(1926) 08 PAT CK 0002

In the Patna High Court

Gopalcharjya Goswami APPELLANT

Vs

Bhim Kali Chaudhury and Others RESPONDENT

Date of Decision : 09-08-1926

Acts Referred:
Limitation Act, 1908 — Article 144, 134

Citation : AIR 1927 Patna 49

Hon'ble Judges : Machpherson, J;Adami, J

Bench : Full Bench

Judgement

Machpherson, J.—In this case the appellant is the plaintiff, described as the shebait of Sri Sri Keshab Rai Jiu Thakur whose suit failed in both the lower Courts. Briefly stated, the averments in the plaint were that the idol named held the villages of Gobindnagar and Kashibera as revenue-free debutter property and the plaintiff as shebait of the idol was in possession of all rights on his behalf. In 1860 a predecessor of the plaintiff made on behalf of the deity a mukarrari grant, with certain exceptions, of those two villages at a rental of Rs. 865. The ancestor of Defendant No. 1 subsequently purchased twelve annas of the mukarrari interest, while the other defendants are in possession of the remainder of that interest. The "grandfather" of the plaintiff made a gift of Rs. 50 of mukarrari rent to the ancestor of Defendant No. 1 by a kachha sanad of 1885 and the rent paid since then has been Rs. 815. The plaintiff''s cases is that the gift is ultra vires of the grantor and that he as the present shebait, is entitled to set it aside is being a breach of trust and not binding against the deity or the present Shebait, and he sought a declaration that he is entitled to realise Rs. 865 annually from the defendants from the date of the death of his "father" in 1917.

2. The suit was contested by Defendant No. 1 who besides his right in twelve annas is mortgagee of the remaining four annas of the mukarrari tenancy. He pleaded that the transfer was not by kachha sanad as alleged but that the reduction of rent was in consideration of a loan of Rs. 1,000, and he also pleaded limitation. The first Court held that the grant was a mahatran one, that is to say,

a grant to a non-Brahman for services, and was for valuable consideration, as pleaded by Defendant No. 1, and that the suit was accordingly barred under Article 134 of the Limitation Act. Incidentally it transpired that the grantor must have been dead in 1894 when the plaintiff''s "father" as shebait granted a usufructuary mortgage of Rs. 600 of the reduced rent of Rs. 815 to relatives of the contesting defendant.

3. In appeal by the plaintiff it was held by the learned. Subordinate Judge that a grant for valuable consideration was not established and, therefore, Article 134 of the Indian Limitation Act, 1908, was not applicable. But he upheld the contention that the suit was barred under Article 144 of that Act, because, as the plaint recites, the property in suit was in the idol, a juridical person, and not in the shebait and, that being the case,

the alienation to the defendant''s ancestor cannot but be taken to be a direct challenge to the title of the idol and the possession of defendant''s ancestor must be taken to have been adverse from the date of the alienation.

He relied upon Damodar Das v. Lakhan Das [1910] 37 Cal. 885 and Ramrup Gir v. Lal Chand Marwari AIR 1922 Pat 243.

4. In support of the present appeal Mr. Sushil Madhab Mullick contends, first, that no question of limitation arises since there is nothing but an agreement which must be void, to pay Rs. 50 a year out of the funds of the idol, and secondly, that if the law of limitation applies, the case is governed by Vidya Varuthi Thirtha v. Balusami Ayyar AIR 1922 P.C. 123, and limitation starts from the death in 1917 of the plaintiff''s immediate predecessor as she-bait. On behalf of the opposite party Mr. A.K. Boy supports the finding of the learned Subordinate Judge and relies upon the cases cited by the lower appellate Court, and the recent decision of this Court, in Badri Narayan Singh v. Kailash Gir AIR 1926 Pat. 239, and he would further distinguish the grant in Vidya Varuthi''i case AIR 1922 P.C. 123 from the present one by the fact that the former was a lease which could be renewed by the intervening mahant, whereas the alienation in this case was a gift or otherwise without consideration and, therefore, not capable of renewal.

5. The first plea on behalf of the appellant does not appear to be sound. What the plaintiff seeks to recover is distinctly an interest in immovable property such as is contemplated by Article 144 of the Limitation Act. It is a grant of the patni at a reduced rent.

The main contest is as to the date from which limitation commences. There is no dispute that the suit is barred if limitation commenced from the date of alienation in 1885 or the date of the death of the alienating shebait which occurred before 1895, and that it must succeed if, as plaintiff contends, each succeeding shebait acquires a fresh start for the purpose of limitation to bring a suit to set aside an invalid grant of debutter property made by a former shebait. In short the point at issue is what their Lordships of the Judicial Committee in Lal Chand Marwari v.

Ramrup Gir AIR 1926 P.C. 9 describe as

the important and difficult question whether the case is governed by the decision of which Damodhar Das v. Lakhan Das [1910] 37 Cal. 885 may be taken as the leading authority or by the line of authority of which Vidya Varuthi Thirtha v. Balusami Ayyar AIR 1922 P.C. 123 may be said to be typical.

Now these two decisions of the Judicial Committee have been considered by this Court on two occasions. In Ramrup Gir v. Lal Chand Marwari AIR 1922 Pat 243 the distinction was held to be

where the property is vested in the juridical person, as it was in Damodhar Das''s case [1910] 37 Cal. 885 and the mahant is only the representative and manager of the idol, the act of alienation is a direct challenge upon the title of the idol, and the idol or the manager of the idol, on behalf of the idol, must bring the suit within twelve years from the date of the alienation. But where the title is in the mahant or the shebait, as it was in the two other cases to which I have referred [the second case Abhiram Gosswami v. Shyama Charan Nandi [1909] 36 Cal. 1003 the act of alienation is not a challenge upon the title of the idol, though the property may be endowed in the Sense that its income has to be appropriated to the purposes of the endowment, and there is no adverse possession so long as the person making the alienation is alive, and the possession of the defendant becomes adverse to the plaintiffs only when a new title has come into existence capable of maintaining the suit and which has not approved of or acquiesced in the alienation.

6. The learned Judges (Das and Bucknill, JJ.) further held that in the case under decision the title to the property was in the Mahant as it was in Vidya Varuthi''s case AIR 1922 P.C. 123 and that limitation commenced from the date of the death of the predecessor of the plaintiff Ramrup Gir. If that distinction is accepted the present suit is barred since here, as in the case of Damodhar Das [1910] 37 Cal. 885, the debutter property is vested in the legal entity, the idol, and the shebait does not acquire a fresh start for limitation from his own accession to the managership of the idol.

But it is urged that the view expressed in Ramrup Gir v. Lal Chand Marwari AIR 1922 Pat 248 was overruled by their Lordships of the Judicial Committee in Lal Chand Marwari v. Ramrup Gir AIR 1926 P.C. 9. In fact, however, their Lordships set aside the decision of this Court on the view that the suit of Ramrup Gir was barred by limitation under Article 144 whether limitation started from the date of alienation by his predecessor or from the date of the death of his predecessor, inasmuch as plaintiff had failed to show that it had been brought within twelve years of the latter of the two dates, and their Lordships expressly kept the important and difficult question entirely open, to be determined when it arises. The authority of the decision of this Court is therefore, unimpaired.

7. Mr. S.M. Mullick then asks us to dissent from the view exressed in Ramrup Gir v. Lal Chand Marwari AIR 1922 Pat 243 as to the distinction drawn between the

case of Damodhar Das v. Lakhan Das [1910] 37 Cal. 885 and that of Vidya Varuthi Thirtha v. Balusami Ayyar AIR 1922 P.C. 123. As at present advised, I am unable to accede. He has failed to show what other distinction exists, and the view that the two cases are in direct conflict ought not to be lightly accepted. It is not denied that in the oases of Abhiram Goswami v. Shyama Charan Nandi AIR 1926 Pat. 239, Vidya Varuthi Thirtha v. Balusami Ayyar AIR 1922 P.C. 123, and Ramrup Gir v. Lal Chand Marwari AIR 1922 Pat 243 the grant was to the Mahant though for the purposes of the math, while in the case of Damodhar Das v. Lakhan Das [1910] 37 Cal. 885 the grant was to the idol; and that constitutes a distinction in the facts on which their Lordships may well have based the distinction in respect of the start of limitation.

8. But it is not necessary in this appeal to rely upon Ramrup Gir v. Lal Chand Marwari AIR 1922 Pat 243. A case quite indistinguishable in material features from the present came before a Division Bench of this Court (Mullick and Kulwant Sahay, JJ.) recently in Badri Narayan Singh v. Kailash Gir AIR 1926 Pat. 239. There the facts were that an alienation without legal necessity of property endowed to the math had been made in 1894 by Mahanth No. 1, and in 1921 Mahant No. 4 who had succeeded after Mahant Nos. 2 and 3 sued to set it aside. The Munsif held that defendant was in adverse possession from the date of the death of Mahant No. 1 and dismissed the suit. The Subordinate Judge decreed the plaintiff''s appeal holding that the Mahant for the time being was a tenant for life, and any alienation which was not for the benefit of the math was valid during his lifetime, and that if the successor of the vendor did not sue the purchaser for more than twelve years, he would be barred only for the period that he remained the Mahant of the math, and that after him his successor would have a fresh start of limitation from the time of the death of his predecessor. He accordingly held that as the suit was brought within twelve years of the death of Mahant No. 3, the plaintiff''s immediate predecessor, the suit was not barred by limitation.

9. In second appeal the learned Judges of this Court negatived the view of the appellate Court relying on Vidya Varuthi''s AIR 1922 P.C. 123, and held on a consideration of Nilmony Singh v. Jagabandhu Roy [1896] 23 Cal. 536; Damodhar Das v. Lakhan Das [1910] 37 Cal. 885 and Madhu Sudan Mandal v. Radhika Prosad Das [1912] 17 C.W.N. 873, that each succeeding mahant does not acquire a fresh start of limitation from the date of his succession as Mahant and that the possession of the transferee became adverse to the institution from the date of the unwarranted transfer, or at any rate from the date of the death of the alien or and accordingly decreed the appeal, The attention of the Court had been drawn to Vidya Varuthi''s case AIR 1922 P.C. 123, and it is clear that in their view the law as to limitation applicable to the circumstances was not as there laid down, but as laid down in Damodhar Das v. Lakhan Das [1910] 37 Cal. 885. In fact that is the settled view of this Court. It is remarkable that with the exception of Vidya Varuthi''s case AIR 1922 P.C. 123 all the cases cited arose in this Province or in an adjoining district where conditions are similar.

10. Mention may be made of the recent decision of the Allahabad High Court in Chitar Mal Vs. Panchu Lal and Others, , where it was held following Damodhar Das v. Lakhan Das [1910] 37 Cal. 885, and Jagadindra Nath Roy v. Hemanta Kumari Debi [1905] 32 Cal. 129, that property can be acquired as against an idol by adverse possession and the idol doss not suffer from any disability u/s 7 of the Limitation Act.

11. In my opinion the decision under appeal is right and I would dismiss this appeal with costs.

Adami, J.

I agree.

