

(1977) 10 MAD CK 0014
In the Madras High Court

Rajanarayanaperumal Temple	Vs	APPELLANT
Rethinam Pillai		RESPONDENT

Date of Decision : 14-10-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12
Limitation Act, 1963 — Section 31
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 109

Citation : (1979) 1 MLJ 159

Hon'ble Judges : N.S. Ramaswami, J

Bench : Division Bench

Judgement

N.S. Ramaswami, J.—The main question in this Second Appeal filed by the plaintiff is whether the plaintiff's title had been extinguished by

the law of limitation. The plaintiff is the Sri Rajanarayanaperumal Temple, Melayur represented by its trustee and Executive Officer. The suit is for

recovery of possession with future profits of an agricultural land whose extent is 96 cents comprised in R.S. No. 169/6, Melayur, Sirkali taluk. It is

not in dispute that the suit property belonged to the temple, the same having been granted as an iruwaram inam.

2. One Manikkam Pillai was formerly the trustee of the temple. In the year 1941, he purported to exchange the suit property with another property

of one Muthiah Pillai. The other property is said to be comprised in two survey numbers whose total extent is 92 cents. The exchange was under

the original of Exhibit A-4, dated 2nd December, 1941. Within two days thereafter, that is under the original of Exhibit A-5 dated 4th December,

1941, the suit property was purchased in the name of the first defendant to the suit, who is no other than the wife of the said Manikkam Pillai (the

then trustee). In effect, the trustee (Manikkam Pillai) got the suit property which is admittedly that of the temple transferred to his wife's name in a circuitous way, that is by transferring it to Muthiah Pillai in exchange for another property and getting a sale deed from Muthiah Pillai in the name of the wife (first defendant). It is common ground that Manikkam Pillai died in the year 1942; and the members of his family continued to be trustees of the temple till 1967. Only in that year, the present trustees were appointed. Later an Executive Officer was also appointed for the temple.

3. The case of the plaintiff has been that the alienation by the then trustee Manikkam Pillai is void and that the plaintiff is entitled to recover possession with mesne profits. Bakkiatha-chi, the widow of Manikkam Pillai was the sole defendant originally impleaded in the suit. She died pending suit and Rethinam Pillai, the adopted son of Manikkam Pillai has been impleaded as the second defendant. He contested the suit mainly on the ground of limitation. He also contended that by virtue of the Madras Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963, the plaintiff's right, if any, should be held to be barred. The Courts below have concurrently found that the suit is barred by limitation and that the defendants must be held to have acquired title by adverse possession. The trial Court has also held that the provisions of Act XXX of 1963 are a bar for the maintainability of the suit and further the plaintiff cannot sue for possession without seeking to set aside or cancel the exchange deed, the original of Exhibit A-4.

4. In this Second Appeal by the plaintiff it is not seriously disputed by the respondent that the alienation under the original of Exhibit A-4 made by Manikkam Pillai is void. When the alienation was made, the Madras Hindu Religious Endowments Act, II of 1927 was applicable. u/s 44-B of the said Act (which corresponds to Section 41 of Act XXII of 1959), any exchange, gift, sale or mortgage and any lease for a term exceeding five years of the whole or any portion of any inam granted for the support or maintenance of a temple etc, shall be null and void. Therefore the alienation under the exchange deed is clearly void and there is no need for the plaintiff to ask for cancellation or setting aside the said document before seeking to recover possession of the property. This position is not disputed by Mr. V. Ratnam, learned Counsel for the respondent.

5. As I said the question is whether the suit is barred by limitation. Two contentions were raised on behalf of the plaintiff-appellant in this regard.

The first is that by virtue of Article 96 of the Limitation Act of 1963, the suit is within time. The second is based on Section 109 of the Tamil Nadu

Hindu Religious and Charitable Endowments Act (XXII of 1959). I am of the view that but for Section 109 of Act XXII of 1959, the suit cannot

be saved from the bar of limitation and the interpretation sought to be made by the learned Counsel for the plaintiff on Article 96 of the Limitation

Act of 1963 is not acceptable.

6. Article 96 corresponds to Article 134-B of the Limitation Act of 1908. The difference between these Articles is that while under the earlier one,

time begins to run from the date of death, resignation or removal of the transferor under the Article in the new Act, the third column is:

The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is

later.

The starting point of limitation from the date of appointment of the plaintiff as manager has been newly introduced under the Act of 1963 and the

Article makes it clear that a suit for recovery of possession can be filed within twelve years either from the date of the death or removal of the

transferor or the date of appointment of the plaintiff as manager whichever is later. The contention of Mr. E. Padmanabban, learned Counsel for

the plaintiff was that the trustees for the temple having been appointed only in the year 1967 and the suit having been instituted in 1969 itself, the

suit is not barred.

7. But this contention overlooks one important aspect, namely that the new Article would have no application if the title of the temple had been

extinguished even prior to the coming into force of the Limitation Act of 1963. In the present case, as already seen, the alienation was in the year

1941 and the alienating trustee died in the year 1942. As the law then stood, Article 134-B of the Act of 1908 would apply, which means that a

suit for recovery of possession ought to be filed within 12 years of the death of Manikkam Pillai. Before the coming into force of the Limitation Act

of 1963, more than 12 years have elapsed after the death of the transferor. That means by virtue of Section 28 of the old Act, the temple's right to

the suit property shall be deemed to have been extinguished, unless Section 109 of Act XXII of 1959 comes to its rescue.

8. There can be no doubt that if the present suit had been filed prior to the coming into force of the Limitation Act of 1963, it must be necessarily

held that the suit is barred under Article 134-B of the old Act and the plaintiff would have been non-suited unless the suit is saved by Section 109

of Act XXII of 1959. There is nothing in the new limitation Act to revive a right which had been extinguished even prior to the coming into force of

the said Act. On the contrary, Section 31(a) of the new Act says that nothing in the Act shall enable any suit, appeal or application to be instituted,

preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 expired before the commencement of this Act.

9. In *Chinna Jeeyangar Mutt, Thirupathi Vs. C.V. Purushotham and Others*, a single Judge of the Andhra Pradesh High Court was of the view that

in spite of Section 31 of the new Limitation Act, Article 96 of the new Act would be applicable even in a case where the alienating trustee had (sic)

more than 12 years prior to the coming into force of the new Limitation Act. But this decision of the single Judge has been overruled by a Division

Bench of the Andhra Pradesh High Court in *C.V. Purushotham Vs. Chinna Jeeyangar Mutt Tirupati*, . In second Appeal No. 400 of 1972,

Sornathammal and Ors. v. Tamil Nadu State Wakf Board, by judgment dated 11th July 1975, Natarajan, J., held that the suit (or recovery of the

properties alienated in the years 1953 and 1955 by the prior muthavalli was not barred because it had been filed within twelve years from the date

of the constitution of the Wakf Board. Second Appeal 456 of 1972, *Thnngiah Velar and Anr. v. Tamil Nadu State Wakf Board* decided by the

same learned Judge by judgment dated 29th July 1975 is also a similar case In the latter of the two cases, the learned Judges has referred to the

decision in *Chinna Jeeyangar Mutt, Thirupathi Vs. C.V. Purushotham and Others*, with approval. Unfortunately the fact that that decision had been

reversed in *C.V. Purushotham Vs. Chinna Jeeyangar Mutt Tirupati*, had not been brought to the notice of the learned Judge. However, in neither

of these two judgments, it has been held by the learned Judge, that even if the right to recover property had been extinguished by operation of the

law of limitation as it then stood (prior to the coming into force of the Limitation Act of 1963), a suit can be maintained after the coming into force

of the later Act In fact, in Second Appeal No. 456 of 1972, the facts are that the alienating mutha-alli was alive even on the date of suit and there

is nothing to show that he had either resigned or had been removed more than 12 years prior to the institution of the suit. Therefore, there was no

question of the right having been extinguished even prior to the coming into force of the new Limitation Act. In Second Appeal No. 400 of 1972

the facts are not clear as to the date of death or resignation or removal of the alienating muthavalli.

10. In *The State Wakf Board, Madras Vs. Subramanyam and Others*, , Ismail, J., had to consider the question whether the suit was within time

under Article 96 of the new Limitation Act That was also not a case where the right had been extinguished prior to the coming into force of the

new Limitation Act, for the alienating trustee had died only in the year 1953, and twelve year had not passed before the New Act came into force.

11. In my judgment *Damodaran Chetty v. Govindasami Chetty and Ors.* C.S. Nos. 109 of 1964 and 2 of 1969 dated 13th July 1971 I had to

consider the question as to whether a suit which had become barred under Article 142 of the old Limitation Act can be maintained under Article

65 of the new Limitation Act. I have held that if the suit had been barred under Article 142 of the old Act, the right of the plaintiff to recover the

immovable property had become extinguished even prior to the coming into force of the new Act and there is nothing in the new Act to revive the

right. In that judgment I have explained the observations of the Supreme Court in *Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and*

Others, , and also referred to *Ambika Prasad v. Ram Ekbal Rai* (1966) 1 S.C.R. 605, and *Laliteshwar Prasad Sahi Vs. Bateshwar Prasad and*

Others, . A different view has been taken by Alagiriswami, J., as he then was, in *Konappa Mudaliar Vs. Kusalaru alias Munuswami Pillai and*

Others, , but that decision has since been overruled by a Division Bench of this Court in *The Southern India Education Trust, Madras Vs. M.S.*

Jagadambal, . What applies to Article 142 read with Section 28 of the old Act would also apply to Article 134-B read with the above said

section.

12. Therefore unless the second line of argument, namely that based on Section 109 of Act XXII of 1959 is acceptable, the suit must be held to be

barred by limitation But I am of the view that the learned Counsel for the plaintiff-appellant is on firm ground in respect of his contention based on

Section 109 of Act XXII of 1959. That section is in the following terms:

Nothing contained in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any religious

institution which had not vested in such person or his predecessor-in-title before the 30th September, 1951.

It is clear that this is a special provision regarding the law of limitation and that would prevail over the general provisions contained in the Limitation

Act. Unless the plaintiff's title had been extinguished prior to 30th September, 1951, then undoubtedly it is entitled to recover the property by

virtue of this section. Natesan, J., in his judgment, *Govindaswami v. Mottayan Chittiar and Anr.* S.A. No. 1220 of 1966 dated 15th November

1968, had to consider the above section. The learned Judge has held that unless the defendant had prescribed title to the property by 30th

September, 1951, the property cannot be said to have vested in him by the sale and therefore there was no question of the deity's title being lost

by the law of limitation. In the present case, as already seen, Manikkam Pillai the alienating trustee died in the year 1942. It is not anybody's case

that he had either resigned or that he had been removed prior to his death. By 30th, September, 1951, twelve years had not elapsed after

Manikkam Pillai's death. Therefore undoubtedly by 30th September, 1951 the property had not vested in the defendant. That means in spite of the

provisions in the Limitation Act, the plaintiff is entitled to recover possession.

13. Mr. V. Rathnam, learned Counsel for the respondent contends that the property is a minor inam, that Act XXX of 1961 applies and by virtue

of the various provisions contained in that Act and the fact that the settlement authorities have issued a patta to the defendant it must be held that

the plaintiff has no title. It is admitted that originally patta was granted by the Settlement Officer to the plaintiff by order dated 30th September,

1964. But subsequently, that is on 12th November, 1976, the Tribunal has reverted the order of the Settlement Officer and granted patta to the

respondent. This is said to be on the basis of the judgment of the Court below in this very suit and also because the respondent is in possession.

However, the plaintiff-temple has filed a Special Tribunal Appeal to this Court and

the same is said to be pending.

14. The contention of Mr. Rathnam is that by virtue of Act XXX of 1963 the property vested in the Government and as patta has been issued to

the respondent, the plaintiff-temple has no longer any right. But this is not tenable. The provision regarding vesting under Act XXX of 1963 is

similar to those in Act XXVI of 1948. The provisions relating to grant of ryotwari patta are all similar in both the Acts. It is settled law that the

question of title has always to be decided by the civil Court and the provisions of Act XXVI of 1948 do not in any way take away the civil Court's

jurisdiction to decide such a question. See *Souai Uiayar v. Aniiyappan* (1959) 1 M.L.J. 195 ; *Adakalathammal Vs. Chinnayyan Panipundar*, ;

Krishnaswami Thevar v. Perumal Konar (1961) 1 M.L.J. 168; *S.K.M. Muhammed Mustafa Marakayar Vs. Udayanachiammal and Others*, ; The

State of Madras Vs. Balamanavala Reddiar and Another, ; *T. M. Laksminarayana Ayyar and Others Vs. Nallachi Ammal and Others*, ;

Rajasekaran and Others Vs. Elumalai Goundan and Others, .

15. The law is not different under Act XXX of 1963 see Judgment of *Gokulakrishnan, J. Poosari Mahalingam Pandaram and Ors. v. Muthuswamy*

Thevar and Ors. 1974 T.N.L.J. 162, judgment of *Mohan, J., Sornathammal v. Ramachandran and Ors.* (1975) T.N.L.J. 151 and the judgment of

Sethuraman, J., in Jumma Mosque. Salavakkam v. Sulaiman Sheriff and Anr. (1977) T.N.L.J. 151. In the last of the cases, *Sethuraman, J.*, has

pointed out that the jurisdiction of the Assistant Settlement Officer is merely for the purpose of granting a patta and not to decide any dispute as to

title. His jurisdiction as well as that of the Tribunal is restricted to the question of issue of ryotwari patta. The learned Judge held that neither the

Settlement Officer nor the Tribunal has jurisdiction to go into the question of title to the land as such.

16. Section 43 of Act XXX of 1963 speaks about *res judicata*. I will extract the said section:

(1) The decision of a Tribunal or the Special Appellate Tribunal in any proceedings under this Act on any matter falling within its jurisdiction shall

be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a Civil Court, in so far as such matter is in issue

between the parties or persons aforesaid in such suit or proceeding.

(2) The decision of a Civil Court (not being the Court of a District Munsif or a Court of Small Causes) on any matter falling within its jurisdiction

shall be binding on the parties thereto and persons claiming under them in any proceeding under this Act before a Tribunal or the Special Appellate

Tribunal in so far as such matter is in issue between the parties or persons aforesaid in such proceeding.

As it is clear from the provisions of the Act that the question of title is beyond the jurisdiction of the Tribunal or the Special Appellate Tribunal, any

decision by them would not attract the bar u/s 43(1) regarding such question. In fact Sub-section (2) quoted above puts the matter beyond any

controversy. That provision makes it clear that regarding matters which are within the jurisdiction of the civil Court, a decision of that Court would

be final and would be binding on the parties when they go before the Tribunal or the Special Appellate Tribunal. Question of title is purely within

the jurisdiction of the civil Court and not within the jurisdiction of the Tribunal or Special Appellate Tribunal. Therefore any decision rendered by

the civil Court (not being the Court of the District Munsif or the Court of Small Causes) regarding title would conclude the issue even when the

parties go before the Tribunal or the Special Appellate Tribunal.

17. Here the original title of the temple is not in dispute. The only question is whether its title had been extinguished by the law of limitation. The

authorities who granted patta are certainly not called upon to decide such a question.

18. There is nothing in the judgment Mohamed Abubacker v. R. Renganathan Chettiar and Ors. L.P.A. No. 18 of 1968 dated 24th June, 1969

against the above position. There is one observation which is liable to be misunderstood. It is stated that the question of title will have to follow a

decision under the provisions of the Act (Act XXX of 1963) to grant patta. From this it is certainly not meant that if a party obtains patta before

the Tribunal or the Special Appellate Tribunal, as the case may be, he should succeed in the civil Court on the question of title also. The Division

Bench has made it clear that "which of the competent claimants to title is entitled to succeed will be a matter to be finally settled by a civil Court.

The earlier reference that question of title will have to follow a decision under the provisions of the Act (Act XXX of 1963) to grant patta had

obviously been made because in that case it was thought that the civil Court may decide the question of title after the patta proceedings were over.

However, even for postponing a decision regarding the question of title by the civil Court (till patta proceedings are over), there is no provision in

the Act and the Bench which decided the Letters Patent Appeal has not referred to any provision nor has it given any reason. Hence the decision

in the Letters Patent Appeal, for postponing a decision by the Civil Court, regarding title, should be held to be confined to the facts of that case.

19. Mr. Rathnam referred to Section 8(2) of Act XXX of 1963 which says that notwithstanding anything contained in Act XXII of 1969, the

provisions in that section shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institution

and contended that by virtue of this provision, the plaintiff cannot invoke Section 109 of Act XXII of 1959. This is not tenable. Section 8 relates to

grant of ryotwari patta and Sub-section (2) thereof specifies certain categories of persons who should be granted patta and that provision is made

a non-obstante clause, the effect of which is that whatever be the provisions in Act XXII of 1959, the categories of persons mentioned in Section

8(2) of Act XXX of 1963 are entitled to patta. But it must be remembered that the question of title is different from the obtaining of patta and the

provision relied on has nothing to do with the operation of Section 109 of Act XXII of 1959 which is only a special provision relating to limitation.

Therefore if the plaintiff's suit is not barred by virtue of Section 109 of Act XXII of 1959, there is no use of the plaintiff invoking Section 8(2)

which only relates to patta proceedings.

20. The plaintiff temple is not claiming any title to the 92 cents of land in R.S. Nos. 168/2 and 170/5 covered by the exchange deed, the original of

Exhibit A-4. As the title to the suit property, namely R.S. No. 169/6, had not passed from the plaintiff-temple, the plaintiff did not get title to the

alternative property, namely R.S. Nos. 168/2 and 170/5. The learned Counsel for the plaintiff-temple concedes that the temple does not claim any

title to the 92 cents land covered by the said deed of exchange. As already noticed over after Manikkam Pillai's death, his family members were

functioning as the trustees of the plaintiff-temple till 1967. Therefore the said 92 cents of land had been with them and even after the new trustees

were appointed in 1967 it continues to be with them. It is made clear that the plaintiff-temple has no title to the said 92 cents and the same should belong to the second defendant.

21. In the result the second appeal is allowed. The decrees and judgments of the Courts below are set aside and the suit is decreed for possession with future mesne profits which are to be determined on an application under Order 20 Rule 12, Code of Civil Procedure. The plaintiff would have its costs throughout.