
(1969) 02 MAD CK 0049
In the Madras High Court

Manikka Narasimhachari

APPELLANT

Vs

M.V. Ramasubbier and Others

RESPONDENT

Date of Decision : 20-02-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92(3)

Citation : (1970) ILR (Mad) 175 : (1969) 82 LW 677 : (1970) 1 MLJ 337

Hon'ble Judges : K.S. Ramamurti, J

Bench : Division Bench

Judgement

K.S. Ramamurti, J.—The second defendant in O.S. No. 99 of 1960 on the file of the Subordinate Judge, Madurai is the appellant. The ancestor of the parties was one Manicka Sankaranarayana Iyer, who died in 1928, leaving behind him five sons, (a) one Venkatachalam Iyer, the father of the first plaintiff, (b) Ramudu Iyer, the father of plaintiffs 2 to 5, (c) one Ramakrishna Iyer, the first defendant (his sons being defendants 2, 4 and 5), (d) Narasimhier, the third defendant and (e) one Lakshmana Iyer, since dead, whose widow is the sixth plaintiff. This Manicka Sankaranarayana Iyer was conducting charity and Annadanam trust and certain other charities and in order to secure efficient and proper performance of the charities, the ancestor, Manicka Sankaranarayana Iyer and his sons executed a settlement deed marked Exhibit A-1 on 3rd June, 1908. The said deed inter alia provides that Sankaranarayana Iyer, the father, should be the first trustee, that after his death the senior-most male member of the family should be the trustee in turns. The present first defendant is now the senior-most male member and is therefore functioning as managing trustee and looking after the trust. Certain properties had been set apart for the maintenance of the father, Sankaranarayana Iyer, during his lifetime and on his death the sons became entitled to those properties. The suit, O.S. No. 46 of 1955, was filed for partition and separate possession of those properties amongst the five branches. A preliminary decree, Exhibit A-7, dated 12th September, 1956, was passed in pursuance of a compromise and a final decree, Exhibit A-2 was also passed on 25th November, 1959. In that partition suit, O.S. No. 46 of 1955, the present

first defendant, Ramakrishna Iyer, was the second plaintiff and his son Narasimhachariar, the second defendant in the present action and the appellant herein, was the third plaintiff. A Commissioner was appointed in that suit, the properties to be divided were auctioned and as per the final decree various items of properties were allotted. The final decree contained a provision for payment of the owelty after adjusting the values of the properties allotted to the various branches. The first defendant was allotted item 6 of the "A" Schedule in that suit which is door No. 48-A, East Avani Moola Street which is the subject-matter in the present suit. This property was auctioned by the Commissioner amongst the members of the family and it was ultimately knocked down in favour of the present first defendant for a sum of Rs. 21,500 his being the maximum bid. Exhibit A-4 dated 19th April, 1959, is the bidders' list which shows that several members of the family participated in the auction, that the first bid commenced with a sum of Rs. 15,000 that after a particular stage the competition was between the third defendant, Narasimhier and Ramakrishna Iyer the first defendant. The third defendant's bid ultimately was Rs. 21,150 over which the first defendant made the final bid of Rs. 21,500 which was accepted and the property also allotted to the first defendant. It is common ground that the funds of the Annadanam trust were utilised to purchase this property, door No. 48-A, though in the beginning the first defendant made the initial 10 per cent deposit of Rs. 2,150 on the day of the auction, and later on reimbursed himself from the trust. It is again common ground that this is trust property belonging to the Annadanam trust and that the first defendant was holding and enjoying the property only as trustee. Under Exhibit B-13 dated 14th July, 1960, the first defendant sold this property as trustee and manager of the trust to his son the second defendant for Rs. 25,000. The sale deed sets out in detail the circumstances under which the trustee or manager of the trust (the first defendant) sold the property to the second defendant. Immediately thereafter, the plaintiffs objected to the sale and notices passed between the parties. The plaintiffs instituted the present action for cancelling the sale deed and for recovery of possession of the suit property from the second defendant and delivery thereof to the first defendant, who as observed is the present managing trustee of the Annadanam trust. The complaint of the plaintiffs is that the suit property would fetch a rent of Rs. 300 per month, that its value will be easily Rs. 35,000 that there was no necessity or benefit for the trustee to sell the property and that the first defendant has clandestinely and fraudulently sold the property to his son, the second defendant for a grossly inadequate price. The further case of the plaintiffs is that the terms of the settlement deed Exhibit A-1, dated 3rd June, 1908, contain a restriction prohibiting the trustee from selling the property and that this sale is highly detrimental and prejudicial to the interest of the trust.

2. The suit was resisted by the contesting defendants, the trustee--first defendant--and the purchaser the second defendant on the ground that the price for which the property was sold was a fair and adequate price, that the second

defendant had purchased door No. 48, property immediately adjacent to the suit property for a price of Rs. 40,000 that disputes had arisen between the second defendant as the owner of door No. 48 and the trust with regard to rights of easement to pass drainage, latrine, water, right to light and air dispute the dividing line etc., and there was also difficulty about light and ventilation for door No. 48-A and the first, and the second defendants referred the entire matter to the common family lawyer one Mr. Rajagopala Iyengar and that he suggested, as the best solution the sale of door No. 48-A to the second defendant for a price of Rs. 25,000. The further case of the defendant is, that the suit property, 48-A is a very very old house constructed about 100 or 150 years ago, that Nos. 48 and 48-A were originally one single house, that for purposes of partition amongst the members of the family the single house was divided into two houses Nos. 48 and 48-A that No. 48-A was only three-fourths of door No. 48 and that the owner of door No. 48-A will have to suffer several disadvantages and inconveniences in the matter of easementary rights, light, ventilation, dividing wall, want of well and that it is because of those considerations that the family lawyer suggested the sale as the best solution under the circumstances. The family lawyer, Rajagopala Iyengar, was examined as D.W. 3, and he has spoken to all the relevant facts and the background in which the sale deed was executed in favour of the second defendant. A perusal of the judgment of the trial Court shows that the learned Judge had accepted substantially the evidence of Rajagopala Iyengar about his mediation and his bona fides in giving the advice which the trustee accepted by selling the property in question. The learned Judge, however, set aside the sale holding that the value of the property will be about Rs. 40,000 and that the price of Rs. 25,000 was not fair but inadequate, that there was no necessity to sell the same and that in any event the terms of the settlement deed contained an embargo against the sale of the property by the trust. Objections raised by the defendants about the frame and maintainability of the suit and about the want of sanction u/s 92, Civil Procedure Code, were overruled as lacking substance. In the result the trial Court declared the sale invalid and passed a decree for possession against the second defendant in favour of the first defendant who is the manager or trustee of the trust. Hence the present appeal by the second defendant-purchaser.

3. When there is a wrongful alienation not binding upon the trust and when the alienating trustee still functions as a trustee and has not been removed, it will be open to the worshippers or the beneficiaries to maintain a suit for possession of the trust property after declaring the alienation invalid; when such possession is asked for, the decree for possession will be in favour of the alienating trustee himself; because so long as he is a trustee he is the only person who is entitled to the lawful possession of the property. The law is well settled and it is too late in the day to question such a right of a worshipper or beneficiary to ask for a decree for possession being passed in favour of the alienating trustee; Section 92, Civil Procedure Code, is not applicable to such a suit. Vide *Bishwanath and Another Vs. Shri Thakur Radhaballabhji and Others*, , and the recent decision of

Alagiriswami, J., in *Amir Jan Vs. Shaik Sulaiman Sahib and Others*, , in which there is a detailed discussion of the relevant case law.

4. Mr. Gopalaswami Iyengar, the learned Counsel for the appellant, then contended that the restoration of possession from the alienee to the trustee would amount to the vesting of the property in the trustee within the meaning of Section 92 (3), Civil Procedure Code, and without sanction of the Advocate-General the suit is not maintainable. We see no substance in this contention. The words "vesting any property in a trustee" have a definite connotation and Section 92 (3), Civil Procedure Code, will apply only to cases in which either a trustee is first appointed or an old trustee is removed and a fresh trustee is appointed and the trust property is vested in such a trustee. Restoration of possession of the property to the trustee from the alienee to whom the property has been alienated wrongfully is not vesting of the property in a trustee under Clause 3 of Section 92, Civil Procedure Code. Vide *Johnson D Po Min v. U Ogh* AIR 1932 Rang. 132 . In *Ranchhoddas Kalidas and Others Vs. Goswami Shree Mahalaxmi Vahuji and Others*, , a Bench of the Bombay High Court took the same view (though, no reference was made to the Rangoon decision) that a suit for possession against an alienee to whom the trust properties had been wrongfully and unauthorisedly alienated would not be hit by Section 92 (3), Civil Procedure Code. Gajendragadkar, J., as he then was, overruled the objection as to want of sanction in these terms at page 157:

It is, therefore, necessary to consider whether the claim for possession made by the plaintiffs falls within Section 92 (1) (c). Mr. Purshottam's argument is that, since the plaintiffs want the properties to be restored to defendant 1, they are virtually asking for an order for vesting the properties in defendant 1. We think that there is no substance in this argument. The plaintiffs do not seek for the removal of defendant 1 from trusteeship; and indeed, they do not seem even to emphasise the wrongful alienations effected by her. They want defendant 1 to continue as trustee and manager of the temple and its properties and according to them the title with regard to these properties which vests in defendant 1 as a trustee has not been validly and effectively divested. There is thus no question of obtaining a decree vesting any property in defendant 1. The relief of possession in the present suit merely amounts to claim for restoring the property to where it still belongs. If that be the true position, there can be no doubt that the suit does not fall u/s 92 and that the absence of sanction would not make it incompetent.

5. The plaintiffs who are the members of the family which founded the trust have got an undoubted right to institute the present suit to protect and safeguard the interests of the trust.

6. We have carefully considered all the aspects of the matter on the merits of the case and we are not inclined to agree with the view taken by the learned Subordinate Judge.

7. There is abundant evidence in the case showing that the plaintiffs have

instituted the suit not so much out of a genuine desire to redress any wrong done to the trust, and the suit is mainly prompted by ulterior motives and ill-will against the first and the second defendants.

* * * * * 8. We are of the clear view that the price fetched at the auction furnishes a safe and reliable data and the price of Rs. 25,000 fixed under Exhibit B-13 is a fair price; if anything it is little higher and certainly not inadequate. Even so, the question still remains whether there are justifying circumstances to uphold the sale in favour of the second defendant.

9. Learned Counsel on both sides invited our attention to some of the decisions which have dealt with the scope of the powers of the managing member of a joint family or a trustee in the matter of alienation of the property either for benefit or for necessity. It is unnecessary to refer to these cases in detail as it is now settled by judicial decisions that the words " benefit to the estate " have to be understood in a liberal sense as opposed to the earlier narrow view that it must be of defensive character calculated to protect the estate from some threatened danger or destruction. The proper test is, whether the transaction could be upheld as an alienation by a prudent owner with the knowledge that is available to him at the time of the transaction. When once the test to be applied is that of a prudent owner, the question whether the transaction is beneficial to the estate must necessarily depend upon the facts and circumstances of the particular case. Vide statement of the law in Mullah's Hindu Law, 13th Edition, page 276, Section 243-A. The managing member or the trustee is not entitled to sell the property merely because the price fetched is attractive or for the purpose of investing the price with a view to get larger income than derived from the property itself. But the sale of unproductive property for an advantageous price or sale of property which is exceedingly difficult of enjoyment has been upheld as being one for the benefit of the estate or the trust. Any enumeration as to what is benefit and what is necessity cannot in the very nature of things be exhaustive and the difficulty is only in the actual application of the test of a prudent owner with regard to individual alienations. In a recent decision of the Supreme Court in Balmukand Vs. Kamla Wati and Others, , the Supreme Court approving the liberal view in Jagatnarain v. Mathurdas I.L.R.(1928) All. 969, and Sital Prasad v. Ajolal Mander I.L.R.(1939) Pat. 306, has held that for a transaction to be regarded as being one for the benefit of the estate it need not necessarily be of a defensive character and the test would be, whether the transaction is one which a prudent owner would enter into in the course of the management with foresight and without being reckless or arbitrary. On the facts of that case, the Supreme Court held that an agreement to sell a fractional share which the family owned in certain lands could not be upheld as there was neither allegation nor proof that the family could not conveniently manage and enjoy the fractional share belonging to the family. We have perused the deed of endowment Exhibit A-1, which contains a specific provision expressly conferring power upon the manager or the trustee for the time being to sell and convert Immovable property of the trust into cash. The trial Court is wrong in thinking that Clause 12

of the deed contains an embargo against the alienation of the trust property in favour of any member of the family. That clause merely emphasises that the dedication or the endowment is outright and of an absolute character and the family is not entitled to any beneficial interest and that none of the members of the family or the descendants should use the property for their own benefit. We are not prepared to read this clause as curtailing the express power which has been conferred upon the trustee to alienate or convert Immovable property into cash if he should think it is necessary in the interests of the trust.

* * * * * 10. For all these reasons, we uphold the sale. The appeal is allowed and the plaintiff's suit is dismissed with costs in both the Courts. We may also add that the second defendant has offered to pay a sum of Rs. 5,000, to the trust ex gratia and we are recording the offer made by his learned Counsel in the course of the hearing. It is hardly necessary to mention that this circumstance did not in any way weigh with us in the conclusion which we have reached on the merits of the case.