

(1915) 02 MAD CK 0012
In the Madras High Court

C.T.N. Narayanan Chettiar and Others	APPELLANT
Vs	
V.S.V. Lakshmanan Chettiar and Others	RESPONDENT

Date of Decision : 23-02-1915

Acts Referred:

Limitation Act, 1908 — Article 91

Citation : 29 Ind. Cas. 1

Hon'ble Judges : John Edward Power Wallis, C.J.;Trotter, J

Bench : Division Bench

Judgement

1. This is an appeal by some of the defendants against a decree in favour of the plaintiffs in a suit brought by certain trustees as hukdars of a temple to recover possession of the temple properties from the defendants (appellants) to whom the trustees had made over the management of the temple under an agreement, Exhibit I, dated 21st June 1901. Four questions were argued before Rs. In the first place it was said that the suit is bad for non-joinder, as, though all the hukdars including the 9th and 10th defendants were impleaded, the plaintiffs in paragraph 16 of the plaint stated that these defendants had lost the office owing to their neglect to discharge its duties, and that they were joined merely because they asserted a right to it. At the trial this contention was abandoned by the plaintiffs, and a decree was passed in favour of the 9th and 10th defendants with their consent as well as of the other defendants. In these circumstances, I do not think the decision in Kokilasari Dasi v. Mohunt Rudranand Goswami 5 C.L.J. 527 cited for the appellants has any application. In that case the plaintiff persisted both in the original and the lower Appellate Court in denying the joint trusteeship of his minor brother whom he had made defendant; and it was only after this issue had been finally decided

against him, that he applied in the second appeal that a decree might be jessed in favour of himself and this defendant jointly. Here the contention

was abandoned during the trial and the title of the defendants Nos. 9 and 10 as trustees was admitted.

2. The second contention was that the suit was barred by limitation under Article 91 of the Indian Limitation Act, as the plaintiffs ""did not sue within

three years to set aside the transfer, Exhibit I. The High"" Court having already held that this transfer was void, Exhibit G, and this being so, it does

not require to be set aside. The Limitation Act merely prescribes within what periods suits must be brought and cannot be construed as of itself

creating an obligation to sue where none existed. In *Malkarjun v. Narhari* 25 Bom. 337 : 5 C.W.N. 10 : 10 M.L.J. 368 : 2 Bom. L.R. 927 : 27

I.A. 216 their Lordships of the Judicial Committee clearly distinguished between sales which were a nullity and sales which were only voidable and

valid until set aside. At page 350 after pointing out that the words to set aside an adoption"" in one of the articles were incorrect as an adoption may

be declared invalid but cannot be set aside, their Lordships observed that there is no such difficulty in the case of suits to ""set aside a sale"" in the

same Act, ""because a sale valid until set aside can be legally and literally set aside; and anybody who desires relief inconsistent with it may and

should pray to set it aside."" See also *Sidhu Sahu v. Gopi Charan Das* 18 Ind. Cas. 969 : 17 C.L.J. 233. This is a more recent decision of their

Lordships than *Guandsambanda Pandara Sannadhi v. Velu Pandaram* 2 Bom. L.B. 597 : 10 M.L.J. 29 which is relied on by the appellants. In that

case two persons Nataraja and Chockalingam shared the management of a religious endowment, and successively transferred their respective

rights of managemant by registered instruments to a third party in 1868 and 1869, Chockalingam, who was a minor, being represented by his

mother. In 1892 Velu, the son of Nataraja, sued to recover the trusteeship joining Chockalingam as defendant, as he was apparently unwilling to

sue. Their Lordships held that Article 124 of the Indian Limitation Act was applicable and that, as the defendants had held adversely to the

plaintiff's father, Nataraja, for more than twelve years, the plaintiff's suit was barred. They did actually rule, as contended by the appellants, that

the suit was barred under Article 91 of the Indian Limitation Act because Nataraja had failed to set the transfer aside in three years which is what

is now contended. Adverting to the case of the defendant Chockalingam, who was a minor at the date of the sale of his share, their Lordships, with

a view of showing that his claim was also barred, observed that he attained majority in 1880 ""and had by Article 44 of the Act three years for

setting aside the sale by the guardian."" Mr. K. Srinivasa Aiyangar relies on the fact that, although their Lordships might have simply said that

Chockalingam had a further period of three years to sue u/s 7, they expressly stated that he had three years under Article 44 which is for suits to

set aside a sale by a guardian, although the sale was one which in an earlier part of the judgment they had held to be void; and he invites us to hold

on this authority, that sales which are void ab initio become valid under the provisions of the Limitation Act if not set aside within three years by

suit. Such a view, as already pointed out, appears to be inconsistent with another part of the same judgment and to be opposed to the rulings of

their Lordships in the later case in *Malkarjun v. Narhari* 25 Bom. 337 : 5 C.W.N. 10 : 10 M.L.J. 368 : 2 Bom. L.R. 927 and we are not prepared

to accept it as correctly representing what their Lordships intended to lay down. This very decision of their Lordships is express authority that

Article 124 is the Article applicable, and under that Article the suit is not barred. The other cases cited were cases of sales by guardians which

were not void and have no application to the present case.

3. The third point is as to the alleged improper rejection of evidence. It appears from the B diary that, after the evidence had been closed and

during the arguments for the defence, it was observed that no issue had been framed about the validity of the agreement, Exhibit I and leave was

given to the plaintiffs to ask for a further issue on 11th April 1912. This, the 7th issue, is as follows:

Is the agreement and arrangement mentioned in the plaint as the one under which the defendants got into possession illegal and void in law, having

regard to its nature, the circumstances and the objects for which it was made and are the plaintiffs entitled to all or any, of the reliefs asked for; and

if it is valid and legal under special circumstances and for special objects, are the circumstances and objects such as to make it valid and good?

4. Reading this with the pleadings and with Exhibit I, the agreement in question, it would appear that the question intended to be raised was

whether such an agreement of this nature, even if ordinarily void, might in special circumstances be valid and, if so, whether such special circumstances existed in the present case. At the further hearing, when the defendants wanted to call evidence as to the practice of the temple, the Subordinate Judge objected that this evidence should have been given at the trial of the other issues and that the question of usage did not arise on the seventh and other additional issues. We think the special circumstances mentioned in the issue referred to the recitals in Exhibit I as to the circumstances in which that document came into existence. It says nothing about a usage under which Exhibit I would be supported and we think the Subordinate Judge was justified in refusing to allow a defence of this kind to be raised at this late stage of the case.

5. The fourth question relates to the form of the decree which makes the appellants liable to account for what may be found due from them but gives them no right to recover anything that may be found due to them for expenses properly incurred out of their own pockets in the course of de facto management. It is contended that they are entitled to be reimbursed and to retain possession of the temple properties until they are so reimbursed. The decision, as yet unreported, in Appeal Suit No. 148 of 1910 on which the appellants rely, does not on examination support the proposition but rather the reverse, as it is mentioned in the judgments and appears from the printed papers that the de facto trustee in that case had in an earlier suit claimed to retain possession of the temple properties until he was reimbursed and that this claim was rejected by the District Judge whose decree was affirmed by this Court in Appeal Suit No. 147 of 1902. There is no reason for allowing trustee's of public charitable endowments any larger rights against the trust property than are recognized in the case of private trustees by Section 32 of the Indian Trusts Act. That section says that a trustee is entitled to reimburse himself all expenses properly incurred in connection with the trust and that he has a first charge enforceable only by prohibiting any disposition of the trust property without previous payment of such expenses not, that is to say, in the ordinary way by sale of the property subject to the charge. No authority has been cited before us to show that in the case of either private or public trusts the Court is bound to leave the trust estate in possession of a person not entitled to the character of a trustee merely because he has

expended money on it whilst acting as trustee. On the contrary it would, appear to be the duty of the Court, especially in the case of a public

charitable trust to take the trust property out of the possession of persons not entitled to hold it, whilst making due provision for any claims they

may have in respect of expenditure incurred in connection therewith.

6. Turning now to the facts of the present case, the defendants' case on the pleadings and at the trial was that they were entitled to remain in

possession until recouped under an express agreement supplemental to Exhibit I. It is only after the rejection of this contention by the Subordinate

Judge that the defendants fell back in appeal on this alleged equitable right. Apart from this we do not think the appellants are entitled to any

modification of that part of the preliminary decree which directs the defendants to give up possession to the plaintiffs, but we are prepared to

amend paragraph 2 of the preliminary decree by directing accounts to be taken in respect of the temple as between the plaintiffs and defendants

Nos. 6, 8, 9 and 10 of the one part and defendants Nos. 2 to 5 and 11 to 13 of the other part, so as to enable the latter to establish any claim they

may have against the trust properties on the taking of the accounts, leaving it to be determined by the final decree how such claim, if established

should be enforced. Otherwise the appeal fails and must, we think, be dismissed with costs. Fresh evidence may be taken if the modification of the

preliminary decree should be found to render it necessary.