
(1915) 02 MAD CK 0008
In the Madras High Court

C.T.N. Narayanan Chettiar and Others	APPELLANT
Vs	
V.S.V. Lakshmanan Chettiar (deceased), and Others	RESPONDENT

Date of Decision : 23-02-1915

Acts Referred:

Limitation Act, 1908 — Article 91

Citation : (1916) ILR (Mad) 456 : (1915) 28 MLJ 571

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 us. 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 Kohilasari Dasi v. Mohunt Rudranand Goswatni (1906) 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 Courts 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 passed in favour of himself and this defendant jointly. Here the

contention was abandoned during the trial and the title of the defendants 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* ILR (1899) B. 337 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 p. 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 (1912) 17 C.L.J. 233. This is a more recent decision of their Lordships than *Gnanasambanda Pandara Sannadhi v. Velu*

Pandaram ILR (1899) Mad. 271 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 management 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 ruling of their Lordships in the latter case in *Gnansambanda Pandara Sannadhi v. Velu*

Pandaram ILR (1899) B. 337 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 valid 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 11--4--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

5. 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 could 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.

6. 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 A.S. 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 A.S. No. 147 of 1902. There is no reason for allowing trustees 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 connecton 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. 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 temple as between the plaintiffs and defendants 6, 8, 9 and 10 of the one part and defendants 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.