

(1951) 03 MAD CK 0024

In the Madras High Court

Case No : Civil Revision Petition No"s. 1590 and 1591 of 1949

M.R. Kalyana Krishna Ayyar

APPELLANT

Vs

Lakshmi Ammal and Others

RESPONDENT

Date of Decision : 09-03-1951

Acts Referred:

Citation : AIR 1952 Mad 548 : (1952) 65 LW 77 : (1952) 2 MLJ 38

Hon'ble Judges : Govinda Menon, J

Bench : Single Bench

Advocate : S. Venkatachala Sastri and N. Sundara Iyer, for the Appellant;
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—On a court-fee slip of the inspect-big Court-fee Examiner, the learned Subordinate Judge of Palghat held that in the

suits out of which these civil revision petitions arise, the plaintiff should pay court-fee u/s 7, Clause (iv) (a) of the Court-fees Act, on the Basis of

the cancellation of the decrees referred to in the plaints in those suits. The plaintiff contends that the order of the learned Subordinate Judge

directing the payment of court-fee on the above basis, is without jurisdiction and seeks to revise the orders of the lower Court.

2. Both the suits are for recovery of possession of immovable properties on the strength of title with rents or mesne profits. The plaintiff is the

executive officer of the Mangalam Anchumarthi temple in Palghat taluk, appointed by the Hindu Religious Endowments Board and seeks to

recover possession of the properties mentioned in the plaints on the strength of the title of the temple. In the plaints it is stated that the previous

trustees have, without the sanction of the Hindu Religious Endowments Board, created mortgages over suit properties which culminated in decrees

being passed for certain amounts charging the properties and as a result of such decrees, those properties were sold in Court auction and

purchased by the defendants, some of whom have alienated the same to third parties. It is stated in the plaints that these mortgages and sales are

not binding on the trust and therefore the executive officer, on behalf of the temple, is entitled to recover possession of the properties with past

mesne profits and damages as claimed in the plaints.

3. The learned Subordinate Judge held that the plaintiff being the present executive officer is not entitled to ignore these mortgages and sales but

should pay court-fee as if for cancelling all these decrees and on that basis the plaintiff was asked to pay additional court-fee valuing the suits u/s 7,

Clause (iv)(a) of the Court-fees Act. The previous hereditary trustees of the suit temple are arrayed among the defendants and the purchasers as

well as their alienees are also made defendants. The learned Judge relied upon a decision of this Court in *S. Ramasubba Aiyar and Another Vs.*

Ayyalu Naidu and Another, , where certain persons, representing the general body of worshippers in a temple, sued for a declaration that a decree

obtained against the temple trustees was collusive and not binding on the temple and therefore wanted a declaration to that effect. In such a case, it

was found that they are liable to pay court-fee u/s 7, Clause (iv) (a) of the Court-fees Act. That decision proceeded on the basis that since the

plaintiffs wanted to represent the temple itself and were not suing as individuals, they could do so only if the decree against the temple is cancelled.

Mockett J. considered various cases of this Court including one by Venkataramana Rao J. in *Vallabhacharyulu v. Rangacharyulu*", 45 Mad L W

380 and came to the conclusion that the suit ought to be valued in that way. The learned Subordinate Judge distinguished the two cases cited on

behalf of the plaintiff, viz., "*rajah of Kalahasti v. Muni Venkatadri Rao Garu*", 53 Mad L J 533 and "*Lakshmudu v. Ramudu*", ILR (1940) Mad

123, on the ground that those cases related to a total prohibition regarding alienation and as such, any such alienation would not be binding on the

properties or on the estate.

4. It is quite clear that for a determination of the question as to what the proper

court-fee is, the allegations in the complaints alone have to be looked into, though there is a body of case law to the effect that the substance of the suit has got to be considered when ascertaining the proper court-fee.

See "Chidambaranatha v. Nallasiva", 41 Mad 124. It has been held by a Bench of this Court in "M. V. CHAP-PAN v. P. RARU", 37 Mad 420,

that where the trustee of a Malabar devaswom first executed an othi for Rs. 50 and subsequently renewed the same in a consolidated othi for Rs. 1650 and further created a purankadam (mortgage) for Rs. 1500 over the same property, and the succeeding trustee sued to redeem the othi for Rs. 50 treating the later mortgages as invalid and not binding on the trust, the suit as framed was maintainable, because the succeeding trustee was not bound to sue to set aside the later mortgages created by his predecessor. On the facts of that particular case, it happened that the trustee who created the first mortgage was a karnavan of a tarwad and the subsequent trustee was the succeeding karnavan because the hereditary trusteeship in the temple vested in the family. The learned Judges held that treating the case as that of a member of tarwad seeking to recover possession of properties mortgaged by his karnavan it is unnecessary for the member to set aside the mortgage granted by the karnavan. It is open to the succeeding karnavan to recover possession on the title of the tarwad and he would be entitled to recover such possession if the defendant does not prove the validity and binding effect of the alienations on the other members of the tarwad. The learned Judges further expressed the opinion that the case would be different where the plaintiffs themselves have executed the instrument under which the defendant claims. This decision has been considered as settling the law that where a succeeding karnavan of a tarwad impugns a previous transaction by his predecessor in office, it is open to him to ignore the transaction and recover the property on the strength of the title of the family or on the strength of any valid transaction binding on the tarwad. But the facts of the case show that the suit related to property which belonged to a temple and the karnavan was only a trustee. In my opinion that principle should be applied to cases of trustees of public temples also. If a trustee alienates property or creates an encumbrance over the property, which would not be binding on the trust, it is open to the succeeding trustee to ignore such a transaction and claim the property

on the basis of the title of the temple. So far as public trusts are concerned, the principle governing the representation in suits is laid down in

"Ratnam Pillai v. Natraja Desikar", 46 Mad L J 341 and that principle is that on the death or removal of a trustee impleaded in a suit what takes

place is the devolution of the office, and the person entitled to be impleaded in the suit is the successor to the office. This is not affected by the fact

that the office is hereditary which merely means that the office holder must be sought among the heirs or in the tarwad of the deceased. Sec

"Sekkara Menon v. Narayanan", 59 Mad L J 714. As one trustee does not claim to succeed to the rights and obligations of another trustee, but

simply comes into the Office as representing the trust, it cannot be said that the actions of a previous trustee can be held to be valid and binding on

the succeeding trustee, if such actions would not bind the trust. It is also clear that a trustee himself is not estopped against his own actions. The

learned advocate for the petitioner, in addition to relying upon the two cases quoted before the learned Subordinate Judge, also invited my

attention to "Ramu Mudali v. Shobagmul" AIR 1940 Mad 628 and "Katwari v. Sitaram Tiwari", 43 All 547 to the effect that in the circumstances

of a case like the present, the sale can be ignored. Wadsworth J. in A. Ramu Mudali Vs. Shobagmul Sowcar and Another, , held that where, on

the face of the decree, it can be seen that the Court which passed the decree had no jurisdiction, or if there are apparent reasons for doubting its

jurisdiction to pass the decree, then the executing Court can go into the question whether or not the decree is a nullity; but the extent to which the

executing Court can go into the validity of a decree, which is not on its face one passed without jurisdiction, is very limited. It is difficult to see now

this decision can have any application to the facts of the present case, because on the face of the decree on the mortgage to which the then trustees

were impleaded as parties, it cannot be held that it was void or inoperative. In the Allahabad case, 43 All 547 , the learned Judges had to consider

a sale of certain property in contravention of Section 20 of the Agra Tenancy Act, 1901, and they held that an executing Court is entitled to go into

the question as to whether the decree for sale of the occupancy holding is contrary to Section 20 of the Agra Tenancy Act, 1901, even if the

decree, on the face of it, is one directing the sale of the holding or is a simple money decree. This case is more analogous to the case in "Rajah Of

Kalahasti v. Muni Venkatadri Rao Garu", 53 Mad L J 533, where Odgers and Curgenven JJ. held that in view of the object of the Madras

Impartible Estates Act of 1904, viz., the preservation of the estates included in the schedule to it in the hands of successive heirs as a measure of

public policy, a succeeding holder of an impartible zamindary is entitled to raise the objection against the sale of any portion of the estate for a debt

due from a previous zamindar for payment of arrears of land revenue on the zamindary. The fact that a final decree making the estate liable for such

a debt in the hands of a successor has been passed without objection, or even by consent, in the absence of the Collector's consent in writing, is

no bar to the executing Court holding, at the instance of the successor, that the decree is invalid and unexecutable as against the estate. This

decision proceeded on the footing that the alienation of an impartible estate, in contravention of Section 6, is opposed to public policy. With regard

to a Desabandham inam, it has been held in "Lakshmudu v. Ramudu", ILR (1940) Mad 123 that the sale of such an inam-holding being void, as it

is opposed to public policy, such a sale would not bind the properties. The exception to the general rule that an executing Court could not go

behind a decree is further illustrated in the judgment in "Thaker Das v. Roshan Din", AIR 1933 Lah 397. Where a non-agriculturist to whom

agricultural land has been mortgaged, applies for sale of the mortgaged property in execution of a decree which allows him to recover the mortgage

money by sale of the mortgaged property, the executing Court must hold its hand and not put to sale the property which has been rendered non-

saleable by the Alienation of Land Act, Punjab, in spite of the fact that the decree-holder has obtained a decree for sale of the property. The

principle enunciated here is precisely the same as that enunciated in "Lakshmudu v. Ramudu", I L R (1940) Mad 123. Reference may also be

made to "BAI SURAJ v. HARIBHAI", ILR (1943) Bom 19 for a similar proposition. But none of these cases can be of real help for considering

the question now at issue because if the Endowments Board had granted sanction to the mortgage which was for the necessity and benefit of the

trust, then the sale would be valid. All that Section 76 of the Madras Hindu Religious Endowments Act, II of 1927, states is that a mortgage, sale

or exchange, and a lease for a term exceeding five years, of immovable property belonging to a temple, shall not be valid or operative unless such

an alienation is necessary or beneficial to the temple and is sanctioned by the Board. Whether the alienations in question, which fructified into the mortgage decrees, are necessary or, are beneficial to the temple, and have been sanctioned by the Board are questions of fact which had to be decided in the suits and the mere fact that the plaints recite that such alienations have not been sanctioned by the Board and are not beneficial would not make them not binding on the temple at all.

5. Mr. V. V. Raghavan for the Government Pleader invited my attention to a recent decision of the learned Chief Justice and Viswanatha Sastri J.

in *Devineni Narasamma Vs. Devineni Satyanarayana*, minor by guardian *Gondi Chandramma and Others*, where this Court, after considering the

various cases, held that where a minor questions the validity of a decree passed against him, it cannot be said that the decree was "ex facie" void

or one passed without Jurisdiction, and therefore in a suit to set aside such a decree the proper Court fee payable is as if it is one for cancellation

of the decree within the meaning of Section 7, Clause (iv) (a) of the Court-fees Act. The learned Judges also referred to Rule (2) of the Court-fee

rules framed u/s 9 of the Suits Valuation Act which came into force on 1-11-1943 and is printed at page 174 of a useful publication, "A Guide to

the Law of Court-fees in Madras by Krishnamurthi and Mathurbhutham". Rule 2 states that in suits for a declaration, or for an injunction

consequent on a declaration, that a decree for money, or any other property having a money value, is not binding on the plaintiff who was not a

party to the decree, the subject matter of the suit shall, for purposes of jurisdiction and Court-fee, be valued at the amount or value of the property

for which the decree was passed. This rule was not brought to the notice of the learned Judge in the lower Court. Reference was also made to

observations in the judgment in "*Ramaswami v. Rangachariar*", ILR (1940) Mad 259 regarding the liability of a quondam minor suing to set aside

decrees obtained against the joint Hindu family of which he was a member. It was held therein that in respect of alienations by the father under

which possession had passed to the alienees, as the minor was in effect asking for their being set aside and for his being placed in possession of his

share of the property alienated, he must stamp his relief in accordance with the provisions of Section 7(iv) of the Court-fees Act; and in respect of

decrees passed against the minor in suits in which he had been "eo nomine" impleaded as a party, he must pay Court-fee as prescribed by Section

7, Clause (iv) (a) of the Court-fees Act. Such decrees would bind the plaintiff until set aside and therefore he cannot seek to obtain a decision on

the footing that his interest in the joint family property is not affected by them. Therefore the learned Judges held that the plaintiff must be held to

have impliedly asked for their cancellation and must accordingly stamp his plaint "ad valorem" on the amount of the decrees and not merely on his

share fraction, as his liability is for the full amount, though limited to the extent of his share in the family estate. It seems to me that the principle

enunciated therein, though analogous, cannot be applied "ad idem" to the case of a trustee. A trustee cannot be said to have any beneficial interests

in the trust property and therefore when he seeks to recover possession of property invalidly alienated by a preceding trustee, (by?) a suit for a

"declaration that a decree obtained against the trust was void so far as the trust was concerned, he cannot be deemed to be litigating on any title

vested in himself. The correct principle applicable to matters of this kind is that a succeeding trustee may sue to recover possession of property

ignoring an invalid or void alienation by the previous trustee and in such a case it is for the alienee to substantiate that the alienation or transaction

by the previous trustee is valid and binding on the trust. If the alienee, does not substantiate such a transaction, it is open to the succeeding trustee

to recover the property as if such an alienation did not exist. The burden of proof in such a case should be on the alienee and not on the trustee.

6. Therefore if the plaintiff in these cases had sued for recovery of possession of the properties on the strength of the title of the temple treating the

defendants as trespassers liable to pay mesne profits, then the plaintiff need pay court-fee only for recovery of possession and mesne profits and

nothing more. But the matter has been complicated by lengthy allegations in the plaints regarding the invalidity of the mortgages created by the

previous trustees as well as the void nature of the decrees obtained against the previous trustees. As I have already stated, "ex facie", it cannot be

said that, the Board did not grant sanction for the execution of the mortgages or that such mortgages are not necessary or beneficial to the trust.

Those are matters to be gone into in the trial of the suits. Therefore, if the plaintiff persists in keeping those allegations in the plaint as framed, it

cannot be said that the order of the lower Court is wrong. But if the plaintiff is prepared to delete those portions of the plaints by amending the

same and simply sues to recover possession of the suit properties on the foot of the title of the temple, the court fee he has paid would be sufficient.

If he is so advised, he can amend the plaints and in such a case it would be the duty of the defendants to prove that the mortgages and the decrees

are binding on the temple. In my opinion the order of the lower Court cannot be said to be without jurisdiction on the footing of the plaints as now

framed. The civil revision petitions are therefore dismissed, but in the circumstances, without costs.