

(1991) 08 MAD CK 0019
In the Madras High Court

Commissioner, H.R. and C.E. and Others	APPELLANT
Vs	
P.V. Subramania Ayyar (Since Deceased) and Others	RESPONDENT

Date of Decision : 09-08-1991

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 108, 60, 63

Citation : (1992) 1 MLJ 1

Hon'ble Judges : Mishra, J

Bench : Single Bench

Judgement

Mishra, J.—This appeal is directed against the judgment of Venugopal, J. under which he decided that a suit for declaration that under a

certain deed of settlement any property right was conveyed in charity to any religious endowment, is maintainable notwithstanding the power u/s

108 of the Hindu Religious and Charitable Endowment Act, 1959. The trial court on the objection of the defendants/appellants held on the facts of

the case that the plaintiffs adopted mother has no competence to execute the document, that the document executed by her was not binding on the

plaintiff and that the suit was not hit by Section 108 of the Act or barred by limitation under Article 60 of the Limitation Act as there has been no

transfer of property under Ex.A-1. The appellants contended that the prayer in the plaint was for a declaration that the charity indicated in the

settlement deed was not a charity of any public nature connected with any public religious endowment and such a declaratory relief can be granted

only by the Deputy Commissioner and the civil court's jurisdiction was barred u/s 108 of the Act Answering the said question, the learned single

Judge has said that the declaratory relief has to be viewed and read against the

background of the allegations contained in the plaint and so viewed, the declaratory relief that there is no charity as per the settlement deed dated 17.4.1929 is based on the ground that the document itself is invalid and the adoptive mother is not competent to execute such a deed and such a document is void ""and as the" sum and substance of the declaratory relief prayed for in the plaint is to have the settlement deed declared invalid, the civil court's jurisdiction is not ousted, since such a declaratory relief regarding the void nature of the document cannot be granted by the Deputy Commissioner. The question whether there was in fact a specific endowment as contemplated u/s 63 of the Act has to be only incidentally considered by the civil court. In this view the trial court is perfectly justified in concluding that the suit is not barred by reason of Section 108 of the Act.

2. We find that the learned single Judge has approached the problem truly and strictly in accordance with law on the subject. To declare a document void, one has to go to a civil court only. The provision of the Act has given any such power to any authority of limited jurisdiction to decide a question of title. The courts, abhor the idea of authorities of limited jurisdiction being vested with the power to decide the questions of title. On many occasions such provisions under which power to declare title is vested in an authority of limited jurisdiction, Courts have declared the law invalid. In the instant case, the case of the plaintiffs/respondents, however, is on a better footing. The law on religious endowments in the State of Tamil Nadu has not vested any authority of limited jurisdiction to decide the question of title and declare any conveyance void. In that view of the matter, he has rightly confirmed the judgment of the trial court on this issue.

3. Learned single Judge has said with regard to the plea of limitation under Article 60 of the Limitation Act, ""It is obvious that Ex.A-1 does not operate as transfer of the suit land and there was no disposal of the minor's property as such under Ex.A-1. As rightly pointed out by the trial court, Section 60 of the Limitation Act applies only where possession is also transferred to the alienee and inasmuch as Ex.A-1 does not purport to make any transfer of the suit land to endowment Art. 60 does not apply and the suit is not barred by limitation."" The above approach, which we

have recorded and with which we are in agreement, is the only correct approach to decide the question of limitation, in such a suit. There is no merit in the appeal. The appeal is accordingly dismissed. No costs.