
(1993) 02 AP CK 0007
In the Andhra Pradesh High Court
Case No : L.P.A. No. 156/85

D. Krishna Murthy and Others

APPELLANT

Vs

C. Ramana and Others

RESPONDENT

Date of Decision : 10-02-1993

Acts Referred:

Limitation Act, 1963 — Article 59

Citation : (1993) 2 ALT 414

Hon'ble Judges : P. Ramakrishnam Raju, J; M.N. Rao, J

Bench : Division Bench

Advocate : N. Subba Reddy, for the Appellant; G. Dharma Rao, for the Respondent

Judgement

P. Ramakrishnam Raju, J.—Plaintiffs 3 to 6 are the appellants in this appeal, which is directed against the decree and judgment of a learned single judge of this Court in AS.111/79. The facts of the case in brief are: there is a religious institution by name Rathi Matham (Stone Matham) which is founded by the ancestors of the first plaintiff's husband. After the death of her husband the first plaintiff was in management of the said Matham. The Matham has four mulgis attached to it. The first plaintiff executed a registered settlement deed Ex. B-1 dated 10-6-64 whereunder she transferred the entire property belonging to the Math in favour of D-1 to D-4. Although it was recited in Ex. B-1 that possession was delivered to D-1 to D-4, it is not in dispute that the possession of the property still remained with the plaintiffs. D-1 to D-4 executed an agreement Ex. A-6 dated 30-6-64 where under they agreed that if the first plaintiff nominates her successor they will not have any objection to transfer the management. While so the plaintiff also executed a registered will Ex. A-5 dated 4-2-71 whereunder she bequeathed her entire properties in favour of one Umapathi Swami. She then filed OS 26 of 79 for a declaration that the registered gift deed Ex. B-1 is void and also for a permanent injunction restraining the defendants from interfering with her possession and enjoyment. She died on 15-9-73 and after her death the second plaintiff was brought on record who also later died

and plaintiffs 3 to 6 were brought on record as LR's of the second defendant (sic. plaintiff). The Defendants 1 to 4 contended that they are not claiming any ownership rights in the said property but they stated that it is a public charitable trust. They also contended that the gift deed Ex. B-1 was not executed on account of fraud or coercions and it is a valid document. They pleaded that they are entitled to be in management of the property by virtue of Ex. B-1. The trial Court after framing necessary issues held that the property is not a public is not a public charitable trust; that the agreement Ex. A-6 is true and binding; that the registered will Ex. A-5 is true and valid and that plaintiffs alone are in possession. However, the trial court dismissed the suit recording a finding that the defendants alone have the right to management. It also held that under Article 59 of the Indian Limitation Act, the plaintiffs ought to have filed the suit within three years from the date of knowledge of the execution of B-1 and, therefore, the suit is barred by limitation. Aggrieved by the said decree and judgment, the defendants 1 to 4 (sic plaintiff 3 to 6) preferred A.S. 111 of 1979. The Seamed single judge also dismissed the appeal confirming the decree of the trial court. Challenging this decree and judgment, plaintiffs 3 to 6 filed the above Letters Patent Appeal.

2. Shri Subba Reddy, learned counsel for the appellants contended that Ex. B-1 is a void document inasmuch as it transfers the entire Math properties in favour of the defendants 1 to 4. He also contended that Article 59 of the Limitation Act has no application to the facts of this case.

3. Shri Dharma Rao, learned counsel for the respondents countered these arguments submitting that Article 59 of the Limitation Act will apply to the case on hand since the suit which was filed to set aside Ex. B-1 should have been filed within a period of three years from the date of knowledge of the execution of Ex. B-1.

4. The points that arise for consideration in this appeal are:

(1) Whether the trustee of a religious endowment is entitled to transfer the trust properties by way of a gift or settlement deed?

(2) Whether Article 59 of the Limitation Act applies?

5. Point No 1:- It may be relevant to notice the three documents Exs. B-1, A-5, and A-6 which are placed on record. Under Ex. B-1 the plaintiff transferred the entire Math property in favour of defendants 1 to 4. Under A-6 Agreement, defendants 1 to 4 consented to transfer the management in favour of a person nominated by the first plaintiff. Under A-5 registered Will, the plaintiff bequeathed all her properties in favour of one Umapathi Swamy. In this Will the properties are referred to as the personal properties of first plaintiff but not as the Math properties. The recitals in Ex.B-1 clearly state that the first plaintiff has conveyed her absolute rights in the trust properties in favour of defendants 1 to 4. The first plaintiff was a Mathadhipathi or a Shebait in respect of the Rathi Matham both in respect of secular and religious aspects. She had transferred the

entire properties in favour of defendants 1 to 4. Ex. B-1 is a conditional gift. The gift is made subject to the maintenance of the first plaintiff by the defendants 1 to 4. The transfer is, therefore, undoubtedly for pecuniary consideration.

6. The Privy Council in *Raja Vurmah v. Ravi Vurmah* (1876) 4 I. A. 76 held that an assignment of religious office for the pecuniary benefit of the holder of the office is against public policy. But this rule has certain exceptions:

(1) Where transfer is not for any pecuniary benefit and the transferee is the next heir of the transferor or stands in the line of succession of the bailee and suffers from no disqualification;

(2) When the transfer is made in the interest of the deity itself and to meet some pressing necessity; and

(3) When a valid custom is proved sanctioning alienation of shebaiti right within a limited circle of purchasers.

7. The Supreme Court in *Kali Kinkor Ganguly Vs. Panna Banerjee and Others*, following the decision of the Privy Council in *Raja Vurma*¹ held that neither the temple nor the deities nor the she bait right can be transferred by sale for pecuniary consideration and the transfer by sale is void in its inception. According to Mayne's Hindu Law, 13th Edn. 1159:

"Maths are in the main religious institutions. Their primary purpose is the maintenance of a competent line of religious teachers for the advancement of religion and piety, for the promotion of religious knowledge, the imparting of spiritual instruction to the disciples and followers of the math and the maintenance of the doctrines of particular schools of religion or philosophy"

8. Idol is a juristic person capable of owning properties. The trustee cannot sell, lease or otherwise alienate the right of management nor is the right saleable in execution under a decree (*Vide Raja Vurmah v. Ravi Vurmah* (1 supra)).

9. In view of the authorities referred to supra, it is clear that the trustee of a religious endowment cannot alienate the trust properties. Consequently the alienation made under Ex. B-1 is illegal. The document Ex. B-1 is void and the alienation under it is inoperative.

10. Point No. 2:- Article 59 of the Limitation Act, 1963 reads as follows:-

_____	Description	Period of Time from which of suit limitation period begins to run
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_____	PART IV - SUITS RELATING TO DECREES AND INSTRUMENTS
59.	To cancel or set aside an instrument or decree or for the purpose of rescission of a contract. or set aside or the contract rescinded first become known to him.

11. The

suit was admittedly filed beyond three years from the date of execution of Ex. B-1 but within twelve years. Therefore, the question is whether the suit is barred by limitation.

12. We have already stated that the alienation of Rathi Matham properties under Ex. B-1 is void in law. When once the transfer itself is void, there is no question of filing a suit, to set aside such a document, within three years. In *Narayanan v. Lakshmanan* ILR (1916) AP 56 . the question was whether a document under which the trustees transferred the management of a temple could be questioned by way of a suit after expiry of three years from the date of knowledge of the instrument? Under Article 91 of the Indian Limitation Act, 1887 corresponding to the present Article 59, the period of limitation was three years for filings a suit to set aside the alienation from the date of knowledge. The Division Bench of the Madras High Court held that since the transfer in favour of the defendants being void, it does not require to be set aside and that Article 91 of the Limitation Act does not apply to such a suit and, therefore, the suit which was not filed within three years is not barred by limitation.

13. It is contended by the learned counsel for the respondents that since the plaintiff prayed for a declaration to set aside the document, the suit must have been filed within a period of three years. This aspect has been considered by a Division Bench of Madras High Court in *Muthiah Muthirian Vs. Vairaperumal Muthirian*, . Venkatarama Aiyar, J (as he then was) speaking for the Division Bench held:

"The fact that the deed is void or that it should be set aside does not affect the position, such prayers being ancillary to the substantive prayer for possession. As observed in the decision already cited, such prayers might be regarded as mere surplusage. We accordingly hold on issue No. 3 differing from the lower court that the suit is not barred by limitation under Article 91."

In view of the said authority we are of the opinion that the suit though filed for seeking a declaration that Ex. B-1 is invalid and void is not barred by limitation since it is filed within twelve years.

14. It is also brought to our notice that a sum of Rs. 10,000/- is lying in deposit being profits that accrued on the mulgies belonging to the Matham in question and the said amount was kept in bank deposit by the lower court. Since we have taken the view that the plaintiff's suit is within the time and they are entitled to a declaration that Ex. B-1 is invalid, we are of the view that the plaintiffs are entitled to act as trustees and manage the Math in question in accordance with the customs and religious practices of the Math. So far as the amount of Rs. 10,000/- in deposit is concerned, we are of the opinion that the interest accrued thereon can be utilized for the maintenance. Such reasonable amount that are absolutely necessary for the purpose of carrying on religious rites in the Math, the plaintiffs are entitled to spend, out of the amount now in deposit. We are told that the four mulgies belonging, to the Math are in dilapidated condition and the

tenants have incurred considerable expenditure towards repairs of the mulgies and they are adjusting the amounts spent by them from out of the rents payable to the Math. As and when the payments are completed, the plaintiffs will be entitled to receive the amounts and expend the same for the purpose of the Math. On behalf of the defendants it is represented before us that they are willing to collect donations and effect improvements to the Math. There should be no objection for this from any quarter including plaintiffs in the suit. As and when amounts are collected by way of donations and defendants came forward for purpose of effecting repairs to the Math the plaintiffs should not object and the repairs or improvements should be carried on jointly by both the plaintiffs and the defendants. Defendants will also have a right to inspect the accounts of the Math periodically which the plaintiffs are duty-bound to maintain.

15. In view of the above discussion, we allow the L.P.A and set aside the decree and judgments of the trial court and the learned single judge of this court and decree the suit as prayed for. Each party will bear their own costs.