeship, their holding the property must be in their capacity

as such trustee and therefore they cannot acquire a right by prescription. The above discussion disposes of the points raised by the appellants.

6. But it is contended by learned counsel that there are improvements on the properties effected by the defendants and if we disagreed with their

contention regarding the ownership, at least the value of improvements should be decreed to them when- properties are directed to be

surrendered, We would certainly have acceded to this argument if there had been evidence let in on this point. Issues 9 and 10 in the Court of first

instance related to the improvements, if any, effected by defendants 2 to 4 and 6 and the learned Subordinate Judge says that no evidence had

been led on their behalf in this connection and therefore the claim for improvements must fail for lack of proof. Such being the case it is not possible

for us to say whether the appellants are entitled to the value of improvements at all. But the appellants can prove the claim for improvements in

execution proceedings. The decree for possession wi5I be conditional on the plaintiffs paying the respective defendants the value of the buildings

and other improvements effected by them which the defendants will be at liberty to prove in execution proceedings. The second appeals therefore

fail and are dismissed with costs -- one advocate fee.

7. The respondents have preferred a memorandum of cross-objections with regard to the D schedule properties which were obtained by the family

of the defendants under a darkhast from the Government. The plaintiffs claim them as accretions to the temple properties. There is no material to

show that the darkhast was granted by the Government to the trustees of the temple as such, though the plaintiffs contend that the defendants''

family would not have got the same if they had not been the trustees. There is no evidence on record regarding this claim and it cannot be

presumed that the Government intended to give the darkhast to the temple trustees as such. Both the lower Courts have observed that it cannot be

held that the grant was made on the consideration that the adjoining temple properties were held by the family on warg right. We agree with both

the lower Courts that so far as D schedule properties are concerned the temple has no right whatever. The memorandum of cross-objections is

also dismissed with costs.