(1926) 11 MAD CK 0061

In the Madras High Court

Natamal Kutti Pokker — APPELLANT

Vs

Natamal Ussan Mayan and Others — RESPONDENT

Date of Decision : 09-11-1926

Acts Referred:
Limitation Act, 1963 — Section 10

Citation : 100 Ind. Cas. 506

Hon'ble Judges : Curgenven, J

Bench : Single Bench

Judgement

Curgenven, J.—By a registered partition karar dated 18th March, 1911, a division, was effected between the first defendant (now appellant) and his brothers and some other, and the share in the Immovable property which the first defendant would otherwise have received was augmented inconsideration of an obligation imposed upon him to pay certain sum aggregating Rs. 500 including a sum of Rs. 250 to the widow of the deceased brother and to her daughter, the latter of whom (the mother having died) is the first plaintiff and a respondent in this second appeal. Both Courts have allowed the claim. The question now left for disposal is whether upon the point of limitation it has been rightly held that Section 10 of the Limitation Act applies.

2. This question depends primarily upon whether the partition karar created trusted in respect of the sums payable by the first defendant, and, in particular, in respect of the suit claim of Rs. 250. The document recites that the first defendant has undertaken to pay the sums specified and accordingly that he has received property of a superior value. There is a further recital that should he not do so "he and the properties allotted to his share shall be liable for that amount and the loss arising there from."

3. It is contended that this arrangement does not amount to a trust because there is no specific trust property. What are the characteristics of trust property has been discussed in The Secretary of State for India in Council Vs. Pandit Radhika Prasad Bapuli, the case of the Tanjore bond-holder; and the appellant

relies upon the test applied there, that the fund to be a trust fund must have been specially set apart and earmarked for the service of the trust. That is, no doubt, true. If the East India Company had merely given an undertaking to discharge the bonds out of their general revenues, no trust would have been created and if here the first defendant had merely agreed to pay the money and property had been declared liable upon his default, again no trust would have been created. But it is said, the property assigned to the first defendant was not trust property because it was not exclusively appropriated to the purpose of the trust. No authority has been cited for the position that property is any-the-less trust property because the trustee as well as the beneficiary enjoy a beneficial interest in it.

4. A "trust" is defined in Section 3 of the Indian Trusts Act as "an obligation annexed to the ownership of property, and arising out of a confidence reposed in, and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner." This definition clearly provides for a case where the owner is also beneficially interested. It was held in Imbiohi Vs. Achampat Avukoya Haji and Others, that where, upon a partition, the property of a party thereto was to be liable upon his failure to pay certain debts assigned to him, a charge was created, and it appears to me that equally here a charge was created. The Court could sell the property in order to enforce the obligation. If this is not "an obligation annexed to the ownership of property," I am unable to understand nor have I been shown what else it is. It may be true that not every Charge gives rise to a trust. But we have here the further element that the obligation arises out of a confidence reposed in, and accepted by the owner. I conclude that the owner was a trustee, and the party to whom the payment was due a cestui qui trust.

5. It has been further objected that a suit, to secure the exemption conferred by Section 10 of the Limitation Act, must be for the purpose of following the trust property and that the present suit asked only for a decree for payment of the money. This is not strictly true, because there was also a prayer for such other reliefs as the plaintiffs may seek and the Court deem fit to allow. The Court, I think, might, on the facts found, have declared and enforced a charge upon the property. However that may be, the suit was in substance one for the enforcement of the trust and should not be allowed to fail upon a mere matter of pleading.

6. I dismiss the second appeal with costs.

