(1979) 07 KAR CK 0017

In the Karnataka High Court

Case No : RFA 34/76

Deities of Chikamma Dodamma APPELLANT

Vs

G.R. Srikantappa RESPONDENT

Date of Decision : 20-07-1979

Acts Referred:

Limitation Act, 1908 — Article 134b
Limitation Act, 1963 — Section 31

Citation : (1979) 2 KarLJ 403

Hon'ble Judges : Patil, J;Jagannatha Shetty, J

Judgement

1. This appeal is directed against the decree and judgment made by the first Additional Civil Judge, Bangalore City dismissing the appellant''s suit O.S. No. 465 of 1973 solely on the ground of limitation.

2. Briefly stated, the relevant facts are these:

The Hallikar Community of Bangalore have a temple of their own with deities of Chikkamma Doddamma at New Tharagupet, Bangalore-2. The deities own substantial properties around the temple. By registered deed Ext. P-1 dated 21st July 1901 Dharmakarthas of the temple granted a lease in perpetuity of a vacant land measuring 34 ft. x 130 ft. to Maistry Marappa at an annual rent of Rs. 30/-. On 25th June 1923, Marappa assigned his leasehold right to Rudrappa, and Byappa The defendant who is the son of Rudrappa is now in possession of the premises with buildings constructed thereon. The buildings are now under the occupation of several tenants.

3. Dharmakarthas of the temple who were parities to the lease deed Ext. P-1 were succeeded by a new set in 1904. They in turn were replaced in 1907. In 1937, they were again succeeded by others. In these periods and thereafter it was alleged that there was no proper management of the temple properties. So complaining, certain devotees filed a Scheme, suit O.S. No. 36 of 1962 in the court of the III Addl. District Judge, Bangalore. That suit was ultimately decreed and pursuant to the scheme framed thereunder the plaintiffs have been elected

as trustees. They have filed the suit O.S. No. 465 of 1973 to recover possession of the property demised under Ext. P-1 out of which the present appeal arises.

4. The suit was based on the following contentions That the perpetual lease providing for payment of an uniform rent is not binding on the deities. It was not an act of prudent management. It was not justified by any legal necessity. It was prejudicial to the interest of the deities. The previous Dharmakarthas did not perform their duties and mismanaged the temple properties.

5. The defendant resisted the suit inter alia contending that the lease was an act of prudent management; that it was for legal necessity of the temple, and the suit was barred by time.

6. The trial court accepted the plea of limitation and dismissed the suit as barred by time, although it held that the permanent lease, of debutter property at a fixed rent was invalid besides being not justified by legal necessity. It was also held that the defendant has perfected the title by adverse possession.

7. In the light of the submissions made by counsel on both sides, the primary question for consideration in this appeal is: Whether the plaintiff''s suit was barred by limitation?

8. The law of limitation is a procedural law and therefore the law existing on the date of a suit must govern the remedies of parties. The Limitation Act, 1963 (called shortly "the 1963 Act") is the relevant Act for our consideration. Art. 96 thereunder which governs the suit of this nature reads as follows:

Description of Suit Period of Limitation Time from which period begins to run.

96. By the manager of a Hindu, Muslim or Buddhist religious charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a viable consideration.

Twelve years. The date of death, resignation or removal of the or transfer or the date of appointment of the plaintiff as manager of the endowment, whichever is later."

If this article governs the suit in question, then there can be no, doubt about its maintainability. But the applicability of that Article depends upon the survival of cause of action for the suit on the date of coming into force of the said Act, because S. 31 provides that nothing in the 1963 Act shall enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian, Limitation Act, 1908 (for brevity called "the 1908 Act") expired before the commencement of the 1963 Act.

9. Mr. Ravindra, learned counsel for the respondent urged that Art. 96 has no application to the suit, since the period of limitation prescribed for that suit by the 1908 Act, has expired long before the commencement of the 1963 Act, but Mr. Jayaram, learned counsel for the appellant strenuously contended to the

contrary. Their rival contentions largely depend upon the scope of alienation of debutter property, the rights of successive trustees recognised by the traditional law and the terminus a quo fixed by the legislature for asuit of this nature under Art. 134-B of the Act.

10. We may now examine these questions in detail. Art. 96 of the 1963 Act has replaced Art. 134-B and 134-C of the 1908 Act. For immediate reference, they are set out below: Description of Suit Period of Limitation Time from which period begins to run.

134-B By the Manager of a Hindu Muhammaden or religious or charitable endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.

Twelve years. The death, resignation or removal of the transferor.

134-C By the manager of a Hindu, Muhammadan. or Buddhist religious or charitable endowment to recover possesion of moveable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.

Twelve years. The death, resignation, or removal of the seller."

Art. 134-C governs the suit to set aside the sale of moveable property comprised in endowments. We are not concerned with that Article, We are only concerned with Art. 134-B. It provides twelve years period for a suit by themanager of an endowment to recover possession of immoveable property comprised in the endowment which has been transferred by a previous manager. The starting point of limitation under the said Article is "the death, resignation or removal of the transferor". Mr. Jayaram wants the Court to read these provisions in such a way so as to give effect to the traditional law governing the alienations of debutter property and to avoid hardship to endowments. His argument in substance runs like this: Under the Hindu Law, the powers of a manager or a Shebait in the matter of alienation of debutter property is very much limited and he has no right to grant a permanent lease of any trust property at a fixed rent. Such alienation in any event, cannot endure beyond the lifetime of the alienating transferor. If, however, the succeeding manager consents to the lessee''s continuing in possession, then a new tenancy commensurate with his term of office may be presumed, but no right to recover possession, accrues till the new manager comes and repudiates the lease. Since the plaintiffs have repudiated the lease in question, their suit, according tothe learned counsel could not be said to have been barred by Article 134-B.

11. There can be little dispute on the general principles stated by the learned counsel. They are put beyond the range of controversy by the decision of the Judicial Committee in the case of Vidya Varuthi Thirtha v. Balusami Ayyar , AIR 1922 PC. 123. There, their Lordships have held that according to the well settled

law in India, a mohant is incompetent to create any interest in respect of the math property to endure beyond his life. The tenant or transferee acquires a right similarly limited. If the successor of the mohant permits the tenant to continue in possession and receives rent from him during his life, the tenancy thus created will be a new tenancy for his lifetime and it is within the power of every successive trustee to continue tenancy during his life and consequently the possession of the tenant never becomes adverse to the successor of the last mohant. In Srimath Daivasikhamani Ponnambala Desikar v. Periyanan Chetti, AIR 1936 PC. 193 the Privy Council observed that a permanent lease or absolute alienation of debutter property is beyond ordinary powers of management. Such an alienation could be justified only by proof of necessity.

But these principles, in our opinion, cannot be squeezed into Art. 134-B so as to save the present suit. A suit for recovery of possession of immoveable property comprised in the endowment which has been transferred by a previous manager should be instituted as per Art. 134-B within 12 years from the date of death, resignation or removal of the transferor. The suit, therefore, cannot be saved unless the word ''transferor'' in the third column of Art. 134-B is construed as inclusive of every succeeding manager of the endowment. But it seems to us, that no such meaning could be given to that word. While construing the Limitation Act, the Court should keep away the equitable considerations and must adopt the strict grammatical meaning of the words. It is common experience that the fixation of the period of limitation under any enactment must always be, to some extent, arbitrary or unjust, but that is no ground for the Court to extend the period by liberal construction. The tarminus a quo for the period of limitation under Art. 134-B has been rigidly fixed by the Legislature, and it begins from the date of death or cessation of office of the transferor. The word ''transferor'' in the set up in which it is found could only mean the alienating transferor and not his successor. That was also the view taken by B.K. Mukherjea, J. in Pratap Mull v. Iswar Gopal Jiew, AIR 1944 Cal. 211 at 218. While repelling the contention similar to the one urged before us the learned Judge said:

"......It seems to me that under Article 134-B, Limitation Act, the terminus a quo has been rigidly fixed and begins from the date of death or cessation of office of the alienating mohunt and the Legislature has deliberately avoided all questions of adverse possession after the death of such manager." (Underlining italics is ours)

The law on this question has also been summarised by B.K. Mukherjea, in the Hindu Law of Religious and Charitable Trusts, 3rd. Edn. 242, as follows:

"Where the new articles apply, a suit by the manager of a religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for valuable consideration is governed by Article 134-B, and it must be brought within 12 years from the date of death, resignation or removal of the transferor. When the property sold is movable property in an endowment Article 134C lays down the period within which a suit for recovery of possession of such property should be instituted, and the period is also 12 years from the date of death, resignation or removal of the seller. You will notice that the terminus a quo for the period of limitations in. suits of this description is the date of death, resignation or removal of that transferor. In a sense the legislature adopted the principle which the Judicial Committee enunciated in Vidyavaruthi''s case, though it has deliberately avoided all questions of adverse possesion and has rigidly fixed the stapling point of limitation at the date of death or cassation of office of the manager."

It is thus clear, that a suit for recovery of possession of immovable property comprised in the endowment which has been transferred by a previous manager should be instituted within 12 years from the date of death resignation or removal of the alienating transferor.

12. It is not as if the Legislature has not realised the hardship caused to endowments by the limitation prescribed under Article 134B. The Law Commission in its third report relating to Limitation Act, 1908 in paragraph 123 stated as follows:

"The starting point of Limitation for suits covered by Art. 134-B is the date of death, resignation or removal of the transferor. This has given rise to some difficulties in certain cases. Thus, an Endowment Commissioner may find it necessary to challenge an alienation by one of the previous managers, after decades; or, there may be a gap of more than 12 years between the death, resignation or removal of one manager and the appointment of his successor. In such cases, it would be more equitable to make the date of the plaintiff''s appointment as Manager the starting point for limitation. But there may be cases and circumstances where the existing provision may be more favourable to the institution. To provide for both contingencies, the later of the two dates should be taken as the starting point of limitation."

It was to implement the above Report of the Law Commission, Art. 96 was introduced in the 1963 Act replacing the Arts. 134-B and 134-C in the 1908 Act. Art. 96 provides a new starting point of limitation for every successive manager. But care has been taken, perhaps in the public interest, not to disturb alienations in respect of which the suit for recovery of possession has already been barred by time under the 1908 Act. S. 31 of the 1963 Act read with S. 28 of the 1908 Act has saved such alienations. The suit to recover the property involved in the instant case is thus barred by those provisions.

13. A similar view was taken by a Division Bench of the Andhra Pradesh High Court in C.V. Purushotham v. Chinna Jeeyangar Mutt, Tirupati, A.I.R. 1975 A.P. 153. It was observed therein that each succeeding Mahant does not get a revival of cause of action in his favour and the appointment of successor was never considered to give a fresh start of limitation under the law as it stood prior to 1963. It was further observed, Ibid page 155, para 8.

".......Under the law of endowments, as settled by the decisions of the Privy Council and the Supreme Court, alienation of endowed property by a mathadhipathi is not binding on the mutt unless it is supported by necessity and a permanent lease is considered to be of the same nature as an alienation. After the death, resignation or removal of the mathadhipathi the succeeding mathadhipathi is entitled to sue for a declaration that the alienation is not binding on the institution. This right is a right under the law governing the endowments and existed when the Indian Limitation Act 1908 was in force and continued to exist even after the new Act. As far as the right to institute such a suit is concerned, there is no change in the law and there cannot be any change by reason of the new Limitation Act. Whereas under the old Act the suit had to be instituted within twelve years after the death, resignation or removal of the transferor, under the new Act it can be instituted within twelve years after the appointment of the successor or within twelve years after the death, resignation or removal of the transferor whichever is later."

This according to us also, is a correct approach to the problem and the only view to be taken having regard to the facts of the case and the provisions of the said two Limitation Acts.

14. Mr. Jayaram however contended that there is no question of the defendant in the instant case perfecting his title by adverse possession since he is admittedly continuing to be a lessee and still goes on paying the rent reserved under the original lease. According to him, the plaintiffs cannot be non-suited, so long as the title to the suit property is vested in the plaintiffs We find from this submission, a slight misunderstanding of the principle of adverse possession in respect of lessee''s right. The interest which a party can acquire by adverse possession may be limited by the nature of his possession and it cannot be greater than that which was transferred to him. The law regarding these matters is well settled In Manavikraman Ettan Thamburan v. Ammu, ILR 24 (1901) Mad. 471 at 487 (FB) Shephard, J. sparring for the Full Bench of the Madras High Court, said:

"......When I put the case of a man purchasing from a trustee and said that by force of limitation he would acquire an absolute title, I did not mean that he would acquire a larger interest than which was in terms conveyed to him. If the conveyance were by way of outright sale, the title acquired would be absolute. If the conveyance were by way of mortgage or lease, the title acquired would correspond. As the interest which a man can acquire by adverse possession may be limited by the nature of his possession (Radanath Doss v. Gicborne, 14 M.I.A. 1, as to trust estate and limitation), so the interest which the law gives a man who has taken from a trustee or mortgagee cannot be greater than that which was ostensibly conveyed to him. It follows that in the case of a mortgage taken from a mortgagee or trustee, the real owner still has a right of redemption against him on the footing of the mortgage under which he claims. The effect of limitation is to put his mortgage given by a mortgagee or trustee on the footing of a mortgage executed by the real owner and on no higher footing."

These principles have been approved by (1) the Calcutta High Court in Takur Sri Sri Raghunath Jieu v. Ganga Gobinda, AIR 1937 Cal. 305 and (2) the Patna High Court in Ramasray Prasad v. Ramsurat Singh, AIR 1940 Par. 131 and (3) the Orissa High Court in Mani Charan v. State, AIR 1969 Orissa 184.

It is clear from these cases that adverse possession of a limited nature could also be perfected but it does not mean that the paramount title of the owner of the property would be extinguished. The case on hand is no exception to this principle.

15. In the view that we have taken, it is unnecessary to consider whether the permanent lease in question was for legal necessity or not.

16. In the result, the appeal fails and is dismissed. In the circumstances, we make no order as to costs.

