

(1956) 01 KL CK 0002
In the High Court Of Kerala
Case No : A.S. No. 475 of 1953

Parameswaran Unnithan Neelakantan Unnithan	APPELLANT
Vs	
M. Chandrashekhara Unnithan and Others	RESPONDENT

Date of Decision : 30-01-1956

Acts Referred:

Trusts Act, 1882 — Section 1, 78, 81

Citation : (1956) 01 KL CK 0002

Hon'ble Judges : Vithayathil, J;Nandana Menon, J

Bench : Division Bench

Advocate : P. Govindan Nair and G.B. Pal, for the Appellant; P.K. Varghese and K.N. Narayanan Nair, for the Respondent

Judgement

Nandana Menon, J.—This appeal is by the Defendant in the suit being one filed for setting aside a document called Bharamelpupathrom executed by the first Plaintiff favour of the Defendant filed as Ext. B and consequential reliefs. Mahadevar Devaawom the plaintiff schedule properties belonged to Pikaveedu tarwad of which the first Plaintiff (who passed away during the pendency of the suit) last surviving member.

According to the Plaintiffs, first Plaintiff executed Ext. II (Ext. B being the copy) in favour of the Defendant who is her father's nephew and son-in-law of her deceased brother under the impression that it was only a deed authorising the Defendant to renovate the temple and without any intention of vesting any other right in him with regard to the temple or the properties. But later on it was realised that the document was one purporting to transfer the right of the first Plaintiff in the temple and properties to the Defendant.

So alleging that this was brought about due to fraud of the Defendant the suit was filed by the first Plaintiff and Plaintiffs 2 to 10 being this children and wife of her deceased son Kunjkrishna Valiathen for cancellation of the deed and recovery of the temple and properties. It was further alleged that Ext. B had been revoked by Ext. C dated 16-12-1115 executed by the first Plaintiff.

The Defendant contended that there was no fraud or misrepresentation, in the execution of Ext. II, that the first Plaintiff had no right to cancel it and was hence not entitled to any of the reliefs prayed for. The lower Court held that, though there was no fraud with regard to the execution of Ex. II the first Plaintiff had a right to revoke it and hence granted a decree in favour of the Plaintiff.

Now Defendant questions the said finding, it being contended that he obtained valid rights under Ext. II with regard to the management of the temple and the properties and that the lower Court was wrong in holding that the first Plaintiff was entitled to cancel the said deed and recover possession of the properties covered by Ext. II. A memorandum of objection has been filed by Plaintiffs 2, 3 and 10 against the findings that Ext. II is not vitiated by fraud and had come into effect.

2. We will deal with the objections to the findings first. Ext. II is a deed registered in the Attingal Sub Registrar's Office and the execution of it was admitted by the first Plaintiff herself. Her contention was that she was not aware of the nature of the document. She was examined as P.W. 1.

In her chief-examination she deposes in support of her contention that she had no knowledge of the exact nature of Ext. II when she executed it tout in her cross-examination she admits mat when D.W. 1 was acting as a mediator and trying to settle the disputes between the parties she did not tell him that the Defendant committed fraud in getting Ext. II executed. D.W. 1 is a very respectable witness and his evidence as pointed out by the learned District Judge is enough to show that the story, of fraudulent, misrepresentation with regard to Ext. II now put forward is not true.

D.W. 1 says that the Defendant told him that he was going to obtain a document covering the temple and the properties mentioned in the plaint, that protest were made to him by some parties against that attempt of the Defendant and he directed the parties to appear before him. Accordingly the Defendant, the first Plaintiff and some Ors. went over to him and the Defendant told him that the first Plaintiff was taken over to prove that he had obtained the deed with her full consent.

Then D.W. 1 clearly says that when Plaintiff was Questioned about it she admitted that the deed was executed by her of her free will. The very fact that the Defendant chose to take the first Plaintiff to D.W. 1 shows the bona fide nature of his action. The admission of the first Plaintiff before D.W. 1 further supports it. By that time protests were being made by interested parties and so if the first Plaintiff had no knowledge of the nature of the deed certainly she would have been informed about it and the same would have been brought to the notice of D.W. 1 by her.

Further, D.W. 1 specifically refers to his questioning the first Plaintiff as to why she executed and deed like Ext. II and her saying that it was because she was not being looked after properly. It was only the remaining Plaintiffs who told D.W.

1 later that the Defendant got the deed executed fraudulently. The first Plaintiff did not at any stage represent to D.W. 1 that she was misled with regard to the execution of the deed.

So the lower Court's finding that Ext. II is not vitiated by fraud or misrepresentation is quite correct. With regard to its coming into effect when it is held that the document was executed with full knowledge of its nature and consent the presumption is that it has come into effect. The deed on the face of it transfers possession of the temple and properties to the first Defendant.

There is evidence to the effect that the employees of the temple were being paid by the Defendant that the Defendant filed a complaint along with the first Plaintiff in 1115 alleging interference with his possession by present Plaintiffs 2 and 3, Ext. XVIII being the copy of the said complaint. The subsequent complaint filed by the first Plaintiff on 16-1-1116 was obviously at the instance of the remaining Plaintiffs. Thus it is clear that Ext. II came into effect.

3. The next point that arises for consideration is the nature of Ext. II. On behalf of the Plaintiffs what is contended is that the deed did not create any vested rights in the Defendant but only evidenced an entrustment of the management of the temples and the plaint schedule properties. So it is urged that the first Plaintiff is entitled to revoke it at her will and pleasure and Ext. C had the effect, of such revocation determining all the rights of the Defendant under Ext. II.

The lower Court has found that Ext. II was intended to be only an instrument making the Defendant an agent and evidence something like a delegation of trust or creation of a new trust, rejecting the defence position that Ext. II had the effect of transferring all the rights of the first Plaintiff to the Defendant without reserving any right of revocation in her. Then holding that applying the principles in Sections 78 and 81, Trusts Act first Plaintiff had a right to cancel Ext. II the claims of the Plaintiffs were upheld by the learned District Judge.

Now what is contended on behalf of the Defendant is that the learned Judge went wrong in applying the provisions of the Trusts Act and in interpreting the nature of Ext. II. Before going in to clauses in Ext. II it is necessary to refer to the partition deed copy of which is filed as Ext. A to understand the effect of Ext. II.

In Ext. A at page 7 there is reference to the Mahadeva Devaswom and the plaint schedule properties. There it is said that the temple belonged to the tarwad of the parties and tarwad properties were given to the Devaswom as Trippatidanam and that gift deed was to be duly executed in favour of the Devaswom. Then there is a reference to the properties then standing in the name of the Devaswom and a direction that the eldest member of the family was to manage the Devaswom and its properties.

In view of the clear wording in this document what we note is the creation of a private family trust. In the Sabdatheravali (Malayalam Lexicon) by Padmanabha Pillai the word "Trippatidanam" is referred to as the gift of a Maharaja of

Travancore to Padmanabhaswami Temple, Thus it is clear that when that word is seen used it is meant to evidence the gift to r temple. So at the time of Ext. II first Plaintiff's possession of the Mahadeva Temple and the plaint schedule properties was in her capacity as the eldest member of the tarwad and as per the rights vested under the aforesaid clauses in Ext. A.

Coming to Ext. II it is significant to note that the first Plaintiff never claimed any title to the property. What is stated is that she was managing the temple and the properties and further she was the last surviving member. Then it is said that she was unable to look after the Devaswom affairs and hence for its proper management and for the continued stability of the temple, being one worshipped from immemorial time by the ancestors of her family, she thought it desirable to entrust the affairs to a fit person for the good of her family.

In the operative portion, of the deed it is stated that she surrendered the entire rights he had in the properties mentioned in the schedules therein to the Defendant described as nephew of her husband and son-in-law of her deceased brother. The only right seen reserved in her is the right, to obtain 150 paras of paddy towards her maintenance every year and in default to take possession of the properties for realisation of the said maintenance.

The aforesaid clauses clearly indicate the transfer of the entire rights of the first Plaintiff subject to her claim for maintenance and it is idle to contend that the deed evidenced only a creation of an agency. The nomenclature of the deed as Bharamelpupathrom cannot be considered as going to show that the deed was not one of absolute transfer of the first Plaintiff's rights.

Obviously in view of the nature of Ext. A the first Plaintiff herself considered that she was only exercising the right of management of the Devaswom and its properties and that explains the use of this particular word, the subject-matter of transfer being the family temple and the properties endowed by the family. What we have to next consider is whether such a transfer is a valid one and whether it is a revokable one at the instance of the first Plaintiff.

The lower Court itself points out that Trusts Act as such is not applicable to the instant case in view of the savings in Section 1 of the Act where it is stated that the Act does not apply to public or private religious or charitable endowments. The 1st Plaintiff being the sole surviving member of her tarwad was competent to execute any deed with regard to the family temple and properties consistent with the conditions mentioned in Ext. A.

Khetter Chundar v. Hari Das 17 Cal 557 (A) cited on behalf of the Defendant is a clear authority in support of the Defendant's position that after Ext. II the first Plaintiff had no right to execute a cancellation deed like Ext. C and claim recovery of the temple and properties on the grounds now put forward.

In that case the Plaintiff alleged that some of the properties involved therein formed the debutter land of an idol named Sreedhar originally belonging to the

Defendants family called the Ghoses were made over along with the idol to the grandfather and grand-uncle of the Plaintiff by a deed of gift executed by the members of the Defendants family owing to their inability to carry on the worship properly, and that the Plaintiff's family was ever since holding the land performing the worship till the Defendants interfered with their possession. They claimed that the Defendants were unlawfully interfering with their rights and claimed recovery of the properties.

Thus the right claimed by the Plaintiff there was under a transfer similar to the one evidenced by Ext. II. The effect of such a transfer arose for consideration there. The following observations beginning from page 560 may be referred to:

It has been, held in several cases that a sebaite has authority to do what may be required for the service of the idol and for the benefit and preservation of its property. In *Prosunno Kumari Debya v. Golat Chand Baboo* 4 Bom LR 450 (B) the judicial Committee observe: - It is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must, in the nature of things, be entrusted to some person as sebaite or manager.

It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager of an Infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of the necessary funds to preserve and maintain them.

And the same view is affirmed by their Lordships in *Doorganath Roy v. Ram Chunder Sen* 2 Calt 341 (PC) (C) in which it has been further observed that in the case of land dedicated to a family idol, "the consensus of the whole family might give the estate Anr. direction". If that is so we see no sufficient reason why the arrangement made in this case in 1254 by the sebaits, who were all the then members of the Ghose family, for the purpose of preserving the property of the idol and preventing the discontinuance of its worship, should not be held to be valid.

It was said that the effect of the arrangement was to convert an endowment for the spiritual benefit of the original founder's family into one for the benefit of the family of the Plaintiff. We do not think that that was so. Having "regard to the terms of the deed of 1245, and to the fact that the idol with its endowed property was made over to the Plaintiff's predecessors we think that according to Hindu notions the worship of the idol would still be for the benefit of the original founder's family from a spiritual point of view.

And if the worship of the idol is at any time neglected it will be open to the representatives of that family to enforce its performance; for under the deed of 1254 it was upon the express condition of, the regular performance of the worship that the idol and its properties were made over to the pre of the Plaintiff. It has been found that Plaintiff has been duly performing the worship of the idol

and no question has, been raised as to his to do so.

So the Plaintiff's claim was upheld. Thus this decision holds that the members of the family of the founder of the trust cannot interfere with the rights of the person to whom the temple and its properties had been transferred as long as the stipulations regarding proper management of the temple and the carrying on of worship were satisfied. The first plaintiff's position here was in no way better than that of the Defendants in the aforesaid suit.

The present suit was brought on the ground that Ext. II was vitiated by fraud and that the first Plaintiff had a right to cancel it. There was no contention at all that the Defendant was not, fulfilling the conditions regarding proper management of the temple and that on that ground the first Plaintiff was entitled to recover the temple and the properties.

So once it is found that the deed was a valid one and it came into effect no such relief can be claimed by the first Plaintiff and the remaining Plaintiffs who claim through her. The plea raised that any transfer deed executed by the first Plaintiff could be effective only till her death cannot stand. If there were other surviving members of her tarwad there would have been some force in it. But here she represented the entire, interests of the tarwad at the time of Ext. II.

The remaining Plaintiffs are only the children of her son and belong to a different family, the parties being governed by Marumakkathayam law. The decision in Boidyo Gauranga Sahu Vs. Sudevi Mata, is not applicable to the present case. There what was held was that where the line of hereditary trustees prescribed by the founder of a religious trust became extinct the trust reverted to the family of the founder and they had a right to nominate a new trustee with the concurrence of all the members of the family.

No such question arises here as the Defendant is the person in whose favour Ext. II itself was executed. Thus it is clear that the lower Court was wrong in granting a decree in favour of the Plaintiffs.

4. In the result, the appeal is allowed with costs of the Defendant in both the courts and the memorandum of objections dismissed.