
(1998) 03 MAD CK 0187
In the Madras High Court

D.K. Ramakrishnan and Another

APPELLANT

Vs

P. Lakshmi Ammal (died) and Others

RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:

Trusts Act, 1882 — Section 5

Citation : (1998) 3 MLJ 357

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Judgement

S.S. Subramani, J.—First defendant died after the judgment of the lower appellate court. Legal representatives of deceased first defendant in O.S.No. 352 of 1973, on the file of III Additional Sub Court, Madurai, are the appellants.

2. Parties herein will be referred according to their rank in the suit.

3. Facts of the case may be summarised thus:

Late Venkatavaradha Iyengar, a leading lawyer of Madurai Bar, had two sons by name Parthasarathy Iyengar and Rajagopala Iyengar. Besides the sons, he had three daughters by name Renganayaki, Rajamani and Lakshmi Bai Ammal (first defendant in the suit). Under Exs.A-1 and A-2, late Venkatavaradha Iyengar had made certain arrangements for his grandchildren through his two elder daughters. He wanted to make similar provision to the first defendant. The arrangement which he made for the grandchildren through the daughters was by taking two documents executed by the daughters in the nature of a declaration of trust. On 29.11.1929, his elder daughters executed a declaration of trust in respect of the amount set apart by him for the benefit of those daughters and their children. He himself kept custody of the amounts and was improving them as Trustee. The elder daughters are no more and their children are in possession and enjoyment of the property which were purchased subsequently with the funds set apart by late Venkatavaradha Iyengar. In a similar way, he also set apart certain amounts to the first defendant and her children. Out of the sums

set apart for the appellant, Venkatavaradha Iyengar negotiated for the purchase of certain lands in Tamaraipatti Village for a sum of Rs. 12,300 and paid an advance of Rs. 3,000 to the vendor. But, before the transaction could be completed, he died. As per the intentions of the deceased, first defendant executed a deed of Declaration of Trust, evidenced by Ex.A-3, dated 25.5.1936. It provided that her mother should be the Trustee in respect of a sum of Rs. 15,000 and the first defendant must get interests or income from the properties which are likely to be purchased from the amount earmarked. Thereafter, under Ex.B-2, dated 29.6.1936, the sale deed was also executed which was already negotiated by her father and another property was also purchased in the name of the first defendant. As per the declaration of the trust, the mother continued to be the trustee for a long time. But, due to her old age, she could not continue the same, and the same was managed by the first defendant. The mother also surrendered possessions of the property to the first defendant. First defendant did not beget any children, and her husband also died in the year 1965. On the basis of the Declaration of Trust, she had only a right of enjoyment without power of alienation. While so, first defendant executed a cancellation deed on 8.7.1970, cancelling the declaration of trust. According to the plaintiff the said document is invalid under law, and the reasons given in that document for cancelling the Trust Deed are all false, imaginary and untenable. The statements in Ex.A-3 declaration of trust are all true. As per the provisions of the declaration of trust, her brother's children who are plaintiffs in this case, will be entitled to the property.

4. In the written statement filed by deceased first defendant, it was stated that the declaration of trust deed happened to be executed due to misrepresentation, fraud, coercion, etc. and the same was got executed at a time when she was in a depressed state of mind. Her father Venkatavaradha Iyengar had died only a few days before that, and she was completely upset, and taking advantage of her mental condition at that time, she signed certain documents without knowing the contents, It is also said that she was not in a position to understand and appreciate anything at that time, and under such circumstances, when her two brothers brought the Trust Deed for signature, she simply signed it without understanding the consequences. In fact, she had no knowledge regarding the recitals in the document and their implications. It is also stated that the signature might have been obtained when she was in a semi-conscious state and was hysteric which occurred to her on account of the death of her father. It is said that the document is void and therefore, cannot be relied on for any purpose. It is also said that litigations were pending between her and Parthasarathy Iyengar, her brother, and after coming to know about the fraud played on her, she cancelled, the same. It is her case that the cancellation is valid and the plaintiffs are not entitled to any reliefs as sought for.

5. The trial court took oral and documentary evidence. Exs.A-1 to A-21 were marked on the side of the plaintiff. Exs.B-1 and B-2 were marked on the side of the defendants. First plaintiff got herself examined as P.W.1 and two other

witness. First defendant examined herself as D.W.1.

6. The trial court came to the conclusion that there is a valid declaration of trust. Ex.A-3 was voluntarily executed by first defendant. The cancellation Deed executed by her under Ex.B-1 is invalid and the suit was decreed as prayed for.

7. The various circumstances mentioned in the cancellation deed were all found to be not correct and it was found that it was only because of the strained relationship between the brother and sister, she happened to execute Ex.B-1 cancellation. The suit was decreed as prayed for.

8. Aggrieved by the judgment, the first defendant preferred A.S.No. 179 of 1979, on the file of Additional District Judge, Madurai. The lower appellate court also confirmed all the findings of the trial court and dismissed the appeal with costs.

9. In the Second Appeal, at the time of admission, the following substantial questions of law were formulated for consideration:

(1) Whether Ex.A-3 created a valid trust?

(2) Whether the trust, if any, created binder Ex.A-3 continued to exist even after the beneficiary herself became the trustee under the terms of the document?

(3) Whether Ex.B-1, the deed of revocation, was not valid in law? and

(4) Whether the suit is maintainable without joining the other heirs of Parthasarathy Iyengar and Rajagopala Iyengar as parties to the suit?

10. On question No. 4 no argument was advanced by learned Counsel for the appellants.

11. The other three questions could be considered together and it may be stated that the only question argued by learned Counsel for the appellants was that there is no valid trust created and, therefore, the suit is not maintainable.

12. learned Counsel for the appellants contended that there is no Trustee with an express trust, and there is also no vesting which are essential for the creation of a trust. The reason for putting forward such a contention is that on the date when Ex.A-3 was executed, no property was purchased and even the funds were not in her possession. The funds which were in the form of Government Bonds were with her brother Parthasarathy Iyengar and they were not vested in her. The plaint schedule property was purchased within a period of 40 days after Ex.A-3 i.e., on 29.6.1936. The property was purchased in the name of the first defendant out of the funds stated in Ex.A-3. The question is, how far such a contention is valid.

13. In N. Suryanarayana Iyer's "The Indian Trust Act" - fourth Edition (1997) at page 98, the learned Author, while commenting on Section 5 of the Act, has said thus:

Trust in relation to movable property may be by vesting declaration. In England,

a vesting declaration in regard to personality has been held sufficient to constitute a trust. Thus, where the owner of a bond handed over a signed memorandum stating that he made over to the donee the amount of the bond it was held that there was valid declaration of trust though the bond itself was not handed over. Where a lady had left funds with her son and drew a cheque on him directing him to hold the proceeds on trust for wife and children it was held that there was a valid trust.

On the above principle where a person effected a transfer of shares held by him in a company to certain persons and orally directed them to hold them in trust for his grandchildren on the same terms as those contained in an earlier deed of settlement and, subsequently, the trustees made a declaration in writing of the trusts in which instrument the settler concurred, it was held that the document was not an assignment of an equitable interest so as to attract ad valorem stamp duty but was only a declaration of trust of personality.

We need only consider whether under Ex.A-3, there was declaration of trust, First defendant herself has admitted that even during the lifetime of her father, after due deliberation by him, she had, with his consent, entrusted the Government Bonds worth Rs. 11,000 with her elder brother Parthasarathy Iyengar, the value of the same on the date. Ex.A-3 amount to Rs. 12,000 and a ready cash of Rs. 3,000 totalling around Rs. 15,000 was in his (father's) custody as Trustee. She also declared that after the lifetime of her father, her mother shall continue to be the Trustee and on her death she will be the trustee for the children born to her. In case children are not born to her, she has declared that she will continue as a trustee for the heirs of her brothers. She also declared that she has no right to dispose of the same and her husband also will have no right over the said funds. It is clear from Ex.A-3 that late Venkatavaradha Iyengar had set apart certain funds for the benefit of the first defendant and her children and they were in the form of Government Bonds standing in the name of Parthasarathy Iyengar. Therefore, it cannot be said that there was no trust fund.

14. Within a few days after Ex.A-3, property was purchased in the name of the first defendant. It was by utilising the amount mentioned in Ex.A-3, that the property was purchased. A mortgage property was also acquired out of those funds, and for the balance, a property mortgaged was also acquired. Ex.A-8 proves the Same. Ex.A-8 is an account whereby Parthasarathy Iyengar (first defendant's brother) gives the entire details of the account to the first defendant, which is the subject matter of the Trust.

15. It was further argued by learned Counsel for the appellant that, in fact, there was no appointment of Trustee. That statement also may not be correct. When the first defendant herself admitted that the amount has been set apart for their use, i.e., for her and her children, by her father, the father becomes a Trustee. Even though the Bond stood in the name of Parthasarathy Iyengar, he did not claim any right over it, and by virtue of settlement of accounts Ex.A-8 and subsequent purchase of property under Ex.B-2, he also agrees that the amount

was set apart by their father for the benefit of the first defendant and her children. Apart from these, first defendant herself was holding the property as a trustee is evident from Ex.A-12, a receipt executed by her. According to me, if Ex.A-12 is admitted, first defendant cannot contend that she is not a Trustee. Relevant portion of Ex.A-12 (which is in Tamil) reads thus:

Even though the first defendant made an attempt to disown it both the courts below have found that it was voluntarily executed by her, and learned Counsel for appellants before this Court also did not put forward any argument challenging Ex.A-12, It may also be noted that on settlement of accounts, amount was. due to the first defendant from Parthasarathy Iyengar. He was not in a position to pay the entire amount and therefore, he had to execute a promissory note in favour of first defendant a collateral agreement was executed by first defendant stating that she will not demand the amount for a period of three years. Parthasarathy Iyengar was not in position to pay the amount within that period. First defendant filed a suit against Parthasarathy Iyengar for recovery of the amount and she even brought the personal properties of Parthasarathy Iyengar for sale. Under these circumstances, it can never be said that Ex.A-3 was not acted upon and the declaration that she made at the time of Ex.A-3 is invalid, she obtained all the benefits that she could derive under Ex.A-3, She has also, by her conduct, admitted that she is a trustee and she was holding the sums as such. Under the above circumstances, I do not think that the contention of the appellant that there is no valid trust under Ex.A-3 can be accepted. The questions of law 1 to 3 are, therefore, found against the appellants, and the Second Appeal is accordingly dismissed, however, without any order as to costs.