

(1961) 02 MAD CK 0003

In the Madras High Court

Case No : C. R. P. No's. 1197 and 2510 of 1960

O. Ramadoss Chettiar and others

APPELLANT

Vs

S.R. Palanichami Chettiar and others

RESPONDENT

Date of Decision : 02-02-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Criminal Procedure Code, 1898 (CrPC) — Section 145, 145(6)
Limitation Act, 1963 — Section 14, 4

Citation : (1961) 02 MAD CK 0003

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : V.K. Thiruvengkatachari and M/s T.P. Gopalakrishnan and A. Narayanaswami, for the Appellant; N.R. Raghavachari, V.C. Srikumar and G.R. Ramanujam and The Govt. Pleader Mr. A. Alagiriswami, for the Respondent

Final Decision : Allowed

Judgement

Kailasam, J.—Respondents 1 and 2 in O. P. No. 24 of 1959 on the file of the Subordinate Judge, Dindigul, are the Assistant Commissioner,

Hindu Religious and Charitable Endowments, Madurai, and the Area Committee, Hindu Religious and Charitable Endowments, Madurai, through

its Chairman, the Assistant Commissioner. They are the petitioners in C. R. P. No. 2510 of 1960. Respondents 3 to 5 in O. P. No. 24 of 1959

are the additional trustees appointed by the Commissioner and are the petitioners in C. R. P. No. 1197 of 1960. The contesting respondents in

both the Civil Revision Petitions are the hereditary trustees and are the petitioners in O. P. No. 24 of 1959. For convenience's sake, I will refer to

their ranks in O. P. No. 24 of 1959. Sri Palaniaswami Chettiar and Srinivasa Chettiar, who are the petitioners in O. P. No. 24 of 1959, are the

hereditary trustees of the temple of Srimath Ramalinga Sowdambigai Amman at Thevaram. They were functioning as trustees from 15th May,

1955. Respondents 3 to 5 were appointed as additional trustees by R. C No. 2178 of 1957 dated 29th May, 1957 (Exhibit B 40). A copy of the

order was served on the petitioners on 30th May, 1957. On 13th June, 1957, the petitioners filed Exhibit B-43, a petition to the Commissioner to

revise the order of the, Assistant Commissioner. On 13th July, 1957, the Area Committee passed a resolution, Exhibit B-42, ratifying the order of

the Assistant Commissioner. After the Area Committee passed the resolution, the petitioners preferred another revision petition to the

Commissioner against the resolution of the Area Committee. By a common order, Exhibit A-17, dated 30th July, 1957, the Commissioner

dismissed both the revision petitions. The Commissioner's order was received by the learned Counsel for the petitioners on 14th August, 1957.

He applied for certified copies of the annexure to the Commissioner's order on 17th August 1957. Stamp papers were called for on 10th

September, 1957, and were furnished on 14th September, 1957. The copies were supplied on 16th September, 1957, and the petitioners filed a

Writ Petition No. 783 of 1957 on 24th September, 1957 against the Assistant Commissioner's order. On 20th March, 1959, the writ petition was

dismissed. A copy of the order in the writ petition was supplied to the petitioners on 1st April, 1959 and O. P. No. 24 of 1959, out of which the

present petitions arise was filed before the Subordinate Judge on 11th April, 1959.

2. The learned Subordinate Judge, after going into the questions of fact and of law elaborately, found that the O. P. was in time and that the

appointment of respondents 3 to 5 was not in the interests of the institution and, therefore, set aside their appointment.

3. In the revision petitions before me, the learned Advocate-General, appearing for respondents 3 to 5, raised several contentions. He submitted

firstly that the petitioners are not hereditary trustees and as such they are not entitled to file an application before the Subordinate Judge under S.

39 (4) of the Hindu Religious and Charitable Endowments Act. Secondly, he contended that as the petitioners filed the revision petitions before the

Commissioner against the order of the Assistant Commissioner and the resolution of the Area Committee, and as the Commissioner passed orders

under S. 18, the order of the Assistant Commissioner and of the Area Committee became merged in the order of the Commissioner, and the

petitioners ought to have filed the writ petition and the O. P. against the order of the Commissioner. Having failed to do so, the learned Advocate-

General contended that the present O. P. against the orders of the Assistant Commissioner and the Area Committee is incompetent. Thirdly, he

contended that an application under S. 39 (4) is available to a hereditary trustee against an order passed by the Commissioner under S. 39 (1) and

(2). In the case of religious institutions over which the Area Committee has jurisdiction, as in this case, he submitted S. 41 alone is applicable, and

as S. 41 does not provide for the filing of an application before Court, the application is not competent. Fourthly, he submitted that, in any event.

O. P. No. 24 of 1959 is hopelessly barred by limitation. An application under S. 39 (4) should be filed within 30 days of the receipt of the order.

In this case, the order of the Assistant Commissioner was admittedly received by the petitioners on 30th May, 1957. The application under S. 39

(4) was filed only on 11th April, 1959. The petitioners contend that the application is within time because they were prosecuting with due diligence

other civil remedies against the same parties, and the time taken both before the Commissioner and before the High Court should be excluded. The

learned Advocate-General contends that the time taken by the Commissioner cannot be excluded under S. 14 of the Limitation Act. He urges that

the time within which an application under S. 39 (4) should be filed as only one month, and the petitioners cannot deduct the time that was taken

by the Commissioner to dispose of the revision petitions under S. 18 of the Act. He also urged that the Commissioner has disposed of the revision

petitions on merits and as such S. 14 of the Indian Limitation Act will have no application as the petitions were not dismissed for want of

jurisdiction or other cause of a like nature. He submitted finally that even if the time taken by the Commissioner is excluded, the petition is out of

time, in that the period between 30th May, 1957, the date of receipt of notice by the petitioners, and 15th June, 1957, the date of the filing of the

revision petition to the Commissioner (15 days) the time taken in applying for a copy of the annexure between 14th August, 1957 and 17th

August, 1957 (2 days), the time taken for depositing the stamps between 10th September, 1957 and 14th September, 1957 (3 days), the time

taken for filing of the writ petition from the date of supply of copies, i.e., from 16th September, 1957 to 24th September, 1957 (7 days) the time

taken from the date of obtaining a copy of the order passed in the writ Petition (1st April, 1959) to the date of the application before the Sub-

Court (11th April, 1959) (10 days) should be excluded; the time taken in all amounts to 37 days.

4. Regarding the first contention of the learned Advocate-General that the petitioners are not hereditary trustees, Mr. G.R. Ramanujam, learned

Counsel appearing for respondents 1 and 2, fairly conceded that the Board has in paragraph 7 of its written statement accepted the petitioners as

hereditary trustees. Regarding the second contention that the order of the Assistant Commissioner and the Area Committee has become merged in

the order of the Commissioner and that the writ petition and the petition before the Sub-Court should have been against the Commissioner's order,

it has to be noted that the Commissioner as well as the High Court in the writ petition did not interfere with the order passed and, therefore, there is

nothing to prevent the petitioners from pursuing their remedies against the original order, if they are within time. Regarding the third contention of

the learned Advocate-General that in a case where additional trustees are appointed under S. 41 of the Act, no right is available to the hereditary

trustees to file a petition before the Court as in S. 39 (4), in a decision in Balasundara Mudaliar v. The Area Committee, H.R. & C North and

South Arcot at Cuddalore (1998) 2 M.L.J. 47 : ILR (1958) Mad. 637 : (1957) 71 L.W. 265, Rajagopala Ayyangar, J., (as he then was) has held

that the provision for resorting to civil Court under S. 39 (4) is applicable to orders of the Area Committee under S. 41 read with S. 39 of the Act.

The learned Advocate-General submits that the above decision requires reconsideration But it is unnecessary to pursue the point further, because

of the view I am taking regarding the question of limitation in the case.

6. On scrutinising the various dates, I find that the application under S. 39 (4) is barred by limitation. S. 39 (4) provides that where the

Commissioner by order appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may within 30 days of the receipt of the

order, file an application to the Court to set aside or modify such order. The section as such does not make any provision for excluding the time

taken for disposing of the revision petitions filed before the Commissioner under S. 18 of the Act. Mr. N. R. Raghavachariar, the learned Counsel

for the respondents, contended that the revision petitions before the Commissioner were only a continuation of the proceedings before the

Assistant Commissioner and the Area Committee and as such in calculating the time under S. 39 (4), it is only the date of dismissal of the petitions

by the Commissioner that should be taken into consideration. He is unable to cite any authority in favour of such a proposition. On a reading of the

section, I do not find any support for the view that the time taken for the disposal of the revision should be excluded. In Nagabushanayya v.

Kotayya (1946) 1 M.L.J. 398=59 L.W. 289, their Lordships, the learned Chief Justice and Lakshmana Rao, J., had to consider the question

whether in calculating the time for filing a suit under Art. 47 of the Limitation Act the time taken in a criminal revision petition before the High Court

could be excluded. An order under S. 145 of the Crl. P.C., was passed by the Magistrate on 16th January, 1939. The matter was taken up to the

High Court by way of revision and the High Court dismissed the petition in limine on 15th August, 1939. The suit was filed on 26th May, 1942. If

the time taken for revision can be excluded, the suit having been filed within three years of 15th August, 1939, would be in time, and if it cannot be

excluded, as the order of the Magistrate was passed on 16th January, 1939, the suit would be out of time. Their Lordships after considering the

various authorities held that

It does not follow that an order dismissing in limine an application for revision of an order" passed under S. 145 (6), Crl. P C. is a final order within

the meaning of Art. 47 of the Limitation Act- The application was dismissed because on the face of the petition there was no scope for the exercise

of the Court's revisional powers which means that the order of the Magistrate stood entirely untouched.....The order dismissing an application of

this nature does not mean the substitution of the order of the High Court for the order of the Magistrate and therefore it cannot be said to

incorporate his order.

7. The is Lordships in conclusion held that if the application for revision is accepted and the Magistrate's order is set aside, his order is no longer

the final order; but until it is set aside or modified, it is, Though the above

decision relates to a revision petition before the High Court against an order under S. 145, CrI.P.C, the reasoning is applicable to the facts of the present case, and I respectfully follow it. Therefore, the time taken by the petitioners in preferring the revision petitions to the Commissioner should be excluded. In this view it is unnecessary to consider the other objection of the learned Advocate-General that the revision petition was not dismissed by the Commissioner due to any defective jurisdiction or other cause of a like nature in order to attract 8.14 of the Limitation Act.

8. Even if the time taken for the revision petitions is not excluded, the application under S. 39 (4) is out of time. As already observed, the order of the Assistant Commissioner was served on the petitioners on 30th May, 1957 and the revision was filed on 15th June, 1957. Two days were taken for filing a copy application and three days were taken for depositing stamps. From the date of obtaining the copies to the filing of the writ petition, there was a delay of seven days and from the date of obtaining a copy of the order in the writ petition to the filing of the application under S. 39 (4), there was a delay of ten days. The time taken, as I have already pointed out, comes to 37 days. The learned Subordinate Judge has excluded 9th and 10th April, 1959, as they were holidays. Under S. 4 of the Limitation Act, where the period of limitation prescribed expires on a date when the Court closes, the suit may be instituted on the date when the Court reopens. If the 30th day fell on the 9th or 10th April, 1959, those days might have been excluded. But, as I pointed out already, more than 30 days had elapsed before the 9th April, 1959. In the circumstances, even if the time taken in preferring the revision to the Commissioner is excluded, the application under S. 39 (4) is out of time.

9. Mr. N.R. Raghavachariar, learned Counsel for the petitioners, finally contended that even if the application was barred by limitation, this is not a case for interference under S. 115 of the Civil Procedure Code. He relied on a decision of the Supreme Court in *Keshardeo Chamria v. Radha Kissen Chamria* (1953) M.L.J. 100 : 66. L.W. 188 (S.C.). He also cited the decision of the Privy Council in *Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras* (1949) 1 M.L.J. 505 : ILR (1950) Mad. 1 : 62 L.W. 374 (P.C.). I am of the view that the above two decisions are not applicable to the facts of the present case. In this case, for the

civil Court to get jurisdiction, the application against an order of the Commissioner should be filed by the hereditary trustee within 30 days. If the application is not filed within time, the Court will have no jurisdiction to entertain the application. The order of the lower Court is therefore without jurisdiction and is liable to be set aside under S. 115 of the Code of Civil Procedure. In the circumstances, I hold that the order of the lower Court holding that the application under S. 39 (4) is within time is erroneous. The petitions are allowed but without costs.