

(1956) 01 KL CK 0014
In the High Court Of Kerala
Case No : A.S. No. 272 of 1954

Padrnanabha Pillai Raman Pillai

APPELLANT

Vs

Secretary, Travaneore Devaswom Hoard

RESPONDENT

Date of Decision : 16-01-1956

Acts Referred:

Citation : (1956) 01 KL CK 0014

Hon'ble Judges : Varadaraja Iyengar, J;Nandana Menon, J

Bench : Division Bench

Advocate : A.S. Narayanan Asan, for the Appellant; M. Madhavan Nair, for the Respondent

Judgement

Varadaraja Iyengar, J.—This appeal arises out of a suit for declaration of die Plaintiff's title as against die Thrikkannapuram Devaswom, represented by the 1st Defendant State and later by the 2nd Defendant Travancoro Devaswom Board, and for injunction.

2. The facts are as follows: The property scheduled to the plaint is a plot of wet land 45 cents in extent. It appertained to the Thrikkannapuram Devaswom and was attached under an ancient grant to temple service viz., playing on the drum "kodu-viruthi" by the Thikknathu family. It does not appear how this family dealt with the property and finally lost control of it. It was clear however that the Perumaveli Matom, which was one of the four Morales of the Devaswom, transferred possession of the property to the Plaintiff's family for the first time in 1051 under Ext. D usufructuary mortgage and that such possession continued with them under later renewals by way of mortgage and Kavana granted by the Matom. Subsequent to the assumption by the Government of Travancore of the management of the Devaswom they issued notice on 14-2-1123 to the Plaintiff's family to show cause why the property which was of service inam tenure should not be "vssumed as having been wrongly alienated by the inamdar concerned. It is the Plaintiff's case here that the proceeding so started were illegal and invalid inasmuch as firstly the property really belonged to the Perumaveli Matom and

the Matom was entitled to grant derivative rights to the Plaintiff's family and secondly even assuming the property belonged to the Devaswom the rights acquired by the Plaintiff's family as a result of the dealings of the Perumaveli Matom, commencing from 1051, had become unimpeachable by limitation and adverse possession and that therefore any action by Government in purported assertion of the title of the Devaswom at the present time was misconceived. The suit was therefore laid for declaration that the proceedings started by the Defendant for recovery of possession of the suit properties from the Plaintiff were unsustainable and for issue of injunction restraining the Defendant from taking possession of the property and for other appropriate reliefs, (3) The suit was contested by 1st Defendant Government, in the first instance and later by the 2nd Defendant Board on the footing that the Perumaveli Matom through whom the Plaintiff claimed was at no time competent to deal with the property and that therefore Plaintiff had not acquired any rights in the property. It was also asserted that the civil Court had no jurisdiction to question the action of Government by virtue of the provisions of the Service Inam Proclamation of 1068.

4. The Court below found on the evidence that the property belonged to the Thrikkannapuram Devaswom and had been demised as Service Inam land from the Devaswom in favour of the Thikka-nethu Veedu. The Court below also held that the suit property came within the purview of the Service Inam Proclamation of 1068 and it had therefore no jurisdiction to entertain the present suit. In any event, according to the Court below, the alienations in favour of the Plaintiff's family were null and void u/s 2 of the Service Inam Proclamation and therefore no question of limitation or adverse possession could arise. In the result the Court below dismissed the suit and hence this appeal by the Plaintiff.

5. Learned Counsel for the Appellant raised three questions, firstly that the application of the Service Inam Proclamation to the present case was totally misconceived inasmuch as the Thrikkannapuram Devaswom was a private Devaswom and remained as such even after the assumption by Government. Secondly, that in real fact, the property, at all material times, belonged only to the Perumaveli Matom and not to the Devaswom and thirdly that even assuming that the Perumaveli Matom did not own the property still under its alienation commencing from 1051, the Plaintiff's family should be held to have developed indefeasible rights to permanent possession on ground of limitation and adverse possession in any event.

6. Taking up first the question as to the applicability of the Service Inam Proclamation we have to observe, that the reason for the issue of the Proclamation is stated at page 772 of Volume I of the Regulations and Proclamations of Travancore as follows:

There are certain specific State services for the due performance of which grants of land have been made by Government free of Tax. The institution has been existing from time immemorial. In the interests of these services and as a safeguard against unauthorised alienations, a Royal Proclamation was issued

under date 1st Edavom 1068 rehabilitating the long recognised usage governing these tenures. and the safeguard was enacted under the Sections 2 and 3 of the Proclamation as follows:

2. All alienations of Inam lands attached to specific services of any description which have been or which may hereafter be made, contrary to past usage, shall be treated as null and void. And it shall be competent to Our Government to resume the lands so alienated and re-attach them to the services Parodied that Our Government may, at its discretion, deal with the resumed lands and the services connected therewith in any other manner it may deem fit.

3. No Civil suit shall lie against Our Government in respect of anything done under the last preceding Section.

It is clear from the above extract that the Proclamation in question-deals only with cases where the grant had been made by the Government in connection with specific State services. It is not claimed that the temple: service here which was attached to the plaint property had anything to do with the State at any time. It was a private Devaswom that had initiated the service and such Devaswom service it continued to remain in spite of the State's assumption of management of the Devaswom, The power of the Government u/s 2 of the Proclamation to resume their service inams and their freedom from question by way of suit u/s 3 on exercise of such power, cannot therefore apply in the circumstances. We hold accordingly that there is no bar to the maintainability of the suit by virtue of the Service Inam Proclamation of 1068.

7. Coming to the second question as to the title to the property, there can be no doubt that it belonged to the Devaswom and had been demised for purpose . of temple service ""koduviruthi". See Ext; II Ozhugu of the property and Ext. I, settlement enquiry proceedings relating thereto. The Perumaveli Maloin it would appear had applied in 1075 for issue of Patta for itself but it was found that the property belonged to the Devaswom and was outstanding on service tenure and therefore Patta could be issued to the applicant who was one of the Ooralers of the Devaswom, only with the tenure specifically described. The issue of the Patta in the name of the head of the Perumaveli Matom cannot in the context invest the Matom with title to the property. Sreedharan Narayanan of the Perumaveli Matom had no doubt executed Ext. mortgage to the Plaintiff's family in 1051 describing the property as his own "Sreedharan Narayanarkulla". And in the next deed of mortgage Ext. C dated 22-3-1957 evented by the same Sreedharan Narayanan in favour of the Plaintiff's family, in renewal of Ext. B, the property is described as belonging to the Devaswom and got from it (Devaswom Vaka Ezhuthi Vangichu Nadannu Vannu). It is only when we come to Ext. D, the Karanma deed executed in further renewal on 5-2-1085 by two senior members of Perumaveli Matom that we find any unmistakable assertion of the absolute title of the Matom (Jnangaluda Vaka Thanthum). Learned Counsel for the Plaintiff relies on the wording in Ext. C to say that the Matom must have got sale of the property from the Devaswom some time before Ext. B and such title gave the

occasion for the recital aforesaid in Exts. B, C, D in succession. However Exts. B and C recitals appear to us, to be only ambiguous. For Ext. B description may well apply to the executant's position as trustee of the Devaswom while Ext. C recital may be explained as really acknowledging the title of the Devaswom and also referring to the prior document of 1051 in favour of the executee. And even assuming that learned Counsel's suggestion as to a sale is correct, still such sale will be inoperative in law against the Devaswom. As the Judicial Committee observed in *Peari Mohun v. Manohar*, ILR 48 Cal 1019 : AIR 1922 PC 235) (A),

Though she bait and trustee are riot identical: terms the rule forbidding the purchase of an estate" by a person who stands in regard to his dealings with. it in a fiduciary relationship is general in its application.

The assertion of its own title by the Perumaveli; Matom in Ext. D could not again serve to effect thu title of the Devaswom to any wxtent adversely. For a trustee who has accepted the office or acknowledged himself as such is incapable of asserting any hostile title against the idol. As Rankin, C. J., observed in *Surendra Krishna v. Shtee Shree Iswar Bluisbaneswari*, 60 Cal 54 at p. 77 : AIR 1933 Cab 295 at p. 304) (B):

If after a shebait has accepted the trust there is a change in the intention with which he holds the deity's properties and he applies the rents and profits of the property to his own purposes, the idol's title cannot be affected thereby. Any change of intention on the part of the shebait can be brought home to the idol by means of the shebait only and the idol can react to it through the shebait. Adverse possession in such circumstances is a notion wholly-devoid of contents.

We have no hesitation therefore to hold along with, the Court below that the properly always belonged, to the Thrikkannapuram Devaswom and the Perumaveli Matom was interested therein only as one of four Morales or Shebails over the debutter entrusted to them for purpose of management.

8. The next question is what, if any, is the right acquired by the Plaintiff's family over the property by virtue of their dealings in respect thereof with the Perumaveli Matom, The earliest document executed. by the Perumaveli Matom as we saw is Ext. B usufructuary mortgage for a sum of 81 fanams. It is not claimed that it was for any purpose binding on the Devaswom, The next document is Ext. C renewal mortgage of 1057 which as we have noticed contains also an acknowledgment of the title of the Devaswom. It is for 165 lanams inclusive of the consideration under Ext. B and it is not clear again that it was executed for meeting any necessary expense concerning the Devaswom or for its benefit. Ext. D the last document in the case in favour, of the Plaintiff's family accounts for a total consideration of 430 fanams and provides for a permanent occupancy right or Karnma over the property after discharge of two intermediate alienations, viz., a mortgage of 1067 in favour of the Plaintiff's family apparently in renewal of Ext. C and the other a meltti of 1079 in favour of a stranger. These two" documents of 1067 and 1079 are not before us. Whether they also like Ext. C

acknowledged the title of the Devaswom is not clear. In any event, so far as Ext. D is concerned there can be no doubt that there was not only no question of necessity as regards the Devaswom but there was besides an open repudiation of the title of the Devaswom.

9. The question has arisen, where a permanent lease is granted by a shebait of debater lands, as to whether such transaction is void altogether or only voidable at the instance of a succeeding manager. Earlier cases on the subject held that a permanent lease of debutter property is void altogether if not executed for legal necessity. See *Nitya Gopal Sen v. Mani Chandra*, 12 CWN 63 (C), but the matter has now become settled after the Privy Council decision in *Ponnambala Desikar v. Periyanan*, 63 Ind App 261 : AIR 1936 183 (Privy Council) where it was laid down after a review of the various authorities on the point "that transfer of endowed property, whether it be by the head of a mull, or the shebait of a family idol, or the dharmakarta of a temple all stand on the same footing, and hold good for the period of life of the transferor."

Indeed there is no distinction on this matter between a disposition purporting to be a grant of a permanent lease and a purported out and out grant by way of absolute sale. In each case the disposition by the manager is good and effective as long as he continues to be manager. See AIR 1935 44 (Privy Council)

10. The question has also been considered in various cases, as to the circumstances under which an alienation will be void altogether and the transferee cannot acquire any vestige of title to the property. Such are cases where the alienation is not of particular items of the endowed property but of the endowment as a whole. Similarly where the manager transfers the property belonging to the deity as his own property asserting his own personal interest in the same. See page 296. *Mukherjea, Hindu Law of Religious and Charitable Trust*.

11. Now the above question as to void or voidable nature of the alienation has great relevancy on the question of limitation and adverse possession raised " by learned Counsel for Appellant. For if the transfer is void ab initio the possession of the transferee is adverse from the date of the transfer. If, on the other hand, it is not void but avoidable merely at the instance of the succeeding manager the possession cannot be adverse until the office of the transferring manager ceases. As we have seen, the transfer would be void if the manager transfers the property as his own property and not as the property of the deity. In such case limitation would run from the date of the transfer.

12. Learned Counsel for the Appellant says that Ext. D transaction of 1085 must be taken to be void altogether in the above view and had become unimpeachable by lapse of time and that therefore the proceedings started in 1123 by Government for resumption could not be permitted to go on. There is a good deal of force in this argument. As we have already seen Ext. D makes the positive assertion as to the title of its executant in the property dealt with and

must be held to be totally void under the test laid down by the Privy Council and referred to above. It cannot therefore create any title in the Plaintiff's family and accordingly the possession thereunder was wrongful as against the Devaswom from its very date. The resumption proceedings complained against cannot in the circumstances be considered to be proper. Learned Counsel for the Defendant, Respondent suggests that it may be open to the Devaswom still to redeem the property as under the admitted mortgage of 1067 referred to in Ext. D as acknowledged in the melotti of 1075 also referred to in Ext. D and ignore Ext. D Karanma. It may be so. But that can be only by way of suit and not by the resumption proceedings impugned.

13. In the result we reverse the decree of the Court below and grant in favour of the Plaintiff a declaration that the proceedings started by the Defendant for recovery of possession of the suit property from the Plaintiff are illegal and invalid and also an injunction restraining the Defendant from taking possession of the property from the Plaintiff. The suit will stand dismissed in regard to the prayer for declaration of title to the suit property. In the circumstances of the case we direct that the parties bear their respective costs throughout.