

(1926) 11 MAD CK 0012
In the Madras High Court

(Ampassemteketh Natamal) Kutti Pokker	APPELLANT
Vs	
(Ampassemteketh Natamal) Ussan Mayan and Others	RESPONDENT

Date of Decision : 09-11-1926

Acts Referred:

Limitation Act, 1963 — Section 10
Trusts Act, 1882 — Section 3

Citation : AIR 1927 Mad 1134 : (1927) 26 LW 51

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—By a registered partition karar, dated 18th March 1911, a division was effected between defendant 1 (now appellant), and

his brothers and some, others, and the share in the immovable property which defendant 1 would otherwise have received was augmented in

consideration of an obligation imposed upon him to pay certain sums aggregating to Rs. 500 including a sum of Rs. 250 to the widow of a

deceased brother and to her daughter, the latter of whom (the mother having died) is the plaintiff and a respondent in the second appeal. Both

Courts have allowed the claim. The question now left for disposal is whether upon a point of limitation it has been rightly held that Section 10,

Limitation Act, applies.

2. This question depends primarily upon whether the partition karar created a trust in respect of the sums payable by defendant 1 and in particular

in respect of the suit claim of Rs. 250. The document recites that the defendant has undertaken to pay the sums specified and accordingly" that he

receives property of superior value. There is a further recital that should he not do so:

He and the properties allotted to his share shall be liable for that amount and loss arising therefrom.

3. It is contended that this arrangement does not amount to a trust because there is no specific trust property. What are the characteristics of the

trust property has been discussed in the Secretary of State v. Prasad Bapuh A. I. R. 1923 Mad. 667 the case of the Tanjore land-holder; and the

appellant relies upon the test applied there, that the fund, to be a trust fund, must have been specially set apart and earmarked for the service of the

trust.

4. That is no doubt true. If the East India Company had merely given an undertaking to discharge the bonds out of their general revenues, no trust

would have been created, and if here defendant 1 had merely agreed to pay the money and no property had been declared liable upon his default,

again no trust would have been created. But it is said that the property assigned to defendant 1 was not trust property because it was not

exclusively appropriated to the purpose of the trust. No authority has been cited for the position that property is any the less trust property because

the trustees as well as the beneficiary may enjoy a beneficial interest in it.

A trust is defined in Section 3, Indian Trusts Act, as an obligation annexed to the ownership of property and arising out of a confidence reposed in,

and accepted by, the owner or declared and accepted by him for the benefit of another or of another and the owner.

5. This definition clearly provides for a case where the owner is also beneficially interested. It was held in *Imbiohi Vs. Achampat Avukoya Haji*

and Others, that where upon a partition, the property of a party thereto was to be liable upon his failure to pay certain debts assigned to him a

charge was created, and it appears to me that equally here a charge was created.

6. The Court could sell the property in order to enforce the obligation. If this is not an obligation annexed to the ownership of property I am unable

to understand nor have I been shown what else it is. It may be true that not every charge gives rise to a trust. But we have here the further element

that the obligation arises out of a confidence reposed in and accepted by the owner. I conclude that the owner was a trustee, and the party to

whom payment was due, a cestui que trust.

7. It has been further objected that a suit to secure the exemption conferred by

Section 10, Limitation Act, must be for the purpose of following the trust property and that the present suit asks only for a decree for payment of the money. This is not strictly true, because there was also a prayer for such other reliefs as the plaintiffs may seek and the Court may deem fit to allow. The Court, I think, might, on the facts found, have declared and enforced a charge upon the property. However that may be, the suit was in substance one for the enforcement of the trust and should not be allowed to fail upon a mere pleading.

8. I dismiss the second appeal with costs.