

(1958) 09 AP CK 0001

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 175 of 1956

Kanteti Sastrulu

APPELLANT

Vs

Madupalli Venkateswara Rao

RESPONDENT

Date of Decision : 18-09-1958

Acts Referred:

Guardians and Wards Act, 1890 — Section 7

Citation : AIR 1959 AP 232

Hon'ble Judges : P. Chandra Reddy, C.J.; Srinivasachari, J.; Satyanarayana Raju, J

Bench : Full Bench

Advocate : N. Rajeswararao, for the Appellant; C. Mallikharjunarao, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—The question referred to the Full Bench is whether a Court can appoint a guardian to a minor in respect of trust properties.

2. The circumstances under which this revision petition arises are these. One Kantheti Anjaneyulu founded "Anjanoya Dasa Sri Ramanuja Kootam", endowed some properties to the institution and constituted himself a trustee. Under the settlement deed making the endowment, he made a provision that the trusteeship should vest in his family hereditarily. Under the same instrument, the founder appointed the present petitioner the guardian of his minor son to manage the trust properties.

Alleging that the present petitioner was misappropriating the income from the institution and mismanaging its affairs, the present respondent (a close relation) moved the District Court, Krishna, u/s 39 of the Guardians and Wards Act for removal of the petitioner and to appoint a fit and proper person "as the guardian for the minor hereditary trustee" and for other incidental reliefs.

3. A preliminary objection was taken to the maintainability of that petition on the ground that the properties to be managed by the guardian did not belong to the

minor. The objection was overruled by the District Judge who thought that the petition was sustainable and that it was competent for the court to go into the merits of the petition. This revision petition is against the order of the District Judge on the preliminary issue.

4. It is contended by Sri Rajeswararao, counsel for the petitioner on the authority of Venkatachalapathi Aiyar v. T.S. Pandara Sannadhi, 6 M LW 637: (AIR 1917 Mad 9); W.A. Varadachariar Vs. Raja Ramakrishnamba Garu and Others, and Kilby Vs. Musammatt Bahuria Sheoratan Kuar, , that no guardian could be appointed to a minor to manage trust properties, as trusteeship is not "property" within the purview of Section 7 of the Guardians and Wards Act. The argument proceeded that if such an appointment falls outside the scope of Section 7 of the aforesaid Act, no relief could be given to the respondent. The answer to this question turns upon the interpretation of Section 7 of the Act.

5. Section 7 of the Act in so far as it is relevant for the purpose of this enquiry recites :

"(1) Where the court is satisfied that it is for the welfare of a minor that an order should be made-

(a) appointing a guardian of his person or property or both, or

(b) declaring a person to be such a guardian, the court may make an order accordingly."

Section 39 of the Act provides for the removal of the guardian in certain contingencies.

6. The first thing that requires to be considered is whether the hereditary trusteeship of a temple or any religious institution is "property" which permits the appointment of a guardian. If the right of making an institution hereditarily is "property" the terms of Section 7 are fulfilled and it would well be within the competence of a court to appoint a guardian. On the other hand, if the expression "property" is not comprehensive enough to embrace the hereditary trusteeship, it falls outside that section.

7. In 6 M LW 637: (AIR 1917 Mad 9), it was laid down that it was not competent to District Court acting u/s 7 of the Guardians and Wards Act to appoint a guardian in respect of properties vested in a trustee.

There, during the minority of the plaintiff, the court, purporting to act under that section, appointed one Thambiran as the guardian of the person and property of the minor plaintiff. The guardian obtained sanction of the Court u/s 29 to sell some of the properties of the mutt. On attaining majority, the Pandaram Sannadhi sued to set aside the sales and that suit was decreed by the trial court.

In the second appeal by the aggrieved alienees, it was observed that the order of the District Court appointing a trust guardian and the proceedings taken thereunder were wholly without jurisdiction. There was no discussion as to why

Section 7 was inapplicable to the case of a minor beyond a statement that the properties in suit were trust properties and consequently under the section, no guardian should have been appointed.

8. In *W.A. Varadachariar Vs. Raja Ramakrishnamba Garu and Others*, , the Bench consisting of Spencer and Venkatasubba Rao JJ., was dealing only with Section 59 of the Madras Court of Wards Act (Madras Act I of 1902) which had reference only to property of which the minor was the owner. That section postulated that the title to the property should vest in the ward. Consequently, the scope of the expression "property" had a limited significance there.

The answer to the point involved in that case depended upon the interpretation of the word "property" in Section 59 of the Court of Wards Act. Still, Spencer J., observed, in the course of the judgment, that the Guardians and Wards Act contains no provision empowering the guardian appointed under the Act to deal with trust properties and stated that for that proposition there was good authority in 6 MLW 637: (AIR 1917 Mad 9), and *Kilby Vs. Musammat Bahuria Sheoratan Kuar*, . There was no independent consideration of the provisions of Section 7 of the Guardians and Wards Act. The other learned Judge had observed that this proposition was conceded.

9. *Kilby Vs. Musammat Bahuria Sheoratan Kuar*, , is of the same description. The learned Judges merely applied the decision in 6 M LW 6 37: (AIR 1917 Mad 9). We cannot derive much assistance from the judgment in 6 M LW 637: (AIR 1917 Mad 9), as there is no indication in the judgment as to the reasons that induced the learned Judges to take the view they did.

We feel that the principle enunciated in 6 M LW 637: (AIR 1917 Mad 9), which has been referred to in *W.A. Varadachariar Vs. Raja Ramakrishnamba Garu and Others*, and followed in AIR 1922 Pat 527, docs not embody the correct law.

10. In our judgment, the term "property" in Section 7 of the Guardians and Wards Act is used in a generic sense. It has a wide connotation and is not restricted to the kind of property in which the minor has a beneficial enjoyment. A guardian could be appointed to a minor irrespective of the nature of the property. The section seems to contemplate appointment of guardians to minors in regard to all types of property.

We do not think that the enjoyment is an essential element to constitute "property" within the purview of the Act. He need not own it or hold any interest therein by virtue of title. The office of hereditary trusteeship is recognised as "property" for certain purposes by the Hindu Law.

11. There are a number of decided cases which afford certain guidance for the solution of the problem that presents itself here. Before we examine them, we may notice the definition of the word "property" in Stroud's Judicial Dictionary (Third edition). It is defined thus:

" "property" is the generic term for all that a person has dominion over. Its two

leading divisions are (1) real, and (2) personal;

"Property" is the most comprehensive of all terms which can be used, inasmuch as it is indicative and descriptive of every possible interest which the party can have."

There is also a short passage which throws considerable light on this issue in *The Constitutional Law of the United States* by Willis at page 815. It reads thus:

"What property may be taken by the power of eminent domain? In general it may be said that any and all property may be taken. Land, buildings, water, an easement as distinguished from general property, a contract, and a franchise may be taken"

Thus, the word "property" is a term of far-reaching conception. It is comprehensive enough to take in all types of proprietary rights.

12. Turning now to the judicial opinion, we will first advert to the decision in *Umayal Achi v. Lakshmi Achi*, 1945-1 Mad LJ 108: (AIR 1945 FC 25). There, the Federal Court had to deal with the validity of the Hindu Women's Rights to Property Act (XVIII of 1937). One of the questions raised before that court related to the claim of a widow to succeed to trusteeship held by the deceased in regard to several religious and charitable trusts. In negating that claim on the ground that Act XVIII of 1937 was intended to apply only to property beneficially owned by the propositus and not to anything in the nature of a trusteeship, Varadachariar J., remarked:

"The Hindu Law has no doubt regarded trusteeship as "property" for certain purposes and it has long been established that the title to the management of religious and charitable trusts follows the line of inheritance from the founder, where no other arrangement has been made therefor. In the present case, we have little or no evidence as to the terms of the foundation in respect of any of the trusts managed by the deceased."

The next ruling to be noticed is *Angurbala Mullick Vs. Debabrata Mullick*, . Here again, the provisions of the Hindu Women's Rights to Property Act (XVIII of 1937) formed the subject matter of the appeal. The main controversy centred round the point as to whether a widow after the death of her husband was entitled to act as a shebait of an idol.

The decision on that issue has to be reached with reference to the meaning to be given to the word "Shebait". The Supreme Court in upholding the claim of the widow, observed as follows:

"But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as a mere office. The shebait has not only duties to discharge in connection with the endowment, but he has beneficial interest in the debutter property.

As the Judicial Committee observed in the above case, in almost all such

endowments the shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right."

In another part of the judgment, Mukherjea J. (as he then was) who spoke for the court observed that there was nothing in any of the provisions of that Act (XVIII of 1937) from which an inference could be drawn that the expression "property" as used therein had a limited or restricted interpretation which was not applicable to shebaitship and which was recognised as property in Hindu Law.

13. We may also allude to a judgment of a Full Bench of the Calcutta High Court in *Manohar Mukherji v. Bhupendranath Mukherji*, ILR 60 Cal 452: (AIR 1932 Cal 791) , which discussed elaborately the legal position of a shebait and decided that "shebait" by itself was property.

This proposition was accepted as correct by the Privy Council in AIR 1936 318 (Privy Council) It was ruled by the Judicial Committee that one of the principles laid down in the Tagore case (*Juttendra Mohan Tagore v. Ganendra Mohan Tagore*), IA Sup 47 (PC), namely, that all estates of inheritance created by gift or will, so far as they are inconsistent with the general law of inheritance are void as such, applied to the succession to shebaitship.

14. Seven years later, the Judicial Committee reiterated this rule in *Bhabatarini Debi v. Ashalata Debi* AIR 1943 89 (Privy Council) Referring to AIR 1936 318 (Privy Council) their Lordships said that that decision emphasised the proprietary element in shebaiti right.

15. In much the same terms as in *Angurbala Mullick Vs. Debabrata Mullick*, , is the rule stated in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . The Supreme Court had to examine the legality of a scheme settled under The Madras Hindu Religious and Charitable Endowments Act 1951 (Madras Act XIX of 1951) in connection with the Sri Shirur Mutt which, it was complained, interfered with the rights of the Mathadhipati.

In doing so, they had to consider the nature of the office of the Mathadipathi. Mukherjea J., gave effect to the contention that the office of Mathadhipati was "property" within the scope of Article 19(1)(f) of the Constitution since, in his view, that word was capable of a liberal and wide connotation and should be extended to all well-recognised types of interest which had the insignia or characteristics of proprietary right. Thus, this judgment also emphasises the notion that the office of shebait or mathadhipati falls within the range of the term "property".

16. We are well aware of the distinction between the office of a shebait and of Mahant who has some personal or beneficial interest in the endowment attached

to the institution, on the one hand and that of a Dharmakarta or a trustee. It was this distinction that was pointed out by their Lordships of the Privy Council in *Srinivasa Chariar v. Evalappa Mudliar*, ILR 45 Mad 565: (AIR 1922 PC 325), and which induced Bhimasankaram J., in *Sitharamamma v. Dy. Commissioner H.R. and C.E., Masulipatam*, 1958 A LT 143: (AIR 1958 AP 319), to doubt the correctness of the observations made by a Bench of the Madras High Court in *Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another*, , which will be dealt with presently.

17. Normally a Dharmakarthas of a temple has no beneficial enjoyment in the endowment attached to that institution. This however, is not of much consequence, having regard to the statement of law in *Angurbala Mullick Vs. Debabrata Mullick*, , that even where no emoluments are attached to the office of shebait he enjoys some sort of right or interest in the endowed property, which partially at least has the character of a proprietary right. This difference does not have the effect of cutting down the content of the expression "property".

18. This view of ours gains considerable support from some of the decided cases. In *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others*, which went up in appeal to the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . Satyanarayana Rao J., who delivered the judgment of the court, remarked that the Matadhipati was not a bare trustee but occupied a peculiar position and had beneficial ownership to some extent in the property and its income.

"Even in the case of a dharmakarthas or the manager of a temple, there may be instances where such a dharmakarthas is not merely a manager but also has beneficial interest in the property.

If there be however an instance where the dharmakarthas has no beneficial interest of any sort but is a mere manager with hereditary rights, there is no reason to exclude such a hereditary right of management even from the scope of property."

So, although no final opinion was expressed by the learned Judge, he was prepared to extend the scope of that expression to the hereditary office of a trustee. It is true the precise legal position of these offices cannot be defined, yet there can be little doubt in our view that they amount to "property" which is capable of being safeguarded. We would like to make it clear that we are not concerned here with a non-hereditary trusteeship and the considerations pointed out above have reference only to the hereditary trusteeship or the Dharmakarthaship.

19. The principle enunciated above was reiterated by a Bench of the Court in *Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another*, , to which we had occasion to advert earlier. Rajamannar C. J. and Venkatarama Ayyar J., after extracting the passage in the decision of the

Supreme Court in Angurbala Mullick Vs. Debabrata Mullick, , which we have set out above, added:

"Thus there is ample authority for the view that trusteeship, where hereditary, is in the nature of property."

They also accepted the correctness of the position indicated by Satyanarayana Rao J., in the Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others, .

20. This view found favour with the Travancore and Cochin High Court and expression was given to it in Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another, . It was held therein, following the decision in Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of Madras and Another, , that the hereditary trusteeship was within the protection afforded by Article 19(1)(f) of the Constitution notwithstanding that no emoluments were attached to the office. This was approved of by a Full Bench of the same High Court in Nambooripad v. Cochin Devaswom Board, AIR 1956 TC 19 .

21. We may here notice a judgment of the Allahabad High Court in Khatun Begam v. Ejaz Ahmad, ILR 39 All 288: (AIR 1917 All 365), as laying down that it was competent to the District Judge to appoint a person to perform the duties of the Mutawalli during the minority of the minor son of the founder of a waqf.

22. On a consideration of the general principles and the authorities noticed above, we have reached the conclusion that the hereditary trusteeship of a religious institution constitutes "property" within the ambit of Section 7 of the Guardians and Wards Act and there is no warrant for giving a narrow and restricted interpretation to the expression "property" occurring in that section.

If the argument of the petitioner is to prevail, a minor could not be a hereditary trustee since he could not function without a guardian. This is running counter to the theory that the office of hereditary trustee follows the line of succession. This principle is embedded in Hindu Law and judicial recognition has been given to it. So it could not have been the intention of the Legislature to exclude minors from that office.

We have to give a reasonable interpretation to that section, so as to harmonise it with concepts of Hindu Law in that behalf. Surely, if the case is governed by Section 7 of the Guardians and Wards Act, Section 39 of the Act is attracted to it and it is competent for the District Court to appoint a guardian to a minor in regard to trust properties and to apply Section 39 of the Act as and when the situation justifies it. No other point arises for our consideration at present. The question referred to us is answered accordingly.

23. In the result, the Civil Revision Petition is dismissed with costs, which we fix at Rs. 100/-.