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assets which were the subject-matter of partition between the partners. Even if the partition be not treated as a sale it was a transfer of property, the property of the firm being transferred to the individual partners thereof and each partner obtaining an absolute interest in the shares thus transferred to him by the firm to the exclusion of the other partners therein. So far as the firm was concerned it was certainly a transfer of the property to the individual partners and even as regards the partners themselves it was a transfer of the interest of the partners *inter se* in the shares respectively transferred absolutely to each of them. If it were necessary to do so I would certainly say that the case was erroneously decided. [See also the judgment of Fletcher Moulton L. J. in *In re Spanish Prospecting Co., Ltd.* (1)].

The result therefore is that the answers given by the High Court to both the questions referred to it were correct and the appeal must be dismissed with costs.

Appeal allowed.

Agent for the appellant: *Rajinder Narain.*

Agent for the respondent: *G. H. Rajadhyaksha.*

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JAGADGURU GURUSHIDDASWAMI
v.
DAKSHINA MAHARASHTRA DIGAMBAR JAIN SABHA.

[MEHR CHAND MAHAJAN, MUKHERJEA, and JAGANNADHADAS JJ.]

Religious endowments—Permanent lease by head of math*—Demise by lessee by way of gift—Decree obtained by succeeding head against heirs of lessee for recovery of possession—Whether binding on donee—Fresh suit against donee—Maintainability—Limitation—Limitation Act (IX of 1908), s. 10A, Art. 134B—"Valuable consideration" meaning of.*

(1) [1911] 1 Ch. 92 at p. 98.

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Jagadguru Gurushiddaswami v. *Dakshina Maharashtra Digambar Jain Sabha.*

In 1887 the head of a *math* granted a permanent lease of property belonging to the *math*. In 1910 the lessee's successor in interest made a gift of the leased premises to a Jain Sabha for constructing a school thereon with the condition that if the school was removed from the site or ceased to exist, the site should revert to the donor. In 1925 the plaintiff became head of the *math* and in 1932 he instituted a suit for ejectment against the heirs of the lessee alleging that the lease was not binding on the *math* and obtained a decree for possession. The Jain Sabha however was not effectively made a party to the suit and was dismissed from it. In 1943 the plaintiff instituted a suit against the Jain Sabha for possession; and it was contended, *inter alia*, on his behalf, that the Jain Sabha as a sub-lessee under the defendants in the earlier suit was bound by the decree obtained therein:

Held, (i) that the rule of law that a sub-lessee would be bound by a decree for possession obtained by the landlord against the lessee was not applicable to the present case, because (a) the suit of 1932 was not a suit by a landlord to evict his lessee but was a suit based on title to eject the heirs of the lessee on the ground that they were trespassers, and (b) because the lands were not given to the Sabha by way of sublease, but by way of gift;

(ii) the suit was not saved by s. 10 of the Limitation Act as the lease was for valuable consideration and the defendant was not therefore precluded by reason of the fact that the property was to his knowledge trust property, from relying on the provision of the law which prescribes the time within which such a suit should be brought.

The expression "valuable consideration" has a well-known connotation in law and is not synonymous with "adequate consideration."

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 187 of 1952.

Appeal from the Judgment and Decree dated the 19th day of October, 1949, of the High Court of Judicature at Bombay (Bavdekar and Dixit JJ.) in Appeal from Original Decree No. 275 of 1946 arising out of the Judgment and Decree dated the 17th day of December, 1945, in Special Civil Suit No. 21 of 1944 of the Court of Civil Judge (Senior Division), Hubli.

M. C. Setalvad, Attorney-General for India (*J. B. Dadachanji*, with him) for the appellant.

G. R. Madhbhavi (*K. R. Bengeri*, with him) for the respondent.

1953. October 14. The Judgment of the Court was delivered by

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Mukherjea J.

MUKHERJEA J.—This appeal is directed against a judgment and decree of a Division Bench of the Bombay High Court dated October 19, 1949, affirming, in appeal, those of the Civil Judge, Hubli, passed in Special Suit No. 21 of 1924.

The facts of the case lie within a short compass and the whole controversy, so far as this appeal is concerned, centres round the short point as to whether or not the plaintiff's suit is barred by limitation. Both the courts below have decided this point against the plaintiff and he has come up on appeal before us.

To appreciate the contentions that have been canvassed before us, a brief resume of the material facts will be necessary. The plaintiff appellant is the spiritual head or Mathadhipati of a *Lingayet Math* known as *Murusavirmath* situated within Hubli Taluka in the district of Dharwar. On November 13, 1887, Gurusidhwaswami, who was the then head of this religious institution, granted a permanent lease of a tract of land belonging to the Math and forming part of R. S. No. 34, in favour of one Pradhanappa and the rent agreed to be paid by the lessee was Rs. 50 per annum for the first six years and thereafter at the rate of Rs. 25 annually. On June 19, 1892, Pradhanappa sold a portion of the leasehold property, which is described in Schedule 1(b) to the plaint, to a person named Bharamappa. In 1897 Gurusidhwaswami died and was succeeded by his disciple Gangadhar Swami who did not repudiate the permanent lease granted by his predecessor and went on accepting rents from the lessee in the same way as before. In April, 1905, another part of the land, which is described in Schedule 1(a) to the plaint, was put up for sale in execution of a decree against Pradhanappa's heirs and it was purchased by one Kadayya, and Kadayya in his turn sold the same to Bharamappa who had already purchased Schedule 1(b) plot by private purchase. On April 8, 1910, Bharamappa

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made a gift of the entire premises consisting of plots 1(a) and 1(b) to the Dakshina Maharashtra Digambar Jain Sabha, a registered body, for the purpose of building a school upon it for the education of Jain students. On August 31, 1920, Gangadhar Swami died and for some time after his death the affairs of the Math were in the hands of a committee of management. On November 25, 1925, the present plaintiff Gurusidhwaswami became the head of the Math. On August 27, 1932, the plaintiff instituted a suit, being Suit No. 80 of 1932, against the heirs and successors of Bharamappa for recovery of possession of the land comprised in the permanent lease on the allegation that there being no legal necessity for granting the lease, the alienation was not binding on the Math and became void on the death of the last Mahant. The Jain Sabha was impleaded as defendant No. 23 in the suit, but under a wrong name. The suit was dismissed by the trial judge but on appeal by the plaintiff to the High Court of Bombay, the trial court's judgment was reversed and the plaintiff's claim for khas possession was allowed in respect of the suit land against all the defendants with the exception of defendant No. 23 who was dismissed from the suit on the ground of misdescription. The judgment of the High Court is dated the 26th of November, 1942. On 3rd December, 1943, the plaintiff appellant commenced the present suit against the respondent Jain Sabha claiming khas possession of the land gifted in its favour by Bharamappa, alleging that as the original permanent lease was not binding on the Math for not being supported by legal necessity, the defendant could not acquire any title by grant from the successor of the lessee. The defendant Sabha resisted the suit and the two material questions round which the controversy centred were: (1) whether the original permanent lease was supported by legal necessity, and even if it was not, (2) whether the plaintiff's suit was barred by limitation under article 134-B of the Indian Limitation Act? The trial judge decided the first point in favour of the plaintiff, but on the question of limitation the

decision was adverse to him. The result was that the plaintiff's suit was dismissed. Thereupon the plaintiff took an appeal to the High Court of Bombay and the learned Judges, who heard the appeal, concurred in the decision of the court below and dismissed the appeal and the suit. It is the propriety of this decision that has been challenged before us in this appeal.

Both the courts below have held that a suit of this description is governed by article 134-B of the Limitation Act and the period of limitation is 12 years computed from the date when the previous Mahant died. The plaintiff's predecessor admittedly died in 1920 and the suit was brought more than 12 years after that and hence it was time-barred.

To get round the plea of limitation, the learned Attorney-General, who appeared in support of the appeal, has put forward a two-fold contention. It is argued in the first place that the decree for ejectment, which was passed in favour of the plaintiff and against the heirs of Bharamappa in the earlier suit of 1932, was binding on the present defendant on the principle that a decree against a lessee binds the sub-lessee as well. The defendant, therefore, was not competent to resist the plaintiff's claim for possession which was already allowed in the previous suit. The other ground urged is, that limitation is saved in this case by virtue of the provision of section 10 of the Indian Limitation Act.

So far as the first ground is concerned, it may be stated at the outset that even if the appellant's contention is right, the present suit would be barred under section 47 of the Civil Procedure Code and the proper remedy of the plaintiff would be to apply for execution of the decree in the previous suit. This difficulty, however, is not insuperable, as under section 47 of the Civil Procedure Code the court is empowered to treat a suit as an execution proceeding, when there is no question of limitation or jurisdiction standing in the way of the plaintiff. In our opinion, however, the contention as put forward by the learned Attorney-General cannot succeed. It may be assumed

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as a proposition of law that a sub-lessee would be bound by a decree for possession obtained by the lessor against the lessee, no matter whether the sub-lease was created before or after the suit, provided the eviction is based on a ground which determines the sub-lease also(1). But there seem to be two insuperable difficulties in the way of applying that principle to the facts of the present case. In the first place, the suit of 1932 was not by a landlord or ex-landlord against his tenant for evicting him from the leasehold premises basing his claim on the ground of determination of tenancy. The Mahant, who created the permanent lease in 1887, might not have been able to derogate from his grant and the lease might be taken to be valid so long as the alienating Mahant lived. As soon as he died, it was open to his successor to repudiate the lease and recover possession of the property on the ground that the alienation was not binding on the endowment. In the present case the immediate successor of the alienating Mahant consented to the lessee's continuing in possession of the property and thereby he might be treated as creating an interest in the lessee commensurate with the period of his lifetime or the tenure of his office. After his death, however, his successor did not accept any rent from the lessee or otherwise treated the lease as subsisting and in 1932 he brought the suit for recovery of possession of the property against the successors of the original lessee on the footing that they did not acquire any title by the grant which, being unsupported by legal necessity, was not binding on the Math. This was not a suit by a landlord against his tenant; it was a suit by the holder or manager of the Math to recover possession of Math property which was improperly alienated by his predecessor on the ground that the defendant became a trespasser as soon as the previous Mahant died and the plaintiff was entitled to recover possession on proof of his title.

Quite apart from this, the other difficulty is equally formidable for it does not appear to us that the

(1) *Vide Sailendra* v. *Bijan*, 49 C.W.N. 133; *Yusuff* v. *Jyotish Chandra*, I.L.R. 59 Cal. 739.

defendant Jain Sabha was at all a sub-lessee under Bharamappa or his heirs. We have gone carefully through the document executed by Bharamappa in favour of the Jain Sabha. Both in form and in substance it is a deed of gift and not a sub-lease. The gift, it seems, was made for a specific purpose, namely, for construction of a school building upon the site which was to be used for the education of the boys and girls of the Jain community, and it was for this reason that the deed provided that on the contingency of the school being removed from the site or its ceasing to exist, the land would revert to the donor. The attaching of a condition like that to a deed of gift could not, in our opinion, convert it into a sub-lease. It is clear, therefore, that the suit of 1932 was not a suit for eviction instituted by a lessor against his lessee, nor could the present defendant be regarded as a sub-lessee under the defendants in the earlier suit. It may be unfortunate that by reason of a pure misdescription, the earlier suit was dismissed against the Jain Sabha, but that is altogether irrelevant for our present purpose. In our opinion, the first contention of the Attorney-General must fail.

As regards the other ground raised by the Attorney-General, we are of opinion that the point is without any substance, and section 10 of the Indian Limitation Act is of no assistance to the plaintiff in the present case. In order that a suit may have the benefit of section 10, it must be a suit against a person in whom the property has become vested in trust for any specific purpose, or against his legal representatives or assigns, not being assigns for valuable consideration. It may be taken that the word "assign" is sufficiently wide to cover a lessee as well; but the difficulty is, that as the lease was for valuable consideration, the case would come within the terms of the exception laid down in section 10 and consequently the defendant would not be precluded by reason of the fact that the property was to his knowledge a trust property, from relying on the provisions of the statute which limit the time within which such suits must be brought. The

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Attorney-General contended rather strenuously that the transfer here was not for valuable consideration inasmuch as the rent reserved for a large tract of land which had immense potential value was Rs. 50 only for the first six years and then again it was to be reduced to Rs. 25 which would continue all through. We desire to point out that the expression "valuable consideration" has a well known connotation in law and it is not synonymous with "adequate consideration". It may be that judged by the standard of modern times, the rent reserved was small, but as has been found by both the courts below the consideration was not in any sense illusory having regard to the state of affairs prevailing at the time when the transaction took place. This is a concurrent finding of fact which binds us in this appeal. The result is that, in our opinion, both the contentions raised by the learned Attorney-General fail and this appeal must stand dismissed with costs.

Appeal dismissed.

Agent for the appellant: *Rajinder Narain.*

Agent for the respondent: *Naunit Lal.*