

(1992) 03 KL CK 0044
In the High Court Of Kerala
Case No : S.A. NO. 225 of 1986

Appi Amma and others

APPELLANT

Vs

N. Chandrasekharan Nair and Others

RESPONDENT

Date of Decision : 27-03-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1992) 1 KLJ 642

Hon'ble Judges : G. Rajasekharan, J

Bench : Single Bench

Advocate : S. Subramani and M. Balagovindan, for the Appellant; S.P. Aravindakshan Pillai, for the Respondent

Final Decision : Dismissed

Judgement

G. Rajasekharan, J.—Plaintiffs 1 and 5 are the appellants. The first plaintiff is a deity and the other plaintiffs are representing the deity. According to the plaintiffs, the temple and the suit properties originally belonged to the family of plaintiffs 2 to 5. There were two partitions in the family first in the year 1118 M. E. and the other in 1950 in which the plaint properties were left out in common. The eldest member of the family was to manage the temple and properties, according to the custom. The fifth plaintiff's father Chadayan was the priest till 1949. Thereafter, Narayanan, Chadayan's brother's son became the priest who died on 22-2-1973. Before that, on 25-4-1962 he executed a gift deed in favour of the N. S. S. Union, Nedumangad Taluk. The first defendant in the case is the President of the said N. S. S. Union.

2. Without impleading the N. S. S. Union or the first defendant in the capacity as President of the N. S. S. Union, a suit was instituted for a declaration that the properties belong to the Devaswom and for consequential injunction. It was also prayed in the suit to get recovery of the property in case it was found to be in the possession of the defendant.

3. The trial court decreed the suit. The sole defendant then, in the suit, filed A. S 281 of 1976. In the appeal, the N.S. S Union, Nedumangad Taluk was sought to be impleaded. The case was remitted to the trial court in view of the impleading application. The N. S. S. Union was impleaded as the second additional defendant as per order dated 25-5-1981.

4. Inter alia, it was contended by the second defendant that Narayanan had absolute right over the property and the gift in favour of the second defendant is unassailable. It was further contended that in any event the second defendant had perfected title to the property by adverse possession and limitation.

5. The trial court again decreed the suit and the matter went in appeal before the District Court as A. S. 239 of 1983. The lower appellate Court confirmed the finding of the trial court that Narayanan had no right to alienate the property and that the gift is invalid. But it was held by that court that the claim of the plaintiff is barred for the reason that the second defendant N. S. S. Union has prescribed title to the property by adverse possession and limitation.

6. The points of law urged before this court are:-

1. That the pleadings of the defendants are insufficient as regards adverse possession and limitation.

2. That the suit should be deemed to have been instituted as against the second defendant also in 1973 and that the finding of the lower appellate court that the second defendant had prescribed title is unsustainable.

There is specific contention in para 12 of the written statement of the second defendant that the right if any of the plaintiff is lost by adverse possession and limitation. So the first point has no force at all.

7. As noticed earlier, when the suit was instituted on 7-4-1973, the sole defendant was the present first defendant. He was impleaded in his personal capacity. It is true that he was the President of the second defendant N. S. S. Union. But the impleadment of the first defendant was not in that capacity. So, when the suit was instituted the N. S. S Union was not still a party to it. The N. S. S. Union was added as an additional defendant by order dated 25-5-1981. Under Order I Rule 10 Clause 5 the proceedings as against the N. S. S. Union, the second defendant shall be deemed to have been initiated only on the service of summons subject to Section 22 of the Indian Limitation Act, 1908, corresponding to Section 21 of the amended Indian Limitation Act. Section 21 (1) of the Indian Limitation Act reads:

Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party.

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith, it may direct that

the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

The above proviso does not help the plaintiffs since there was no order by the lower court that the omission was in good faith and so the suit as against the second defendant is to be deemed to have been instituted on any earlier date than the date on which the summons was served on the second defendant. When the date of impleadment of the second defendant is reckoned as the date on which the suit has been instituted as against the second defendant twelve years had elapsed from the date of Ext. B1, the gift deed under which the second defendant came into possession of the property. As adverted to earlier, the gift deed has been found to be invalid and so the possession of the N.S. S. Union was wrongful and adverse to the true owner. If there was continuous possession from the date of Ext. B1 till the date on which the second defendant was added as a party, certainly there is prescription of title by adverse possession and limitation.

8. The learned counsel for the appellant has argued that there was no continuous possession from the date of Ext. B1 till the date on which the second defendant was impleaded because there was dispossession by the receiver appointed in the case.

9. On the application of the plaintiffs receiver was appointed on 7-4-1974. The receiver took possession on 11-4-1973. If that assumption of possession by the receiver actually arrested the running of time then certainly there is no adverse possession so as to prescribe title. So the crucial question for consideration is whether taking possession by the receiver on 11-4-1973 actually arrested the running of time as far as the second defendant N. S. S. Union is concerned?

10. Learned counsel for the appellant strongly relied on Chakrayudhan v. Sarada & others (1984 K. L. T. 573) to contend that the second defendant having been a stranger to the suit when the receiver took possession, receiver's possession will not enure to the benefit of the second defendant and so there is disruption of possession and arrest of running of time. The head note in the above decision is confusing and it does not reflect the law laid down by the court or the conclusion arrived at. The head note reads :

The appointment of a Receiver does not save the rights of any persons, but the parties to the action in which the Receiver was appointed. Where the Court during the pendency of an action is in possession of property by a Receiver, the possession enures for the benefit of the party to the action, ultimately declared to be entitled, so that during such possession, time will run against, but not in favour of, a person who is a stranger to the suit.

Going by the latter portion of the above head-note it will appear that the possession of the receiver enures only to the benefit of the parties to the action and during such possession time will not run in favour of a, stranger to the suit. But actually, the court was taking a different view and the ultimate decision of the case was in accordance with that view. In paragraph 8 of the judgment the

court noticed Kerr on the Law and Practice as to Receivers, 16th Edition and has quoted the following passage.

The appointment of a receiver does not in any way affect the right to the property over which he is appointed. The court takes possession by its receiver and his possession is that of all the parties to the action according to their titles

The appointment of a receiver in an action does not prevent the operation of the Limitation Act, 1908 against a rightful owner who is out of possession and is not a party to the action Nor will it interrupt the possession of a stranger so as to prevent the statute from conferring a title on him.

Relying on the above passage as well as the law laid down in the case of Lakshmanan v. Govindan (1963 K. L. T. 1152) the court held that the receiver's taking possession from a stranger to the suit does not arrest the running of time of limitation.

11. That was a suit for declaration of title, cancellation of a sale deed and recovery of possession and redemption. The relief of redemption was concurrently granted by the trial court as well as the first appellate court. But the first appellate court held that the plaintiffs were not entitled to get recovery of possession for the reason that the right was lost by adverse possession and limitation. The points that arose for consideration before the first appellate court therein were :

1. Whether the plaintiffs are members of the jenmi tarwad?
2. Whether the sale deed Ext.A2 in favour of the second defendant is void? and
3. Whether the plaintiff's title to the suit property, if any, was lost by limitation and adverse possession?

12. Ext. A2 therein, a gift deed was found to be void. On the question of limitation, it was held by the first appellate court in that case that excepting the properties outstanding on mortgage there was adverse possession and limitation. This court confirmed that finding and held:

They were not parties, to the suits in which the receivers were appointed and as the passage from Halsbury shows during the receiver's possession, time continued to run against but not in favour of the plaintiffs who were not parties to the suits. The plaintiffs were throughout out of possession and they had no subsisting title at the date of this suit. In our view, the learned District Judge was right in his conclusion.

Thus, in deciding that there was adverse possession and limitation, the court was following the principle that the appointment of a receiver in an action does not prevent the operation of the Limitation Act against the true owner who is out of possession and who is not a party to the suit. Nor will it interrupt the possession of a stranger so as to prevent the statute from conferring a title to him. So the decision relied on certainly is not helpful to the appellants to canvass the position

that by the assumption of possession by the receiver the running of time was arrested as far as the second defendant N. S. S. Union is concerned.

13. In this context, the nature of possession of receiver is of relevant consideration. The mere appointment of a receiver and the taking possession by the receiver will not interrupt the possession of a stranger so as to prevent the Statute of Limitation conferring title on him. So as a general rule, the mere appointment of a receiver to take charge of the property in dispute will not suspend the operation of the statute of limitation. Nor will it interrupt the possession of a stranger so as to prevent statute of limitation conferring title on him. The second defendant was impleaded in 1981. The second defendant got Ext B1 gift deed and possession pursuant to that on 25-4-1962. The plaintiffs were aware of that gift deed as is evidenced by Ext. B2 copy of application submitted by eight persons including the plaintiffs to the N. S S. General Secretary seeking his intervention for getting possession of the property from the N S. S. Union, Nedumangad. Both the courts below had adverted to the evidence regarding actual assumption and possession of the properties and on that fact there is the finding that the second defendant was in possession pursuant to Ext. B1. Ext. B1 recital also is a clear indication that possession was passed to the donee. That possession continued till 11-4-1973 when the receiver took charge. But the receiver's occupation or receiver's custody will not arrest the running of time and it continued and so, the possession must be deemed to have continued with the second defendant. Second defendant was impleaded only in 1981 and in view of Order 1 Rule X (5) C.P.C. and Section 21 of the Limitation Act, the suit must be deemed to have been instituted as against the second defendant only in 1981. By that time twelve years elapsed and the second defendant had prescribed title by adverse possession and limitation. The finding in that regard by the first appellate court does not call for any interference and the appeal is totally devoid of merits.

The appeal fails and I dismiss it, but in the circumstances, without costs.