

(1955) 12 MAD CK 0010
In the Madras High Court

Lakshmana Pillai

APPELLANT

Vs

Emakalaperumal Nadar (died) and Others

RESPONDENT

Date of Decision : 08-12-1955

Acts Referred:

Trusts Act, 1882 — Section 61

Citation : AIR 1956 Mad 399 : (1956) 69 LW 308 : (1956) 2 MLJ 109

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—The order of reference to the Bench, states the reasons which impelled the learned Judges who heard the case in the

first instance to place the matter before a Bench. As the whole case is before us we intend to deal with the question in its entirety. Valiavanda

Vinayagar temple mentioned in schedule 1 of the plaint as well as the properties described in schedules 2 and 3 thereunder belonged to the family

of the plaintiff and defendants 2 to 5 for which one Manikkavasagam Pillai was the huqdar and manager in 1934. Under Exhibit B-2 dated 1st

October, 1934, Manikkavasagam describing himself as the manager and huqdar of the temple and its properties and stating that he could not

manage the affairs of the temple properly and that his successors cannot perform the puja and other appurtenant rituals assigned away the huqdar

right and management of the temple and its properties to the first defendant for a consideration of Rs. 100. The document recites that as a result of

the assignment the first defendant is entitled to take the place of Manikkavasagam, become the huqdar of the temple and its properties and enjoy

the properties mentioned in the schedule to the document as huqdar by himself and his heirs from son to grandson hereditarily. The effect of this

document was to completely transfer the trusteeship of the temple, its properties and everything appertaining to the temple in favour of the first

defendant. Thereafter no vestige of any right remained in the transferor. The first defendant has been in possession of the temple properties,

managing them and has also been performing the pujas and other duties by stepping into the shoes of Manikkavasagam since then. Nearly three

years later Manikkavasagam died on 1st September, 1937. Had not Manikkavasagam transferred all his right in the temple and its properties

under Exhibit B-2 the next huqdar and manager would be his son who it is stated relinquished his hereditary right of huqdar and manager in favour

of the plaintiff who also was a member of the family of Manikkavasaga. There is no documentary evidence with regard to the relinquishment but it

is the case of the parties, and the second defendant who is the son of Manikkavasagam does not dispute Such a relinquishment.

2. Accordingly the plaintiff claims to recover possession of the temple properties and also the management of the temple from the first defendant on

the ground that Exhibit B-2 is invalid and not binding on the family and that as the cause of action for recovery of the properties and the right of

huqdar arose only after the death of Manikkavasagam, the suit brought on 29th June, 1949, is within time. The District Munsif accepted the plea of

tht plaintiff and decreed the suit holding that Exhibit B-2 is not valid, and that the suit having been filed within 12 years from the date of the death of

Manikkavasagam, viz., 1st September, 1937 - when the cause of action arose was within time relying upon Article 134-B of the Limitation Act.

He found following the decision in Venkateswara Sarma, styled Gnanasivacharia Swamigal, Matathipathi and Guru of Perur Mel Mutt, for himself

and on behalf of the Mutt Vs. S.N. Venkatesa Aiyar and Others, , that limitation can run only from the date of the death of Manikkavasagam and

not from the date of the transfer in 1934. On appeal, the learned District Judge Tirunelveli disagreeing with the District Munsif held that as the

transfer was void at its very inception the starting point limitation was the date of the transfer and since more than 12 years had elapsed from the

date of the transfer the suit was barred by limitation both as regards the recovery of the office of huqdar of the temple and the temple properties.

Hence this second appeal by the plaintiff.

3. Mr. T.M. Krishnaswami Ayyar for the plaintiff, appellant based his case in the following manner:

There can be no dispute that the transfer of the hereditary office of trusteeship is void at its very inception and as such, no title or right to hold it

passed to the transferee. But a transfer of properties belonging to a trust is not ab initio void but only voidable and the same would enure during the

lifetime of the trustee. Such being the case under Exhibit B-2 the alienee is enabled to hold the property in his possession during the lifetime of the

transferor. Though the transfer of the trusteeship is void the transferor still continues, as trustee. Therefore there is no transfer of trusteeship at all

but only transfer of the properties to recover which the period of limitation is 12 years from the date of the transfer. In other words learned

Counsel's argument is that despite Exhibit B-2, Manikkavasagarii continued to function as trustee of the temple though by that document he has

divested himself of his possession of the properties belonging to the temple. The document according to the learned Counsel, should be dissected

in that manner and only that portion of it which could be interpreted as legally capable of taking effect should be considered to have any effect

while the other portion should be ignored as non-existent. The learned Counsel has not been able to cite any specific authority in support of his

argument but he contends that by the analogy of Sections 60 and 61 of the Indian Trusts Act the beneficiary in the present case, namely, the idol

has a right that the trust property should be properly protected, held and administered by proper persons and by a proper number of persons, the

transfer of the right to the office of trustee being invalid the transferor remains as trustee and he is entitled at any time in spite of his being a

transferor, to file a suit to recover possession of the property illegally transferred as there can be no estoppel against a trust. No legal rights flowed

out of the transfer with regard to trusteeship.

4. On the other hand, Mr. Veeraswami, learned Counsel, for the first defendant, respondent, submits that since the suit is one for the office and for

recovery of the properties, the starting point of limitation is under Article 124 of the Limitation Act when the possession becomes adverse to the

transferor, that is, from the date of Exhibit B-2 and Exhibit B-2 does not make any distinction between trusteeship and property. Learned Counsel

further contended that the enactment of Article 134-B of the Limitation Act did not make any change in the law regarding the transfer of trusteeship

and that being the case as has been held in a number of cases where the suit is for recovery of the office and the property attached to it, the starting

point of limitation is the date of the transfer under Article 124 of the Limitation Act. It is further urged that since it is impossible to dissociate the

office of the trusteeship from the properties of the trust if the right to recover the office is barred the right to-recover property would also become

extinct. Further in the case of hereditary trustees succession to the office of trustee is from predecessor to successor and the whole number of

trustees constitutes a chain each succeeding the other. Such being the case it is argued that the suit is barred.

5. As early as (1876) L.R. 4 I.A. 76 (Privy Council) the Privy Council had laid down that the transfer of trusteeship of a temple is void as opposed

to public policy and that being the case we have no doubt whatever that even where it is a private institution the trustee for the time being cannot

transfer his office. This is not disputed by anybody. The judgment of the Judicial Committee in *Vidya Varuthi Thirtha v. Balusami Ayyar* has laid

down that the endowments of a Hindu mutt are not "conveyed in trust"; nor is the head of the mutt a trustee with regard to them unless there is

something to show that any specific property is proved to be vested in the head of the mutt for a specific and definite object. That being the case,

Article 134 of the Limitation Act which contains the expression "conveyed in trust" does not apply where the head of mutt has granted a permanent

lease over a part of the mutt property not proved to be the subject of the trust. Their lordships held that in such a case the property vests in the idol

and that the madathipathi is only a manager for the time being. It was, therefore, with the object of providing a period of limitation where alienations

have been effected by managers of Hindu, Muhammadan or Buddhist religious and charitable endowments that Article 134-B was introduced by

the Amending Act I of 1929 which provides specifically for cases of alienation of properties of charitable and religious institutions since after the

decision in *Vidya Varuthi Thirtha v. Balusami Ayyar*, Article 134 could not be applied to such cases as the properties are not conveyed in trust in

the trustee Or the manager. But it is clear that Article 134-B was only enacted with the object of providing a specific article of limitation to a class

of cases as those arising under the Hindu, Muhammadan or Buddhist religious or charitable endowments where the manager for the time being has

alienated the property of the institution for valuable consideration, and was not intended to make any change in the law with regard to alienation of

the office of the manager or office of trusteeship which would be governed by Article 124 of the Limitation Act. This is clear from the observations

of Sir Lionel Leach, C.J., in Venkateswara Sarma, styled Gnanasivacharia Swamigal, Matathipathi and Guru of Perur Mel Mutt, for himself and on

behalf of the Mutt Vs. S.N. Venkatesa Aiyar and Others, .

6. That being the case we have now to find out what the proper article applicable to the present case would be. There can be, no doubt, whatever

that hereditary office of trusteeship is property like land or house capable of inheritance according to the law of succession and liable to be lost by

adverse possession under the law of Limitation. See the decisions in 4 CWN 329 (Privy Council) , and Kalipada Chakraborti and Another Vs.

Palani Bala Devi and Others, . The same authorities have laid down a further proposition that there is no distinction between the office of

trusteeship and the property or emoluments to which they are attached and therefore, property passed with the office and the office alone cannot

be recovered without seeking to recover the property and vice versa. The property alone cannot be recovered notwithstanding the fact that the

right to the office is lost. There are observations at page 517 in Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others, , to the effect

that when there is a transfer of trusteeship the article applicable is 124 of the Limitation Act. The distinction between Article 124 and 134-B is real

and substantial.

7. Article 124 begins by stating that the suit is to be for possession of an hereditary office and in the column under the heading ""time from which

period begins to run"" it is specified ""when the defendant takes possession of the office adversely to the plaintiff"". In Article 134-B there is no

question of any adverse possession. As the latter article confines itself only to cases of recovery of possession of Immovable property comprised in

the endowment which has been transferred by a previous manager for valuable consideration the suit should be brought by the succeeding manager

within 12 years from the date of the death, resignation or removal of the

transferor. Such being the case in our opinion it is clear that where the office along with the property of the trust or endowment has been transferred the transaction is void ab initio and the possession of the transferee becomes adverse from that date. In that case Article 124 of the Limitation Act is applicable whereas if the manager for the time being transfers the whole or part of the endowed property for valuable consideration without in any way impairing his rights as manager, in such cases Article 134-B of the Limitation Act would apply. The reported cases are clear on this point. In 4 CWN 329 (Privy Council) the facts show that what was transferred was not only the office but the entire properties attached to the office and their Lordships held that in such a case possession becomes adverse to the transferor from the date of the transfer and that no distinction can be made with regard to the claim to the office and to recovering the properties. The opening words in the judgment of the Judicial Committee show that the suit was to establish the right to management of the office of the temple and to the possession of the lands forming the endowment. At page 279 their lordships observe that there is no distinction between the office and the property of the endowment and that the transfer would be void and would not give title to the purchaser. It is also clear from this judgment that since the transfer is void, title remains with the transferor and that the possession which was taken by the transferee becomes adverse from that date. This decision is therefore, ample authority for the application of Article 124 to a case where there is a transfer of both the office and property of the endowment. In 14 CWN 889 (Privy Council) , after the death of the Mahant of a mutt his two chelas divided the mutt and its properties between them and one of them held possession of portions of properties under a particular mutt for more than 12 years. It was held in a suit by his successor to recover possession of those properties that, the suit filed after a lapse of 12 years was barred by limitation as the starting point for limitation should be deemed to be the date when the agreement between the two chelas took place. The decision of the Supreme Court in Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others, , cited already is to the same effect.:

8. The other class of cases governed by Article 134-B of the Limitation Act may now be referred to. We have already considered the effect of the

decision of the Judicial Committee in *Vidya Varuthi Thirtha v. Balusami Ayyar* , where it was decided that if there is an alienation of the trust

property apart from the office of trusteeship then such an alienation is voidable and would enure during the lifetime of the alienor and a suit brought

within 12 years from the date of the death of the alienor would be in time. Their Lordships held that except for unavoidable necessity the head of

the mutt or religious institution cannot create any interest in the property of the endowment to enure beyond his lifetime. Therefore the starting point

of limitation would be the date of the death of the transferor 01 his removal from office. A distinction between a total alienation or disposition of a

religious endowment and its properties and the alienation of a part of the properties is clearly made out by the Judicial Committee in 37 CWN 541

(Privy Council) in which the headnote is as follows:

Although an assignment or disposition of a mutt and its properties by Mahanth is void either a sale or a permanent lease by him of an item of

property appertaining to the mutt even if not for necessity is valid during the tenure of office of the Mahanth. Consequently, upon an alienation of

that nature the possession of the purchaser or lessee does not become adverse so as to cause time to run under Article 144, Schedule I of the

Limitation Act.

It is this principle that has been embodied in Article 134-B of the Limitation Act. The observations at pages 257 and 258 of the judgment support

this view. The Judicial Committee again considered the question of limitation where there has been a transfer of only a part of the trust property by

the manager or trustee without transferring the office in *Mahadeo Prasad Singh v. Karia Bharti* (1934) 68 M.L.J. 499 : 1934 L.R. 62 IndAp 47 :

ILR 57 All. 159 (P.C.). the observation is as follows:

The learned Counsel for the appellants has cited the case of 14 CWN 889 (Privy Council) , in support of his argument that the possession of

Rajbans became adverse from the date of the compromise but that case is clearly distinguishable. The document dealt with therein was an

assignment of the math as well as its properties and as observed by this Board in the case in 37 CWN 541 (Privy Council) , such an assignment

was void and would in law pass no title, with the result that the possession of the assignee was adverse from the moment of the attempted

assignment. In the present case there is no assignment of the religious institution itself to Rajbans, nor any other transfer which was a void

transaction and rendered his possession adverse. He was undoubtedly the Mahant of the math in 1904 and while transferring certain items of

property to Karia he kept the rest of the estate for himself. It is one of the villages retained by him that he sold in 1914 and the sale was a voidable

transaction. The period of limitation for the recovery of the village did not begin to run until the death of Rajbans in 1916. The action which was

commenced in 1926 was, therefore, within the limitation prescribed by Article 144.

This clear exposition of the different kinds of transfers leaves no room for doubt with regard to how the matter has to be viewed. Again in (1936)

71 MLJ 105 (Privy Council) the question was discussed by the Judicial Committee and they held that where there is a transfer of an item of

property belonging to a trust it is valid during the lifetime of the trustee and the starting point of limitation begins on the death of the trustee. There

are numerous passages in this Judgment justifying that proposition and it is unnecessary to refer to them in detail. We are, therefore, of opinion, that

the decision in 4 CWN 329 (Privy Council) has in no way been affected by the introduction of Article 134-B of the Limitation Act. We may once

again repeat what has already been discussed by stating that the office of huqdar or manager is *res extra commercium* the alienation of which is

void and no title passed to the alienee. That being the case, his possession is adverse from the date of the alienation and the death of the alienor

does not interrupt the running of time which runs against and bars the successor. The case of alienation of a portion of property endowed is good

for the lifetime of the alienor because of the qualified power in him or on the ground of estoppel. In such a case time runs only on his death and

once it starts to run uninterrupted for a period of 12 years, the successor also will be barred from recovering the property. In the first case the

transaction is void while in the latter case it is voidable. Where it is voidable Article 134-B of the Limitation Act applies or Article 144 before 1929

and where it is void Article 124 applies. This distinction is exemplified in the contrast between one class of cases such as 4 CWN 329 (Privy

Council) 14 CWN 889 (Privy Council) , and Kalipada Chakraborti and Another Vs. Palani Bala Devi and Others, , on the one hand and Vidya

Varuthi Thirtha v. Balusami Ayyar , 37 CWN 541 (Privy Council) , Mahadeo Prasad Singh v. Karia Bharti (1934) 68 M.L.J. 499 : 1934 L.R. 62

IndAp 47 : ILR 57 All. 159 (P.C.), (1936) 71 MLJ 105 (Privy Council) , and Gurusidhwaswami v. D.M.D. Jain Sabha (1953) 2 M.L.J. 819 :

(1953) S.C.J. 730, on the other.

9. In any event the respondent argues that in the present case the plaintiff is not the manager as the right has been lost before the alleged

relinquishment in his favour, and therefore, Article 134-B would not apply. We may also observe in this connection that the endowed property

alone cannot be recovered and since the right to recover the office of huqdar and manager is barred by limitation, the claim to property follows suit

as it is subsidiary to and is attached to the office, vide Kandaswami Thambiran Vs. Vagheesam Pillai, wrongfully styling himself as Ponnambala

Desikar, , Govindaswami Pillai v. Dakshinamurthi ILR (1910) Mad. 92 and Rajagopala Naidu and Others Vs. Ramasubramania Ayyar and

Others, .

10. In view of the discussion above we are of opinion that the learned District Judge is right in holding that the suit by the plaintiff is time barred.

This Second Appeal is dismissed with costs.