

**Narayan Manjaya and anr. Vs. Shri Ramchandra Devasthan, Moktesars Ganpaya Govind Shetti and anr.**

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**Court :** Mumbai

**Decided On :** Feb-18-1903

**Reported in :** (1904)ILR27Bom242

**Judge :** L.H. Jenkins, Kt., C.J. and; Aston, J.

**Appellant :** Narayan Manjaya and anr.

**Respondent :** Shri Ramchandra Devasthan, Moktesars Ganpaya Govind Shetti and anr.

**Judgement :**

L.H. Jenkins, Kt., C.J.

1. The plaintiffs sue to recover possession of a piece of land and also rent, and they have been met with the plea that the land is held by the defendants under a mulgeni lease granted by Krishna Swami, and that all rent has been discharged.

2. It has, however, been held by the lower Appellate Court that the leased land belonged to the temple of which Krishna Swami was the manager, and that the lease is not now binding on the plaintiffs, the present managers. In so holding, the defendants' plea of limitation has been determined to be of no avail. Assuming, then, that the lease was invalid, the only question before us is whether the defendants' plea of limitation is sound.

3. The lease is dated 1845 and purports to create a mulgeni interest at a rent of 8 mooras of rice. In 1854 there was litigation regarding the rent of the leased land brought by the then manager against a predecessor of the defendant. The defendant in that litigation asserted the mulgeni character of the lease and in the end the suit was withdrawn.

4. Then in 1885 a further suit was brought. The mulgeni lease was again pleaded, and again the suit was withdrawn.

5. It is clear, then, that from 1854 the defendant and his predecessors have been in possession of the land in suit, and throughout that period have asserted to the knowledge of the temple managers their claims as mulgenidars under the lease of 1845, and have successfully resisted on that ground the manager's attempts to obtain enhanced rent. Why, then, should the present defendant be not entitled to invoke the aid of the Statute of Limitation? If the original lessor was not a trustee of the leased land for the temple, Article 144 applies, with the result that there has been an adverse possession to the extent of the alienation contained in the mulgeni lease: *Budesab v. Hanmanta* (1896) 21 Bom. 509.

6. It is urged, however, that there is a trust, and that this makes a difference. But it has been already held by this Bench in *Dattagiri v. Dattatraya* (1902) 4 Bom. L.R. 743 see ante p. 363 relying in part on the decision in *Attorney General v. Magdalen College* (1857) 6 H.L.C. 189 that where the head of a math, who holds math property as a trustee thereof, purports to alienate that math's property absolutely for valuable consideration, and the alienee holds under that title, a plea of limitation after the lapse of the prescribed period can be successfully urged.

7. Here no doubt we have a mulgeni lease, and not an absolute alienation, but in principle this involves no distinction, for even if Article 134 be treated as the governing article, a mulgeni lease is a purchase pro tanto of the interest thereby assured: *Attorney General v. Payne* (1859) 27 Bea 168. This last cited case and that of *Attorney General v. Davey* (1859) 27 Bea 168 furnish us with an instructive application of the decision in *Attorney General v. Magdalen College* (1857) 6 H.L.C. 189 to a case where the lands had been leased and not alienated absolutely, and our application to the present case of our decision in *Dattagiri's case* (1902) 4

Bom. L.R. 743 runs on parallel lines. In *Attorney General v. Payne* (1859) 27 Bea 168 an improvident lease was granted by a charitable corporation to a trustee for the master, and yet it was held that after twenty years' enjoyment under it the right of the Attorney General to question its validity was barred by the Statute of Limitation. Lord Romilly in his judgment, after referring to *Attorney General v. Magdalen College* (1857) 6 H.L.C. 189 says: 'I compare that case with the present, and what is the difference? Here the alienation was a lease but what difference can that possibly make? A lease is an alienation pro tanto...I cannot distinguish this case from *Attorney General v. Magdalen College* (1857) 6 H.L.C. 189 and I think that as soon as the lease was granted the lessee held adversely to the rights of the charity to the extent of the alienation contained in the lease.'

8. In *Attorney General v. Davey* (5) it was held that the decision in *Attorney General v. Magdalen College* (1857) 6 H.L.C. 189 governed a case where charity land had not been alienated in fee, but had been held under a lease for five hundred years, granted by trustees at a rent which had been regularly paid. The Lord Chancellor, Lord Chelmsford, in delivering judgment, said: 'Is there, then, any distinction between the present case and that of *Magdalen College* (1857) 6 H.L.C. 189? Mr. Lloyd says that the lease was void, but that by the acceptance of rent a tenancy from year to year had been created. He was pressed to give an authority for the proposition, that possession taken under a lease of this kind has ever been dealt with in equity as a lease from year to year, and he has been unable to produce any such authority. I think that there has been adverse possession, and that the statute would run according to the decision in the House of Lords by which we are bound.' Knight Bruce and Turner, L.JJ., agreed in holding that the case before them could not be distinguished from that of *Magdalen College* (1857) 6 H.L.C. 189.

9. In these cases adverse possession was regarded as running from the date of the lease, and it has been suggested before us that to apply such a doctrine in this country would be a dangerous innovation. It is, however, unnecessary to decide this point, for, even if, for the sake of argument, it be conceded that time should not run during the lifetime of the person who granted the lease, it clearly would run from his death, and starting from that point even sufficient time has elapsed to bar

the suit either under the 144th or the 134th article. For these reasons we hold that the District Judge wrongly decided that the Statute of Limitation was not a bar to the claim for possession.

10. The District Judge's decree as to rent is, we think, also wrong. In the first place Rs. 54-3-0 has been paid into Court during the suit; then we think the items of Rs. 10 and Rs. 4-8-0 for interest should have been disallowed, so that Rs. 18-10-0 will be awarded for past rent. No decree can be passed as to future rent. Appellants must get their costs throughout.

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