(1967) 04 AP CK 0001

In the Andhra Pradesh High Court

Case No : Second Appeal No''s. 412, 471 and 731 of 1963

Kerla Ankamma Devasthanam Vinnakota APPELLANT

Vs

Manikonda Venkata Ratnama and Others RESPONDENT

Date of Decision : 11-04-1967

Acts Referred:
Limitation Act, 1908 — Article 134, 134B, 142, 144

Citation : AIR 1969 AP 13

Hon'ble Judges : Obul Reddi, J

Bench : Single Bench

Advocate : I. Baliah, for the Appellant; K. Chalapathi Rao, for the Respondent

Judgement

1. The sole question that arises for consideration in these second appeals is when does limitation start to run in case where a trustee alienates the property of the temple or the deity.

2. To appreciate the point involved in these second appeals, it may be necessary to state the relevant facts. The plaintiff (appellant) laid three connected suits O. S. 1/59, O. S. 33/59 and O. S. 34/59 in the Court of the District Munsif, Gudivada for recovery of the temple lands which are in the possession of the defendants. The case of the plaintiff in all the three suits is that the lands in question belonged to the temple and the previous trustees described as ''Maikonda family'' were in possession of the suit lands of the temple on behalf of the temple and were utilising the net income derived from the lands for Dhoopa Deepa Naivedyam and for other festivals concerning the temple. While acting as hereditary trustee the members of the Manikonda family some of whom are now defendants, alienated the properties to the defendants on the ground that the lands were their own private property. They were alienated under three sale deeds (1) Ext. B-6 dated 5-3-1942, (2) Ext. B-8 dated 29-3-45, (3) Ext. B-11 dated 31-8-42 The alienations are admitted by the defendants. But, their case is that the properties do not belong to the temple but were the private properties of the trustees in Manikonda people, and as such the temple is not entitled to

recover possession of the property from them as the temple had no title to or possession of these lands. The defendants also raised the question that the suits are barred by limitation for the reason that their predecessors-in-title had perfected their title by adverse possession.

3. The trial Court framed several issues the relevant issue being issue No. 3 ''whether the defendants perfected their title to the suit property by adverse possession." On a consideration of the evidence placed before the trial court, it found on the principal issues that the suit property was endowed to the temple, that the members of the Manikonda family were the hereditary trustees in possession and management of the properties on behalf of the temple, that they had no right to alienate the property and that the defendants had not perfected their title by adverse possession and therefore decreed the suits of the plaintiff. It is against this decree that the defendants preferred appeals and the Subordinate Judge allowed the appeals A. W. Nos. 22/61, 23/61 and 61/61 on the sole ground that the suits were barred by limitation as they were not filed within 12 years after the respective dates of alienation. The three suits were filed on 8-7-58 and the alienations in respect of the three properties in question concerning the three suits were on 5-3-42, 29-3-45 and 31-8-42 respectively.

4. The plaintiff was appointed as the trustee by the Endowments Department on 10-4-57 and he laid these three suits on 8-7-58. Therefore, the question is whether these suits are time-barred as found by the lower Appellate Court having regard to the dates of alienation. It is not in dispute that the members of Manikonda family were the hereditary trustees managing the temple properties and utilising the income deprived from the properties for Dhoopa Deepa Naivedyam and for the festivals of the temple. Prior to the appointment of the plaintiff, the members of the Manikonda family were either the hereditary or de facto trustees and they ceased to act as trustees only with effect from 10-4-57 when the plaintiff took over charge as the trustees of the temple. The finding of both the Courts below is that the members of the Manikonda family were either dharmakartas or hereditary trustees of the temple till the plaintiff took over charge. The trial Court has also given a finding that "it is needless to say that a trustee, whether he is de son tort or a regular trustee or any person in management of endowed property, cannot prescribe hostile title adverse to the deity in whatever manner he treated the property."

5. Mr. Baliah, the learned counsel appearing for the appellant (plaintiff) contended that Article 134-B of the Limitation Act is the relevant article applicable to this case and that the suits are not barred by limitation. Mr. K. Chalapathi Rao, the learned counsel appearing for the respondents, contended that Article 144 is the relevant article and not Article 134-B of the Limitation Act. It is necessary to extract both the articles.

6. Article 134-B of the Limitation Act runs in the following terms:-

134-B. By the manager of a Hindu Muhammedan Twelve Years The death, resignation or Buddhist religious or charitable endowment to removal of the transferor. recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.

Article 144 reads as follows:

144. For possession of immovable property or any Twelve years. When the possession of interest therein not hereby otherwise specially provided for. the defendant becomes adverse to the plaintiff.

Therefore, the question is whether the starting point of limitation runs from the date of alienation or from the date when the plaintiff took over as the trustee of the temple.

7. The Madras High Court in Palaniyandi Malavarayan v. Vadamalai Odayan, 2 M LW 723 : (AIR 1916 Mad 1001 (1), held that it is a recognised principle of law that the statute of limitation would not run where there is no person competent to sue. Bakewell and Phillips. JJ., in Manikkam Pillai v. Thanikachalam Pillai, 4 MLW 369 (AIR 1917 Mad 706(1), dealing with case where title was pleased by adverse possession, held that "since there was no properly constituted trustees of the plaintiff temple till 1900, and there was therefore, no person with knowledge of the acts of the dependents or capable of taking the necessary steps for the protection of the plaint properties, adverse possession commenced to run only from the year 1900 when the trustees were appointed and that the present suit of 1911 was not barred by limitation." A Full Bench of the Madras High Court per majority in Venkateswara v. Venkatesa, AIR 1941 Mad 449 , held that "where a manager of a Hindu religious institution makes an alienation of the property of the institution for valuable consideration and the succeeding manager seeks to impeach that alienation by suit, Art. 134-B, and not Art. 144, applies even when there is an interval of time between the death, resignation or removal of the previous manager and the election or appointment of the subsequent manager. Even if Art. 144 does apply, the date of the starting point of adverse possession in such a case is the date of the death, resignation or removal of the manager who effected the alienation. and not the date of election or the appointment of his successor." The lower Appellate Court relied upon a decision of the Madras High Court is S.K. Venkatasubramania Ayyar and Others Vs. S. Sivagurunatha Chettiar and Others, where it is held:

"Adverse possession of an alienee dates from the moment the alienee is without lawful title. That time is, in the case of a void transfer, the date of the transfer in the case of a voidable transfer the date of the avoidance and in the case of the transfer effective for a period (whether because of estoppel or otherwise) the date of the termination of the period.

A trustee of a choultry alienated property belonging to the choultry as his own. He did not purport to pass title as manager of the choultry:

Held, that the alienation was ab initio and possession of the alienee became adverse from the date of the alienation and not from the death of the trustee."

It is on the basis of this ruling that the lower Appellate Court held that the starting point of limitation is the date of alienation and not the date of removal or the date when the new trustee took charge. This is not a decision rendered under Article 134-B of the Limitation Act and the Full Bench of the Madras High Court referred to above is binding as the question referred to the Full Bench was when does the starting point of limitation begin under Articles 134-B and 144 of the Limitation Act." The Supreme Court in Sree Sree Ishwar Sridhar Jew Vs. Sushila Bala Dasi and Others, , dealing with a case of adverse possession held:

"If a she bail by acting contrary to the terms of this appointment or in breach of his duty as such shebait could claim adverse possession of the dedicated property against the idol, it would be putting a premium on dishonesty and breach of duty on his part and no property which is dedicated to an idol would ever be safe. The shebait for the time being is the only person competent to safeguard the interests of the idol, his possession of the idol whose shebait he is and no dealing of his with property dedicated to the idol could afford the basis of a claim by him for adverse possession against the idol."

Therefore, there is no doubt from what is laid by the supreme Court that if a trustee acting contrary to the terms of his appointment or in breach of his duty as the trustee could claim the dedicated property against the idol, it would be certainly putting a premium on dishonesty and breach of duty on his part and no property which is dedicated to an idol would ever be safe. The trustee is a person appointed to safeguard the properties and interests of the temple and he is in possession of the property on behalf of the temple and, therefore, no claim can be made by him hostile to the interests or title of the temple. A trustee, as long as he continues to act as a trustee, cannot claim adverse possession against the temple. Therefore, having regard to the Full Bench decision of the Madras High Court referred to above, there is absolutely no doubt that it is Art. 134-B that applies and the limitation starts from the date of the removal of the previous trustees viz. the members of the Manikonda family. IN this case as has been found by the lower Appellate Court, the members of the Manikonda family were trustees till the appointment of the plaintiff, and therefore, the limitation begins to run only from the date when a regularly appointed trustee takes charge and the plaintiff has taken charge on 10-4-1957 and file the suits on 8-7-1958. Therefore, the suits are within time.

8. In the result, the finding of the lower Appellate Court in the three concerned suits that they are barred by limitation is reversed. The judgment and the decree of the lower Appellate Court are, therefore, set aside and the appeals are allowed and the suits are decreed as prayed for with costs here and in the lower Appellate Court.

9. Appeals allowed.

