

(1924) 03 MAD CK 0014
In the Madras High Court

Kothandaramasami Naidu

APPELLANT

Vs

Pappammal

RESPONDENT

Date of Decision : 04-03-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48

Citation : 79 Ind. Cas. 891

Hon'ble Judges : Phillips, J;Odgers, J

Bench : Division Bench

Judgement

Odgers, J.—One T.M. Narayanaswami Naidu died in 1889 or thereabouts leaving a will whereby he constituted a certain religious trust

called Ramanujamatam and appointed three trustees to manage it. These trustees died and the appellant before us applied for and obtained on

26th September 1894. Letters of Administration with fee will annexed to the estate of Narayanaswami Naidu. From 1894, the appellant was in

management of the trust and in 1912 by O.S. 3 of that year, appellant's brother Lakshmiah sued appellant to produce the accounts of the trust and

for revocation of the Letters of Administration granted to him. This suit was compromised on 18th December 1912 and a decree passed in

pursuance thereof. It provided that plaintiff Lakshmiah should manage the trust properties for 2 years from 1st January 1913 and defendant for the

next two years.

They shall thus continue to manage the same alternatively in turns of 2 years each.

2. Lakshmiah died on 17th March 1917 without apparently recovering possession of the trust properties for his turn 1917 and 1918 from his

brother Narayanaswami Naidu. Lakshmiah left a will whereby he bequeathed to his widow and daughters-he had no male issues the right to his

turns in the management of the trust properties. The present application of 1922 is to execute the compromise decree of 1912 on behalf of the

widow of Lakshmiah who claims to come on to the record as legal representative of her deceased husband. This was allowed by the District Judge

and the brother-in-law Kothandaramsami Naidu appeals against this order.

3. Several points are raised. First, it is said that the right of management of trust property is not capable of devise or inheritance. It seems to me

that prima facie there might be a good deal to be said against both the validity of appellant's original position in 1894 and that of the compromise

decree. It is not easy to see how the possession of Letters of Administration to a deceased man's private estate can entitle the holder to become

trustee of property which the deceased had alienated in trust. Nor is it obvious, how, assuming that appellant's possession and management as

trustee were valid in 1912, he could legally consent to share that possession and management with another. It may be that the compromise decree

can be explained as an appointment of the brothers as alternate "trustees by the Court. But however, that may be, this is an application in execution

and it is not open to a party to question the validity of the decree which is binding on the parties to the suit till it is set aside, just as much as if it had

been passed after contest. Thiruvambala Desikar Gnana Sambanda Pandarasannadi Avergal and Another Vs. China Pandaram alias

Manikkavasaka Desikar (died) and Another, of., Raja Jaga Veera Rama Venkateswar Ettapa Nayakar Avergal, Zamindar of Ettyapuram Vs.

Chidambaram Chetty and Others, . It must be held then that Lakshmiah was validly in alternate possession and management of the trust properties.

In Janakee Debee v. Gopal Acharya 2 C.P 365 : 1 Ind. Jur. 737 : 1 Ind. Dec. (N.S.) 523 it was held that the succession to a Shebaitship had not

in that case followed the ordinary rules of Hindu Succession and that a Hindu widow could not succeed to the office as heir of her husband

without proof of special custom. This was affirmed by the Privy Council in Janaki DeU v. Gopal Acharya (4). No special custom has been proved

here but the history of this trust so far as it has gone would go to show that ordinary methods of devolution would apply to this office.

4. Otherwise, it is, as pointed out above, difficult to see how the grant of Letters of Administration carried the possession of the office to the appellant. As stated it is too late to contest the validity of this point of view and therefore, it must, I think, be held that Narayanaswami Naidu could legitimately leave his alternating right to the trusteeship to his widow. Further the respondent was, after her husband's death, sued by the appellant who claimed to succeed to Lakshmiah's properties by right of survivorship. He failed in the suit and also on appeal. On these grounds the District Judge is right when he says that objection to the respondent's right to be added as legal representative of Lakshmiah is overruled by that litigation and the question cannot be reopened in execution.

5. The second point raised by appellant is limitation. The date of the last execution petition was 1st September 1913 or much more than three years prior to the present one in 1922. It will be remembered that Lakshmiah was, under the compromise decree, entitled to possession for the years 1913, 1914, Narayanaswami Naidu being entitled for 1915 and 1916. It is stated in the present petition that appellant has been in possession since 1915. Reliance is placed on *Sabhanatha Dikshatar v. Subbu Lakshmi Ammal* 7M.P 80 : 2 Ind. Dec. (N.S.). That case followed an unreported case CM. S.A. No. 391 of 1879 set out in the footnote to the report. In the latter case the Court observed that in the Act of 1871 those decrees in which the right to execute does not wholly arise immediately but in part from time to time were not provided for. The reference is to the Limitation Act of that date which contained no reference to the corresponding section to the present Section 48 C.P.C. which covers payment or delivery at recurring periods and which is expressly referred to in Article 182 of the present Limitation Act. In C. M. Section A. No. 391 of 1879 the decree (for maintenance), provided for annual maintenance and the Court pointed out that in order to avoid limitation decree should declare specific dates on which payments were to be made and should not merely declare generally that payments were to be made annually. The question here is whether the decree directs payment to be made or delivery given at a certain date. I am of opinion that it does. The dates are specified. The first period of management is for 2 years from 1st January 1913, the other brother is to manage for the next two years,

and provision is made for alternate terms of 2 years each. The respondent's husband would have been entitled to his turn in 1921 and 1922 and in

my opinion a fresh application for execution is permissible within 3 years of any of the periods in which he was entitled to be in possession and

management of the trust properties. The case in *Subhanatha Dikahat v. Subba Lakshimam-mal* 7 M.P 80 : 2 Ind. Dec. (N.S.) 641 is thus clearly

distinguishable. If it be objected that Clause 7 of Article 182 does not apply as it refers only to payment, the answer is that the compromise decree

directs inter alia payment of the balance of funds in the hands of the outgoing trustee.

6. In my opinion the appeal fails on both these grounds and should be dismissed with costs.

Phillips, J.

7. I agree, but would like to add a few words with reference to *Sabhanatha v. Lakshmi* (5). The authority relied on there i. e., the decision in

O.M.S.A. No. 391 of 1879 was one governed by the Limitation Act of 1871. Article 182 in Schedule I of the present Limitation Act of 1920

excepts decrees provided for by Section 48 of the CPC whereas in the Act of 1871 there was no reference in the corresponding Article 167 to

any similar provision in the CPC then in force. On this ground also I think the case may be distinguished from the present case, and that possibly in

view of the change in the statute it may not be good law now.