(1931) 11 BOM CK 0018

Bombay High Court

Case No: None

Shri Sharada Peeth Math		APPELLANT
	Vs	
Shri Rajrajeshvarashram		RESPONDENT

Date of Decision: Nov. 3, 1931

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115

Citation: AIR 1933 Bom 276 : 145 Ind. Cas. 190

Hon'ble Judges: Patkar, J; Barlee, J

Bench: Full Bench

Judgement

Patkar, J.

This was a suit brought, by the plaintiff for a declaration that he was entitled on behalf of the Sharada Peeth Math at Dwarka to obtain and retain possession of the property which was in custodia legis and held by the administrator appointed under Regn. 8 of 1827, and for an injunction restraining the defendants from recovering possession of the property and from asserting their claim as Acharyaof the Sharada Peeth Math.

2. It is common ground that the last holder of the Shrada Peeth Math of Dwarka was Madhav Tirtha, who died at Dakore on 27th September 1916, without designating his successor. On his death the Collector took possession of the property and handed it over to the District Judge under Regn. 8 of 1827. The District Judge u/s 10, Regn. 8 of 1827, issued a proclamation under App. C. Ex. 86, on 17th October 1916. In pursuance of the proclamation three claimants appeared: (1) defendant 1, (2) Shantyanand as the nominee of the Baroda Government, and (3) Purnanand. Defendant 1 advanced his claim on 11th November 1916, alleging that he was the eldest disciple of Madhav Tirth. He is known by three names: (1) Appaji Ayya, (2) Parmanand Swarup, and (3) Rajrajeshvarshram. On 16th December the claim of the Baroda State to appoint the Shankaracharya was notified to the District Judge by Mulji Nathji, Ex. 87, who was appointed local agent of the Devasthan Assistant of

Baroda. On 18th May 1917 the Baroda State appointed Shantyanand Saraswati as the successor of the last Shankaracharya Madhav Tirtha and he was installed on the gadi at Dwarka on 5th June 1917. On 14th July 1917, Swami Shantyanand applied to the District Court by Ex. 101. Claimant 3, Purnanand, gave up the contest, and on 9th August 1917, Mr. Kennedy, the District Judge, passed an order delivering the property to Shantyanand by Ex. 68, on the ground that he was the de facto occupant of the gadi, and had been installed at Dwarka and was in possession of the property situate there and subject to the control of the Shankaracharya.

3. Against this order Appeal No. 245 of 1917 was filed by defendant 1 to the High Court. Defendant I also filed suit No. 667 of 1917 on 13th August 1917, against Shantyanand and applied for an injunction against him restraining him not to style himself as Shankaracharya. The trial Court having refused the injunction, defendant 1 applied in revision by Civil Extraordinary Application No. 234 of 1917. The first appeal, No. 245 of 1917, and this application were heard together. Scott, C.J., and Shah, J., held that as soon as two or more claimants came forward in answer to a proclamation u/s 10, Ch. 2 of the Regulation, the provisions of Section 9 applied to the case, and, following the '' decision in Shri Vishvambhar v. Shri Vasudev (1892) 16 Bom 708 held that the Judge could not make an order delivering the property to one of the claimants under the Regulation so long as the party against whom the decision was given had aright of appeal, and that the word"determined" in Section 9 of Regulation 8 of 1827 must be understood as "finally determined," and therefore set aside the order handing over the property to Shantyanand, the occupant of the Dwarka gadi, until the final determination of title had been come to, and did not think it necessary to deal, u/s 115, Civil P.C., with the order refusing the application for injunction in Suit No. 667. The Suit, No. 667 of 1917, referred to above, which was brought by defendant 1 for setting aside the order passed four days before the institution of the suit in favour of Shantyanand, dragged on for nearly nine years. Though issues were raised on 7th October 1919, nothing effective was done till 16th February 1926, when Shantyanand, the nominee of the Baroda Government, died. On 19th June 1926, the Court passed an order, Ex. 56, Under Order 22, Rule 4, Sub-rule (3), that the suit abated. The result of the abatement order is that no fresh suit can be brought by defendant 1 on the same cause of action Under Order 22, Rule 9, Sub-rule (1), Civil P.C.

4. The present plaintiff was appointed by the Baroda Government on 19th November 1927. No steps were taken by defendant 1 to set aside the abatement Under Order 22, Rule 9. Meanwhile, on 22nd Juno 1926, defendant 1 thinking that the line was clear applied to the District Judge for possession of the property by Ex. 67. On 8th August 1926, the District Judge entertained the application and postponed the final orders till 20th August 1926, by Ex. 91. On 20th August 1926, Mr. Davis, the District Judge, passed the final order, Ex. 92, in favour of defendant 1. On 11th November 1926, Swarupanand, defendant 2, brought Suit No. 19 of 1926 against the present defendant 1, claiming to be the successor of the last Acharya

Madhav Tirth through one Trivikram Tirthji who was alleged to have been installed as Shankaracharya on 21st June 1917, and was succeeded by Bharati Krishna Tirthji who selected defendant 2 to succeed him at Dwarka. Defendant 2, Swarupanand, also applied to the Distsict Court under the regulation for revocation of the order made in favour of defendant 1. But the application was rejected on 20th November 1926, by Ex. 93. Defendant 2 filed First Appeal No. 423 of 1926 against the order of the District Judge to the High Court, and Marten, C.J., and Baker, J., on 18th January 1927, ordered that the property should not be handed over to either party until the determination of the suit brought by Swarupanand, defendant 2: see Ex. 94. On 24th September 1927, the Sub-ordinate Judge dismissed the suit of defendant 2 on the ground of limitation. Defendant 2 filed an appeal No. 532 of 1927, which was dismissed by Madgavkar and Allison, JJ., on 9th September 1929. It was brought to the notice of the appeal Court that the Baroda State had nominated the plaintiff as the successor of Shantyanand who had brought the present suit No. 24 of 1928 in the First Class Subordinate Judge''s Court at Nadiad, and the Court directed that the property should remain with the administrator till the final decision of the present suit as the title would presumably be determined in the present suit. The present plaintiff, who was appointed by the Baroda Government on 19th November 1927, applied to the District Court on 12th February 1929 to be brought on the record of the proceedings under Regn. 8 of 1827 by Ex. 90, and he was accordingly brought on the record on 13th January 193Order The present suit had already been brought by the plaintiff on 4th August 1928.

5. The learned Subordinate Judge raised several issues and dismissed the plaintiff''s suit on the ground that the cause of action arose on the date of the death of Madhav Tirtha or on the date on which the administrator took possession and that the plaintiff''s suit was barred by limitation Under Article 120, Lim. Act. The learned Subordinate Judge did not decide the case on the merits, and did not take any evidence and record any findings on the material issues of facts arising in the case covered by Issues 9, 10, 11 and 12. The real contest in this suit is between the present plaintiff and defendant 1. Defendant 2''s suit was already dismissed on the ground of limitation. According to the decision of the High Court the administrator was to remain in possession till the title of any of the rival claimants was finally determined u/s 9, Regn. 8 of 1827. Defendant 1 by reason of the order of abatement of his suit No. 667 of 1917, cannot bring another suit to establish his title Under Order 22, Rule 2, Sub-rule (1); and if the decision of the lower Court that the plaintiff''s suit is barred by limitation is right, there will be no final determination of the title of any of the claimants in a civil suit. Though a suit for a declaration of title to the lands might be barred Under Article 120, the bar effects only the remedy or relief by way of a declaration and does not extinguish the right and title of the true owner to the property. Section 28, Lim. Act, is limited in its operation to suits for possession of property and the right of the true owner to lands cannot be extinguished however long the attachment of the property may continue, according

to the decision in Rajah of Venkatagiri v. I. Subbiah (1902) 26 Mad 410 Defendant 1 being incapable of establishing his title in a separate suit and the plaintiff''s right not being extinguished even though a suit for a declaration may be barred, the Condition of things would come to an impasse if the administrator is to remain in possession till the title to the property is finally determined according to Section 9, Regn. 8 of 1827. It is possible to hold that in such a state of things the District Judge himself will have to determine the question of title, finally u/s 9, Regn. 8 of 1827. The question therefore arising in this appeal is a question of limitation. It is a common ground that the article applicable to a suit for declaration of title to the property which is in custodia legis is Article 120, Lim. Act.

6. It is urged on behalf of the plaintiff that the cause of action arose when the plaintiff was installed as the Acharya, i.e., on 19th November 1927, and the present suit being brought within six years from the date of his nomination by the Baroda Government his installation is within time. The learned Subordinate Judge held that the suit is barred because Shantyanand, the nominee of the Baroda Government and the predecessor-in-title of the present plaintiff, did not bring a suit within six years from the time when the cause of action arose, that is, from the date when the administrator took possession of the property, and secondly, that if the plaintiff was not the successor of Shantyanand, the plaintiff is barred because the Baroda Government did not bring a suit within six years from the time when the administrator took possession. It would appear that it was not neeessary for Shantyanand to bring a suit as an order was passed in his favour on 9th August 1917, and a suit was brought by defendant 1 four days afterwards on 13th August 1917, which continued till the death of Shantyanand in 1926. It would also appear that it was not competent for the Baroda Government to bring a suit because only the right of nomination was alleged to rest in the Baroda Government, and as soon as a Shankaracharya was nominated or approved by the Baroda Government, it is the nominee who has to bring a suit.

7. The question however of limitation must be approached on two hypotheses: first, that the plaintiff claims independently of Shantyanand and as the nominee of the Baroda Government, and secondly, that he claims through Shantyanand, who was defendant 1 in the previous suit No. 667 of 1917. The plaintiff in his plaint claims in his own right and does hot claim through Shantyanand. It is urged on behalf of the respondent that in paras. 10 and 11 of Ex. 34, the plaintiff suggested that he claimed through Shantyanand as he alleged that the present defendant 1 took no steps to set aside the attachment and proceed with the suit after he came to know that the present plaintiff was selected and installed on the gadi at Dwarka. It appears that the plaintiff has been tripped into putting forward that argument probably on account of the statement made in para. 3 of the plaint, Ex. 1, and para. 21, Clause (e), of the written statement, Ex. 24. But reading the pleadings as a whole I do not think that the plaintiff anywhere alleged that he claimed through Shantyanand. A reference is further made to point No. 4 in this appeal in which Shantyanand is

referred to as the immediate predecessor-in-title, but it does not follow therefrom that though Shantyanand may be the predecessor-in-title the plaintiff necessarily claims through him. The reversioner does not claim through the widow nor does a second reversioner claim through the first reversioner though the widow and the first reversioner might be loosely called the predecessor-in-title. The plaintiff''s case was that Shantyanand was nominated as the Acharya by the Baroda Government and was entitled to be the Acharya on account of that nomination. Similarly, the plaintiff after the death of Shantyanand was appointed by the Baroda Government and claimed in his own right by virtue of the nomination by the Baroda Government and the installation as the Acharya. From the pleadings it does not appear that the plaintiff claims through Shantyanand. It is common ground that Article 120, Limitation Act, applies, and if the plaintiff does not claim through Shantyanand that the cause of action accrued to the plaintiff on the date of his nomination and his installation in the year 1927, and the suit would be within time.

8. According to the decision of the Privy Council in AIR 1930 270 (Privy Council) , Under Article 120, Limitation Act, the right to sue accrues only when the defendant infringes or at least has clearly and unequivocally threatened to infringe the right asserted by the plaintiff in the suit. The plaintiff could not bring a suit before his installation, and if he claims in his own right and not as successor to Shantyanand, his claim would be within time: See AIR 1931 9 (Privy Council) and AIR 1931 89 (Privy Council) . The learned Subordinate Judge has not taken any evidence and found on the essential questions arising in the case as to the custom relating to the Acharya, whether the Acharya can be nominated by the Baroda Government or whether he is to be elected in the absence of any designation of a proper person by the previous Acharya. There is considerable divergence of opinion as to the true position of the head of the institution known as mutt. It was held in Bam Parkash Das v. Anand Das AIR 1916 P.C. 256 that an Asthal or Mutt is an institution of a monastic nature and is established for the service of a particular cult, the instruction in its tenets and the observance of its rites. The followers of the cult and disciples in the institution are I known as chelas who are of two classes, celibate and non-celibate. The Mahant or the Asthal must by the custom of the mutt be a bairagi or religious chela. The Mahant is the head of the institution, sits upon the gadi, initiates candidates into the mysteries of the cult, superintends the worship of the idol and the accustomed spiritual rites, manages-the property of the institution and administers its affairs, and the whole assets are vested in him as the owner thereof in trust for the institution itself. At p. 76 it is observed:

The question as to who has the right and office of Mahant is one, in their Lordships'' opinion, who, according to the well-known rule in India, must depend upon the custom and usage of the particular mutt or asthal. Such questions in India are not settled by an appeal to general Customary law; the usage of the particular mutt stands as the law therefor.

9. The learned Subordinate Judge has not gone into the evidence and ascertained the custom of the mutt as to the person who is entitled to be appointed to the right and office of the Acharya and the custom and usage of the particular mutt in respect of the appointment of such Acharya. The case of the plaintiff is that the Acharya designates a fit person to be his successor and that, appointment is approved by the Baroda Government, and in the absence of such designation and approval, the Baroda Government has power to nominate. Intact the plaintiff''s case is that the authority to represent the mutt at Dwarka is derived from the nomination by the Baroda Government. The case on behalf of defendant 1 is that in the absence of a designation of a proper person to succeed as the Acharya by the previous incumbent of the office, a proper and fit person is elected as the Acharya, and that it is not necessary that he-should be appointed to the office at Dwarka, but that if a proper person is elected as successor at Dakore, he is entitled to occupy the gadi of the Shankar-acharya of the Sharada Peeth.

10. In Mohunt Rama Nooj Doss v. Mohunt Debraj Doss (1839) 6 SDA (Cal) 262 it was held that the mutts were of three descriptions, namely, mouroosi, punchaiti and hakimi,. that in the first the office of Chief Mahant was hereditary and devolved upon the chief disciple of the existing Mahant, who moreover usually nominated him as his successor that in the second the office was elective, the presiding Mahant being selected by an assembly of Mahants; and that in the third the appointment of the presiding Mahant was vested in the ruling power presumably the civil power or in the party who endowed the temple. In the absence of any evidence and finding on the point as to the custom relating to the appointment of the Acharya of the Sharada Peeth, it is difficult to hold that the plaintiff necessarily claims through the previous Acharya. The case of the plaintiff is that after the death of Madhav Tirth, Shantyanand was nominated by the Baroda Government, and after his death the present plaintiff is appointed as the Acharya. It does not therefore necessarily follow that the plaintiff claims through the previous Acharya, and in the pleadings there is no allegation that the present plaintiff claims through Shantyanand.

11. As to the position of the bead of a Math it was held in Ram Parkash Das v. Anand Das AIR 1916 P.C. 256 that the whole assets are vested in him as the owner thereof in trust for the institution itself. In Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami (1904) 27 Mad 435 it was held that the head of a Math is not a mere trustee but a "cooperator sole" having an estate for life in the permanent endowments of the Math and an absolute property in the income derived from offerings subject only to the burden of maintaining the institution﷿in other words, a superior of a Math is not a trustee but a life tenant "In Kailasam PilLai v. Nataraja Thambiran (1910) 83 Mad 265 it was held that it cannot be predicated of the head of a Math, as such, that he holds the Math properties as a life tenant or trustee. The question must be determined in each case upon the conditions on which they were given or which may be inferred from the long established usage and customs of the institution. The lower Court has not investigated into the long established custom or

usage of the institution in suit. In Vidya Varuthi Thirtha v. Balusami Ayyar AIR 1922 P.C. 123 it was held that the head of a Math is not, a trustee of the endowments of a Hindu Math save as to the specific property vested in him for a specific object and it was held at p. 327 that according to the well settled law of India (apart from the question of necessity) a Mahant is incompetent to create any interest in respect of the Math property to endure beyond his life. In Arunachdlam Chetty v. Venkatachalapathi Guruswamigal AIR 1919 P.C. 62 it was held that the-nature of the ownership is an ownership in trust for the institution itself, that while the ownership in the general case is with the spiritual head of the institution, still the property may be held on different conditions and subject to different incidents, and that there are varieties of circumstances and tenure and in respect of these the usage and custom of the Math fall to be determined, and once that usage and custom are? clear they form the law of the Math.

12. Both the parties agree that the last Acharya was Madhav Tirtha who was the Shankaracharya of the Sharada Peeth. The title of the Math to the property in suit is not in dispute. The dispute is between the two rival claimants who claim a declaration of title of Shankaracharya and also the declaration of title to the property in suit. The suit is for vindication of private and personal right and not for vindication of the rights of the Math: see Babajirao v. Laxmandas (1903) 28 Bom 215 The plaintiff in this, suit claims to vindicate his private right and bases his claim on the nomination by the Baroda Government. Shantyanand was also nominated by the Baroda. Government. It is difficult to hold that the second nominee claims through the-first nominee in the absence of any admission or evidence to that effect. If the plaintiff fails to prove that the Baroda Government have the right of nomination, he will fail on the merits. There is no admission of the plaintiff that he claims through Shantyanand. It is therefore difficult to hold, in the absence of any evidence or admission on. the point, that the present plaintiff claims through Shantyanand, who was alleged to have been nominated by the Baroda Government in the year 19174; The point of limitation must be decided on the allegations made in the plaint, and I am not satisfied that the plaintiff''s claim is barred by limitation, as the plaintiff has never alleged that he claims through Shantyanand. The decision in First Appeal No. 532 of 1927 brought by Swarupanand, defendant 2, by Madgavkar and Allison, JJ., can be distinguished on the ground mentioned in the judgment, viz., that defendant 2 claimed as successor in the line of Trivikram Tirth, and Trivikram Tirth did not bring a suit within six years from the time when he came to know that the defendant got himself installed as Shankaracharya. Further, it is mentioned in the judgment that

Trivikram could and should have applied to the District Court in the proceedings under the Bombay Regn. 8 of 1827 and to the First Class Subordinate Court to be joined however as a party in the suit by the plaintiff (i.e., present defendant 1) against Shantyanand.

13. If, on the other hand, the plaintiff can be said to claim through Shantyanand, the question arises whether any cause of action had arisen in order to compel Shantyanand to bring a suit, and if so, whether the time occupied by Suit No. 667 of 1917 from 13th August 1917, the date of the institution of the suit, to 16th February 1926, when Shantyanand died, should not be excluded in computing the period of limitation for the present suit. It is contended on behalf of the appellant that the period occupied in the previous suit ought to be excluded u/s 14 liberally construed on the authority of the decision in Lakhan Chunder Sen v. Madhusudan Sen (1907) 35 Cal 209 where the right of the plaintiff to bring an action was held to be suspended during the period occupied by the previous litigation though the case was not covered by Section 14, Lim. Act. The decision of the Calcutta High Court was confirmed by the Privy Council in Nrityamoni Dassi v. Lakhan Chandra Sen AIR 1916 P.C. 96.

14. On the question whether Shantyanand, assuming that he was the person from whom the plaintiff claims, had a cause of action to bring a suit, it appears that on 9fch August 1917, Mr. Kennedy passed an order in favour of Shantyanand by Ex. 68 and Suit No. 667 was brought by defendant 1 specifically for the purpose of setting aside that order only four days after the order passed in favour of Shantyanand. That suit dragged on for nearly nine years till Shantyanand died on 16th February 1926. It was not necessary for Shantyanand to bring a suit for a declaration, as according to the decision of Scott, C.J., and Shah, J., in First Appeal No. 245 of 1917, the question of title was to be finally determined in the suit, and the refusal by the Subordinate Judge of the application of defendant 1 for an injunction against Shantyanand was not interfered with, as the administrator was to remain in possession until a final determination of title was come to. It has been repeatedly held by the High Court, whenever the case came up in several appeals, that the administrator was to hold possession till the question of title was finally determined, and if the suit had been expedited, the question of title would have been finally determined in Suit No. 667 of 1917. Though the order of the District Judge handing over possession to Shantyanand passed on 9th August 1917 was subsequently set aside by the High Court, no order was passed in favour of the present defendant 1, and the administrator was ordered to remain in possession till the question of title was finally determined, and the question of title would have been finally determined by Suit No. 667 of 1917 brought by defendant 1 specifically for the purpose of setting aside the order of Mr. Kennedy. Even if a suit had been brought by Shantyanand, it would have been stayed u/s 10, Civil P.C. Can it be said that Shantyanand had a cause of action to bring a suit?

15. He was installed on the gadi after nomination by the Baroda Government. Mr. Kennedy recognized his right and passed an order in his favour, and though the order was set aside by the appellate Court, no order was passed in favour of defendant 1, and the refusal of the application by defendant 1 for injunction against Shantyanand was not interfered with by the High Court in revision on the express

ground that the administrator was to remain in possession till a final determination of title was come to. The Suit No. 667 of 1917, brought by defendant 1 was pending, in which the question of title would have been finally determined within the meaning of Section 9, Regn. 8 of 1827. The mere bringing of the Suit No. 667 of 1917, by the present defendant 1 cannot be considered as affording a cause of action necessitating the bringing of a suit by Shantyanand. The cause of action for recovery of possession of the property accrued to Shantyanand either on the date of death of Madhav Tirth or on the date of his own nomination. Shantyanand''s title was recognized by the Baroda Government and he was installed on the gadi in 1917, and in view of the allegations in the plaint it is doubtful if it was necessary for Shantyanand to bring a suit for possession of an hereditary office within Article 124, Lim. Act. The property in suit was taken possession of by the administrator under Regn. 8 of 1827 who held it for the rightful owner. Mr. Kennedy passed an order in favour of Shantyanand, and though the order was set aside in appeal, the administrator was ordered to remain in possession till the title to the property was finally determined. Defendant 1 brought Suit No. 667 of 1917 four days after the order handing over the property to Shantyanand to set aside the order, and the question of title would have been finally determined in that suit, The suit dragged on for nine years till the death of Shantyanand in 1926. I do not think on the materials in the present case that there was any cause of action necessitating the bringing of a declaratory suit by Shantyanand, and if it was not necessary for Shantyanand to bring a declaratory suit, the suit of the present plaintiff would not be barred on account of the failure of Shantyanand to bring a suit.

16. Before the present plaintiff was nominated by the Baroda Government on 19th November 1927, there was the order passed in favour of defendant 1 on 20th August 1926, by the then District Judge, Mr. Davis. The present suit is brought within six years from that date. That order could not be carried into effect on account of the suit brought by defendant 2, Swarupanand, and in Swarupanand''s appeal it was ordered by Madgavkar and Allison, JJ., that the administrator should hold possession of the property till the question of title was determined in the present suit, and the present plaintiff applied on 12th February 1929, "to be made a party in the proceedings before the District Judge under Regn. 8 of 1827, and he was accordingly brought on the record of those proceedings. Under these circumstances I think that, even assuming that the plaintiff claims through Shantyanand, the present suit is not barred on account of the failure of Shantyanand to bring a suit for a declaration of his title, for it was not necessary for him to bring a suit. He was installed on the gadi of Shankaracharya by the order of the Baroda Government and took possession of the property at Dwarka and also got the property in suit by the order of Mr. Kennedy, and though the order of Mr. Kennedy handing over the property to Shantyanand was set aside in appeal, there was no order handing over the property in favour of defendant 1 and the suit brought by defendant 1 against Shantyanand was pending till 1926, that is till Shantyanand''s death.

17. Assuming however that there was a cause of action to bring a suit and that Shantyanand could not have got the property, as urged on behalf of respondent 1 before us, unless he had got a declaration in his favour in the event either of defendant 1 having withdrawn the suit against Shantyanand or his suit having failed for any other reason, the question will have to be considered whether the time occupied by the suit No. 667 of 1917 can be deducted in the peculiar circumstances of the present case. This question does not arise on the conclusions I have reached on the other points. In the event of withdrawal of suit by defendant 1 or the failure of his suit on any ground other than on its merits, the position of Shantyanand would not have been in any way worse than that of defendant 1.

18. It is contended on behalf of respondent 1 that when once time begins to run, no subsequent inability or disability would stop the running of time. It is contended on behalf of the appellant that the time occupied in the previous litigation should be deducted u/s 14, Lim. Act, liberally construed according to the decisions in Lakhan Chundra Sen v. Madhusudan Sen (1907) 35 Cal 209 and Nrityamoni Dassi v. Lakhan Chandra Sen AIR 1916 P.C. 96 It might be deduced from the decisions of the Privy Council in the cases of Prannath Roy v. Rooked, Begum (1859) 7 M.I.A. 323 Mt. Ranee Surno Moyee v. Shooshee Mokhee Burmonia (1868) 12 M.I.A. 244 Hem Ghunder v. Kali Prosunno (l7)and Nrityamoni Dassi v. Lakhan Chandra Sen AIR 1916 P.C. 96 that ordinarily limitation runs rom the earliest time at which an action can be brought and that after time has once begun to run there may be revival of the right to sue when the previous satisfaction of the claim is nullified with the result that the right to sue which had been suspended is revived. It is urged, on the other hand, that the principle that once time has begun to run no subsequent disability or inability to sue stops it, has been applied in the cases of Hurro Pershad Roy v. Gopal Chunder Dutt (1882) 9 Cal 255 Soni Ram v. Kanhaiya Lal (1913) 35 All 227 and Jusourn Boid v. Pirthichand Lal AIR 1918 P.C. 151 The question has been considered by the Full Bench of the Madras High Court in MuthuKorakkai Chetty v. Madar Ammal AIR 1920 Mad 1 where the majority of the Judges held that when the time had once begun to run, it could not be suspended otherwise than according to the provisions of Section 9 or any other similar provision of the Limitation Act itself. But Sadasiva Ayyar, J., however took a different view, and relying on the decisions in the cases of Lakhan Chunder Sen v. Madhusudan Sen (1907) 35 Cal 209 Nrityamoni Dassi v. Lakhan Chandra Sen AIR 1916 P.C. 96 and Mt. Banee Surno Moyee v. Shooshee Molchee Burmonia (1868) 12 M.I.A. 244 held that notwithstanding Section 9, Lim. Act, there are exceptional cases where such suspension of the cause of action for a suit can take place on the liberal construction of Section 14, Lim. Act. A similar view was taken in the cases of Abdul Rahim Oosman and Co. Vs. Ojamshee Purshottamdas and Co., , Ramdutt Ramkissendass v. E.D. Sassoon & Co. AIR 1929 P.C. 103 and G. Bhandari v. Rule Nihalchand AIR 1929 Bang 55 Different and somewhat conflicting views were taken in the case of Dwijendra Narain Roy Vs. Joges Chandra De and Others, and Sm. Sarat Kamini Dasi v. Nagendra Nath Pal AIR 1926 Cal 65.

19. The conflicting views are (1) that there may be a revival of the right to sue when the previous satisfaction of the claim is nullified with the result that the right. It sue which has been suspended is animated, and the true test to determine, whether a cause of action accrued is to ascertain the time when the plaintiff could have maintained his action to successful result, (2) that except perhaps in cases where injustice has been occasioned by a Court by its own acts or oversights, there is no scope for the application of any principles of equity in the administration of statute law of limitation, and a revival of a cause of action once satisfied or cancelled is foreign to the conceptions of the Statute law of limitation. If the present plaintiff is considered to claim through Shantyanand and that it was necessary for Shantyanand to bring a suit in the year 1916 or 1917, 1 would be inclined to hold, though not without hesitation, that in the peculiar circumstances of the present case, the time occupied in the previous suit should be excluded u/s 14, Lim, Act, liberally construed. If the time occupied by suit No. 667 of 19l7 is excluded, it is clear that the plaintiff''s suit is within time.

20. Though it is not necessary to decide the point, having regard to the conclusions which I have reached on the other points, I would be inclined to hold either that the time occupied by suit No. 667 of 1917 should be excluded u/s 14, Lim. Act, liberally construed or that if the cause of action had accrued to Shantyanand, there was a satisfaction of Shantyanand''s claim by the order of Mr. Kennedy handing over the property to him, and though the order was see aside on appeal, there was no order handing over the property to defendant 1, and the refusal of the application by defendant 1 for injunction against Shantyanand was not set aside by the High Court but the administrator was. ordered to remain in possession till the question as to title was finally determined, in other words, there was can cellation of the cause of action operating to suspend the right of Shantyanand, and the suspension of the right was not removed till Shantyanand''s death. Assuming the suspension of the right was removed by the order of Mr. Davis, Ex. 92, on 20th August 1926, putting defendant 1 in possession, the suit of the plaintiff brought within six years from that date is within time. The result would be the same if it is held, as I have already done, that there was no accrual of a cause of action to 1ihe present plaintiff for a declaratory suit till the order of Mr. Davis on 20th August 1926, or till the installation of the present plaintiff.

21. I think, on the whole, that the view of the lower Court on the point of limitation cannot be sustained. I would therefore reverse the decree of the lower Court and remand the case for decision on the merits, and I think, having regard to the previous decisions of this Court, the lower Court should not now go into any technical or preliminary questions, but should take evidence on the important questions arising in the case and decide on the essential questions relating to the title to the property in custody of the administrator and should dispose of the suit on the merits as quickly as possible. This litigation has been extending for a period of nearly fourteen years and it is to be regretted that the learned Subordinate Judge

disposed of the suit on preliminary points without dealing with the case on the merits. I would therefore reverse the decree of the lower Court and remand the case for decision on the merits. Costs costs in the suit.

Barlee, J.

22. This suit has been dismissed as time-barred. The question of limitation has been tried as a preliminary issue, and the simple point for decision is whether, if the facts pleaded by the plaintiff-appellant be correct, the suit was instituted more than six years after his cause of action had accrued. He claims a declaration of title, and it is common ground that the Article of the Limitation Act which is applicable is No. 120, which allows him six years from the date on which his cause of action accrued.

23. There are two pleadings to be considered, the plaint and a counter written statement. The plaint is a short document and clearly drafted. In paras. 1 to 4 the plaintiff sets out shortly the history of the disputes over the right to succeed Shrimant Shankaracharya Madhav Teerthji, who died in 1916, and was the last undisputed Shankaracharya. He states (para. 1) that the Shri Sharada Peetha Matha is situated at Dwarka within the raj of His Highness the Maharajah Gaekwad of Baroda: but owns property in British India, particularly at Dakore; that His Holiness Swami Shri Madhav Teerthji died at Dakore in September 1916; (para. 2) that the mamlatdar took possession of the Dakore properties and that in 1917 the District Judge of Ahmedabad, after hearing defendant 1, who was a claimant, passed an order in favour of Swami Shri Shantyanandji who had been installed as Shankaracharya; but that the District Judge''s order was later set aside in this Court; (para. 3) that defendant 1 instituted Suit No. 667 of 1917 against Swami Shri Shantyanandji; that the latter died during the pendency of the suit which abated; (para. 4) that defendant 2 also is a claimant; (para. 5) that the property is still held by the administrator appointed by the District Court; that he, the plaintiff, was installed as Shankaracharya on 19th November 1927, and is entitled to the said property; and (para. 7) that the cause of action accrued on 19th November 1927. In answer to the written statements of defendant 1 and defendant 2 the plaintiff filed a counter written statement in which he pleaded: (After setting out the important paras, the judgment proceeded.) Para. 11 is an answer to para. 21 (c) of the written statement of defendant 1 which runs:
In para. 3 the plaint ought to state whether Swami Shantyanandji had any legal representative who could be brought on the record (in Suit No. 667 of 1917).

24. We are not concerned with the correctness of these allegations. The suit has not been heard on the merits. We have therefore to assume the truth and correctness of the facts pleaded, and to decide whether plaintiff''s cause of action arose more than six years before the suit. Prima facie it arose within that period. The plaintiff has stated that he was installed on 19th November 1927, and that is the date which he has given in his plaint as the date of the accrual of his cause of action. It follows,

then, that his suit cannot be time-barred unless it can be made to appear that, according to the true interpretation of his pleadings, when read as a whole, he is claiming through a predecessor whose claim would have been barred in November 1927. Two arguments have been advanced against his claim; firstly, that he is the nominee of the Durbar and that the right to nominate has been lost owing to the laches of the Durbar; and, secondly, that he is claiming through the deceased Shantyanandji, and has the same cause of action, that afforded by the counter-claim of 1917.

25. The first argument learned Subordinate not, the defendant 1 in appealed to Judge, but the has I think, been seriously pressed by learned counsel for respondent 1. Mr. Thakor has, it is true, made capital of the statement in para. 11 of the counter written statement, that on the death of an Acharya the properties of the gadi vest in the Durbar. But in para. 9 the plaintiff pleaded that on such occasions the properties "vested in the management of the Baroda State," and reading these sentences in their context I think it clear that the plaintiff was claiming for the State, not a right of ownership, but the right of control which is inherent in a sovereign power. The reasoning of the learned Subordinate Judge is that the suit is practically one by the Baroda Government to establish their right of nomination and appointment, and that the Durbar could have filed a suit to have the succession determined. This view is not justified by the plaintiff''s pleadings and that is the least that can be said. It is the plaintiff''s case, as I understand it, that, since the mutt is at Dwarka, succession to the gadi is controlled by the Government which has jurisdiction at Dwarka, and that appointments made by the ruling vewer must be recognized by the civil Courts of other States. It is not his case that the Baroda Government has any private rights, which have been transferred to himself. The learned Subordinate Judge has himself found that the State is not putting forward any claim to the property of the gadi. I can find nothing in the pleadings to justify his view; and his finding that the plaintiff''s claim is time-barred owing to the neglect of the Baroda Government to file a suit is, in my opinion, radically unsound. Obviously a ruling State cannot be expected to seek the recognition of its sovereign powers in the Municipal Courts of another State.

26. The next question is whether the plaintiff is suing as the legal representative of Swami Shri Shantyanandji. Apart from para. 11 of his counter written statement there is nothing in his pleadings to suggest that he claims through Swami Shri Shantyanandji. His plaint is quite clear. In it he bases his claim on his installation at Dwarka on 19th November 1927.

27. In the first part of his counter written statement he is even more explicit. He distinguishes between the succession of an Acharya, who had been nominated by his predecessor, and the appointment of an Acharya when there has been no such nomination. He claims that in his case there had been no nomination and that his title is based on his appointment by the sovereign power. It is only in para 11 of the

counter written statement that Mr. Thakor has found any material for his argument on this point, and it must be admitted that, read by itself, this paragraph suggests that the plaintiff looked on himself as the legal representative of Swami Shri Shantyanandji. But this paragraph is altogether inconsistent with the facts pleaded before, and itself contains a mere argument and not a statement of fact. I am unable, then, to agree that it justifies the view that the plaintiff was suing as the legal representative of his predecessor. The learned counsel has found one other ground for his argument, but that comes from the memorandum of appeal, and not from the pleadings, and is not, in my opinion, substantial. In this document the plaintiff speaks of Shantyanandji as his pre-decessor-in-title, and Mr. Thakor asks us to interpret this as meaning that the plaintiff looked on himself as a legal representative. I am not prepared to do so. Whether plaintiff claims through Swami Shri Shantyanandji or not, ha can properly speak of him as his pre-decessor-in-title, in the same way as a reversioner, who follows a Hindu widow, may speak of her as his predecessor-in-title, though in fact he claims, not through her, but through her deceased husband.

28. For these reasons I disagree with the learned Subordinate Judge and consider that the plaintiff was claiming in his own right based on his installation and not through Swami Shri Shantyanandji. His suit, therefore, is not time-barred. This finding is sufficient for the decision of this appeal. But as an alternative case has been set up by the appellant and discussed at considerable length, I must deal with it and shall try to do so as briefly as I can. In the alternative Mr. Coyajee has argued that, even if the plaintiff be held to be the legal representative of Swami Shri Shantyanandji he has a right to sue. The question, then, is whether Swami Shri Shantyanandji could have sued in 1927 had he been alive. Mr. Coyajee''s argument is that Shantyanandji was not required to file a suit to establish his rights, firstly, because they were in issue in the respondent''s suit; and secondly, because the respondent''s suit was not a threat to his interests -within the meaning of Section 42, Lira. Act. He relies on Nrityamoni Dassi v. Lakhan Chandra Sen AIR 1916 P.C. 96 which confirmed the decision of the Calcutta High Court in Lakhan Ghunder Sen v. Madhusudan Sen (1907) 35 Cal 209 Now, these cases, in my opinion justify the view that Shantyanandji had a cause of action in 1917 when the respondent put forward his claim; but that, when the District Judge had decided in 1918 that ho, Shantyanandji, was entitled to the property, his title ceased to be in jeopardy and that he had no need to sue whilst that order of the District Judge was in force. The ratio decidendi of the cases cited was that a man who has obtained satisfaction is not required to sue to enforce rights which have been decided in his favour. In the alternative I am prepared to hold that the proceedings under the Regulation were of a civil nature and that Section 14, Lim. Act, entitles the plaintiff to exclude the period during which he was conducting them up to the date on which the District Judge''s order was set aside. Accordingly, I start with the assumption that the period between the death of Shrimant Shankaracharya Madhav Teerthji and the decision of

this Court, by which Mr. Kennedy''s order was reversed, is to be excluded.

29. This brings me to 1918 and the simple question is whether a cause of action accrued to Shantyanandji then; for, if a cause of action did accrue, a suit by his legal representative is time-barred. We have heard a long argument on this point, and it has been contended that he was not bound to do more than defend the respondent''s suit, as all he required was a finding on the issues framed in that suit in respect of his claims. But, with respect, I think that irrelevant. We have not to consider whether he could or could not have obtained a declaration in the respondent''s suit, but whether he could have maintained a suit of his own. As to this I feel no doubt. Had he filed a suit and1 pleaded that the property was withheld'' by the District Judge until some claimant obtained a final decree of a civil-Court, the respondent could not have pleaded that he had no cause of action. In fact he had just as good a cause of action as the respondent had for his suit, or as the appellant has for the present suit. I cannot see that after 1918 his position was in any way different from theirs. For each the cause of action was the denial of his right by the other. It accrued before the District Judge''s order. Shantyanandji is denial of the respondent''s right induced the District Judge to refuse him the property. And the denial by the respondent of the right of Shantyanandji induced this Court to set aside the District Judge''s order and in consequence-prevented him from enjoying the property. Therefore in 1918 he had as good a cause of action as had the respondent. He did not avail himself of it during the succeeding six years and in consequence I think that his right to sue became barred by Article 120, Lim. Act. I cannot see that the decision in Nrityamoni Dassi''s case AIR 1916 P.C. 96 can help the present plaintiff, for Shantyanandji did not obtain satisfaction in the respondent''s suit and the rule in that case refers only to persons who have in someway obtained satisfaction (see the decision in Huthu Korakkai Chetty v. Madar Ammal AIR 1920 Mad 1 I need not discuss this question further as I am of opinion that the plaintiff has succeeded on the first point. I agree that his appeal succeeds.