

(1938) 02 MAD CK 0006
In the Madras High Court

Ar.L.N.Rm.Ar. Sevugan Chettiar

APPELLANT

Vs

Raja Srimathu Muthu Vijiya Raghunatha Doraisingam alias
Gouri Vallabha Thevar Avl., Zamindar of Sivaganga and
Others

RESPONDENT

Date of Decision : 08-02-1938

Acts Referred:

Tamil Nadu Survey and Boundaries Act, 1923 — Section 14

Citation : AIR 1938 Mad 612 : (1938) 47 LW 637 : (1938) 1 MLJ 763

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit instituted u/s 14 of the Madras Survey and Boundaries Act. The lower Court has

dismissed the suit as barred by limitation. This plea of limitation is the only point for decision in the appeal. In the village of Kallal, in the Sivaganga

estate, there is one portion belonging to a temple of which the Zamindar is the dharmakarthar and the other portion which belongs to the plaintiffs"

family has been set apart by them for certain charities and in that character has been under their management. During the survey operations carried

on in the estate, the Survey Officer demarcated the boundary between the two portions in a manner to which the plaintiffs take exception. Hence

this suit u/s 14 of the Madras Survey and Boundaries Act, the suit has to be instituted within three years of the final publication of the survey

demarcation, which in the present case took place on the 21st January, 1928. As the suit was instituted only on the 19th February, 1931, it will be

prima facie barred, unless the plaintiff can claim the benefit of Section 15(2) of the Limitation Act, which provides that in computing the period of

limitation prescribed for any suit of which notice has been given in accordance with the requirements of any enactment, for the time being in force,

the period of such notice shall be excluded. As the Sivaganga Estate was under the management of the Court of Wards, the plaintiffs apparently

thought that in the present case notice u/s 49 of the Madras Court of Wards Act had to be given and they have given a notice to the Estate

Collector and another notice to the District Collector. If the two months" period required by Section 49 could be excluded, the present suit would

undoubtedly be in time. The question was accordingly raised before the lower Court whether this is a case in which notice had to be given u/s 49.

The learned Subordinate Judge held that notice was not required under that section in the present case and that the plaintiffs were therefore not

entitled to claim the benefit of Section 15(2) of the Limitation Act in respect of the period of notice.

2. Before us, it has been contended that the view of the learned Judge is not right, that the decision in *Varadachariar v. Raja Ramakrishnamba*

Garu (1922) 44 M.L.J. 367 which he purports to follow was not a decision on this point and that the observations relating to Section 63 of the

Court of Wards Act should not be followed. As a matter of the ordinary meaning of the language employed in Section 49, it seems to us difficult to

say that the expression ""property of a ward"" can include property of an institution of which the ward is a manager or trustee. Whether the Office of

trusteeship is not in a sense property and to that extent it might not fall u/s 49 is not a question that we need consider in this case; because the suit

does not relate to the right to the office. Again, whether the word "property" in Section 49 should be restricted to property in which the ward has a

"beneficial" interest or can also comprise property whereof the legal title is vested in him though he may hold it subject to certain obligations either

wholly or partly in the nature of a trust is again a question which does not arise for decision in this case. So far as we can gather, the property of

which the Zamindar claims to be in possession is one of the usual endowments of temples in this country which prima facie belong to the deity and

of which the dharmakarthas are only managers and not the legal owners, as explained in *Vidya Varuthi Thirtha v. Balusami Ayyar*. Mr. Venkatarama

Aiyar the learned Counsel for the appellant relied on the decision of the Judicial Committee in 8 CWN 809 (Privy Council) but that case does not

help him. All that their Lordships there held was that as the possession and management of the property of the idol were vested in the shebait any

cause of action for the protection of such property must also be held to accrue to the shebait, within the meaning of Section 7 of the Limitation Act.

On the other hand, their Lordships recognise - though they say that it is only in an ideal sense true - that the title vests in the deity; and, in view of

the fuller discussion of the subject in *Vidya Varuthi Thirtha v. Balusami Ayyar* it is impossible to interpret the decision in 8 CWN 809 (Privy

Council) as supporting the view that the shebait is the owner of the property of the institution.

3. Whether the grounds of policy which led the legislature to enact that a notice should be given in certain cases will not equally apply to cases of

trust properties dealt with u/s 63 of the Court of Wards Act is a matter which we are not justified in taking into account in the interpretation of

Section 49. On the other hand, the history of the legislation on the subject seems to suggest that prior to 1902 the consensus of opinion was that

neither the Court of Wards nor a Civil Court exercising jurisdiction under the Guardian and Wards Act was entitled to deal with the properties of

institutions of which the ward was only a trustee or manager and it was to provide for the performance of the ward's duties as such trustee or

manager during his ward ship, that special provision was made by Section 63 of the Madras Court of Wards Act of 1902. It does not seem to us

proper to read this special provision as having the effect of bringing the properties of the institution into the management of the Court of Wards in

the sense in which the private properties of the Ward come under its control. On the other hand, Section 63 speaks of them as properties

belonging to the institution or endowment. Though the actual point for decision in *Varadachariar v. Raja Ramakrishnamba Garu* (1922) 44 M.L.J.

367 was different, we respectfully agree with the view expressed by the learned Judges that the expression ""property of the ward"" used in various

sections of the Madras Court of Wards Act (including Section 49) cannot comprise the property of an institution of which the ward is only a

trustee or manager.

4. It was contended in the alternative by Mr. Venkatarama Aiyar that if the present case is held not to fall u/s 49 of the Court of Wards Act, it is at

least one in which notice u/s 80, Civil Procedure Code, was required and that as the plaintiffs have also given a notice to the District Collector u/s

80, they are entitled to the benefit of Section 15(2) of the Limitation Act. We fail to see how the subject-matter of the present suit relates to any

act done by the Collector or by any public officer in his official capacity. It is the Zamindar that has been impleaded as the defendant in the case

and as he happens to be a ward he is sought to be represented by the Estate Collector. It is therefore not possible to regard it as a suit instituted

against the Secretary of State or against a public officer. Further, the suit relates to a claim of title between the plaintiff charity on the one hand and

the temple represented by the Zamindar on the other. It is therefore not a case falling u/s 80 of the Code. The learned Subordinate Judge was

therefore justified in holding that the plaintiffs were not entitled to claim the benefit of Section 15(2) of the Limitation Act and that the suit was

barred.

5. The appeal fails and is dismissed with costs.