
(2011) 11 MAD CK 0272
In the Madras High Court
Case No : O.S.A. No. 229 of 2006

Satti Paradesi Samadhi and Pillar Temple	APPELLANT
Vs	
M. Sakuntala (Died) and others	RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(2)

Citation : (2012) 2 LW 865

Hon'ble Judges : R. Mala, J; R. Banumathi, J

Bench : Division Bench

Advocate : V. Balasubramanian, for the Appellant; V. Ravi for Respondents 2 to 6 and 8 to 11, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi. J.

1. This appeal arises out of the Judgment dated 24.7.2003 made in C.S. No. 673 of 1997, whereby the learned Judge had taken up the issue of limitation as a preliminary issue and dismissed the Suit as barred by limitation. The unsuccessful plaintiff is the appellant. For convenience, the parties are referred to as per their original rank in the Suit. Case of Plaintiff in brief is as follows:-

The plaintiff claims that he is the owner of the properties in Door Nos 16/1 and 16/2 16/3 Veeraraghavan Road, New Washermanpet, described in plaint "A", "B" "C" Schedules. In the property of the Trust Samadhis of Satti Paradesi and Raju Mudaliar, the Chief Disciple of Sanyasi Satti paradesi are situated. To these was added a small Pillar temple. The objects of religious Trust are stated to be:- (i) to conduct Guru Pooja every year on the Chitra Pournami Day for the Sanyasis entered in the Samadhis; (ii) maintenance of Samadhi; (iii) Vinayaka Chathurthi Celebration; and (iv) Feeding Sadhus and poor on the Guru Pooja days and Thai Poosam day pooja.

2. The property was purchased by one Raju Mudaliar who was an ardent disciple

of Swamiar Satti Paradesi. In order to construct a Samadhi for Satti Paradesi Swamiyur Raju Mudaliar purchased vacant land of an extent of 4 grounds in Tondiarpet. The parties are related to Raju Mudaliar as under:

Raju Mudaliar

V. Sabapathi Mudaliar (died in 1918)

Santhalingam (adopted son) (Settlor) = Vijaya Saradambal

Ramalin-gam Plaintiff/appellant

Sakunthala (D1) Died

Arunambik ai (D2)

R4 to R8 Legal representatives

Geetha (D3)

3. After death of Raju Mudalair Sabapathi Mudaliar was in management of the Trust and maintaining the Samadhis, After death of Sabapathi Mudalliar, his adopted son Santhalingam was in management Earlier there was a suit in O.S. No 809 of 1954 filed by Santhalingam against the then poojari Chidambara Mudaliar alias Chidambara Swamy, and two others for declaration and possession and also for mesne profits. The said suit was decreed, which came to be challenged by Chidambara Mudaliar in A.s. No. 74 of 1957 Confirming the judgment of the trial court the appeal was dismissed. Both in the suit as well as in the appeal it was held that the Trust was created over the suit property and that Santhalingam was the Hereditary Trustee.

4. The suit "A", "B" and "C" Schedule properties have been settled in favour of defendants 1, 2 and 3 respectively by the previous trustee late B. Santhalingam by three, settlement deeds all dated 27.3.1978 Case of plaintiff is that the properties are the trust properties, whereas the settlement deeds were executed as if the properties were the personal properties of B. Santhalingam.

5. Further case of plaintiff is that their mother Vijayasaradambal promised to settle the dispute by recovering the schedule properties to the plaintiff Trust and the said settlement deeds are null and void.

Vijaya saradambal died in 13.11.1996 The plaintiff made an oral request to the defendants and also issued notice to them calling upon them to vacate and deliver vacant possession. The defendants sent reply (Dated 6.2.1997) containing false allegations Stating that the settlement deeds in favour of the defendants are null and void plaintiff has filed the suit for declaration that the three settlement deeds dated 27.3.1978 are null and void and to set aside the settlement deeds and to direct the defendants to deliver vacant possession of "A", "B" and "C" schedule properties respectively and also to pay damages for wrongful occupation.

6. Resisting the Suit, the defendants have filed the written statement contending that the properties were settled in their favour even in march 1978 and that they are in absolute possession and enjoyment of the properties and that they are entitled to collect rent from the properties. Claiming that they are the absolute owners of the suit properties the defendants inter alia raised the question of plea of limitation and contended that the suit is barred by limitation.

7. On the above pleadings, the learned single Judge framed the following issues:-

1. Whether the suit for declaration that the three settlement deeds, all dated 27.3.1978 and registered as document Nos. 248, 249 and 443 of 1978 with the Sub Registrar's office, Royapuram is barred by limitation of time?

2. Whether the suit peoperties had even been in the possession of Sri. B.S. Ramalingam in his individual capacity?

3. Whether there existed a hereditary trust in the name of Satti Paradesi Samadhi and Pillayar Temple trust?

4. Whether the plaintiff owns the schedule properties?

5. Whether the defendants are the owners of the Schedule properties and in possession and occupation from the date of settlement in the year 1978?

6. Whether the plaintiff is entitled to mesne profits?

7. To what reliefs the parties are entitled?

8. Taking Issue No. I as the preliminary issue for consideration, the learned Judge held that the appellant/plaintiff was aware and had knowledge of the settlement deeds in favour of the defendants even in the year 1978 itself whereas it instituted the Suit only in the year 1997 nearly after a period of about 19 years. Observing that the Suit for declaration and to set aside the documents would fall under Article 59 of the Limitation Act, the learned Judge held that "In Suit to cancel or set aside an instrument the suit should have been brought within three years from the date of knowledge and the Suit filed after nineteen years is barred by time". Pointing out that the defendants have acquired title by adverse possession and that the suit cannot be maintained the learned Judge dismissed the suit on the preliminary issue of Limitation, which is challenged in this appeal.

9. The learned counsel for appellant/plaintiff contented that the suit for recovery of possession would fall under Article 96 of the Limitation Act and the starting point of limitation is the date of appointment of the appellant as a Manager of the plaintiff Trust. Reliance was placed upon a judgment of Division Bench of this Court in Sri Lakshminarayanaperumalswami Vs. Kasthuri Naicker and Others, , in which the Trust properties were alienated by way of mortgage and certain other items were sold without authority and falsely representing the items as his private property. The suit was filed to declare the alilenations as not binding on Trust by successor in office. In the said decision Division Bench Madras High Court held that Article 134 A of Limitation Act, 1908 would be applicable. Placing

reliance upon the said decision, it was contented that the Trust property was alienated by Santhalingam as if it was his private property and the settlements in favour of defendants 1 to 3 are contrary to the objects of the Trust and those settlements are to be declared as null and void. On behalf of appellant it was further contented that plaintiff had taken charge of the Trust only in 1996 and Article 96 of the Limitation Act enables the appellant to file the suit within twelve years from the date of appointment/taking over as a Manager of the plaintiff Trust.

10. Suit A to C schedule properties have been settled in favour of defendants 1 to 3 by the trustee late B. Santhalingam by three settlement deeds (27.3.1978). To set aside the settlement deeds (27.3.1978) plaintiff filed the Suit in 1997. Case of appellant is that earlier Vijayasaradambal promised to settle the dispute, but the defendants influenced her and she did not deliver the suit schedule properties. Further case of plaintiff is that he took over the management of plaintiff Trust and issued notice to the defendants to deliver possession of the properties and the Suit is well within time.

11. By perusal of evidence and records it is seen that after erection of Samadhi, Raju Mudaliar formed a Madam to perpetuate the memory of Satti paradesi. After death of Raju Mudaliar his adopted son-Sabapathi Mudaliar became the Hereditary Trustee, Sabapathi Mudaliar died in 1918. No document has been produced to show the creation of the Trust. Only the certified copy of the judgments in the earlier suit - O.S. No. 809 of 1954 and A.S. No 74 of 1957 have been produced. By reading of the earlier proceedings, it is that during the life time of Sabapathi Mudaliar, he was organising daily worship and maintaining of Samadhis and Guru Pooja was done every year. After his death, his adopted son Santhalingam became the trustee. Santhalingam was also an advocate and he was on war service between 1942/1947 during which time, the then Poorajri Chidambara Mudaliar was performing the daily worship. Santhalingam filed a suit - O.S. No 809 of 1954 against the said Chidambara Mudaliar alias for profits and the said Suit was decreed by the Judgment dated 31.3.1956. The appeal filed in A.S. No 74 of 1957 came to be dismissed by the judgment dated 19.2.1959. In the earlier proceedings Court has accepted the case of Santhalingam that Trust was created over the suit property and that Santhalingam was a hereditary Trustee.

12. Tracing the prior history and also referring to the celebration of Guru Pooja and Chitra Pournami day and feeding of sadhus, settler Santhalingam had settled the property in favour of defendants 1 to 3. It is seen from the recitals in the settlement deed that the property is in a rectangular shape and leaving about two grounds, where Samadhis situated, the remaining property was settled. Notwithstanding the settlement, the place, where Samadhi and pillar temple situated, are stated to be intact. It is also stated that notwithstanding the settlements, the objects of the Trust are regularly performed.

13. To bring the Suit under Article 96, plaintiff has to establish that the property

has been dedicated for a Hindu, religious or charitable endowments. As seen from the pleadings and documents, Raju Mudaliar was an ardent disciple of Swamiar Satti Pradesi. The said Swamiar died in or about 1902. In order to construct a Samadhi for Satti Pradesi Swamier Raju Mudaliar purchase a vacant land of an extent of 4 grounds in Tondiarper, Madras and Raju Mudaliar erected Samadhi and in the middle of four Samadhis, pillar idol has been installed. The objects of the Trust are stated to be:-

(i) to conduct Guru Pooja every year on the Chitra Pournami Day for the Sanyasis entered in the Samadhis;

(ii) maintenance of Samadhi;

(iii) Vinayaka Chathurthi Celebration; and

(iv) Feeding Sadhus and poor on the Guru Pooja days and Thai Poosam day pooja.

14. When Samadhis are situated in the suit property and when the activities pertain to performance of pooja in the Samadhi and maintenance of Samadhi it cannot be said that it is a religious or charitable institution within the meaning of Hindu Religious and Charitable Endowments Act. As per section 6 (18), as inserted by Tamil Nadu Act No 10 of 2003 religious institution means a math, temple of specific endowment and includes, -(i) Samadhi or Brindavan or (ii) any other institution established or maintained for a religious purpose. The word Samadhi was introduced in the definition of section 6 (18) religious institution by Act No. 10 of 2003 the word "Samadhi" was not there in section 6 (18) of the Act By Tamil Nadu Amendment Act No. 4. of 2008 again the word Samadhi was declared from section 6 (18) In the suit property admittedly Guru Poojas are performed for Satti Pradesi and other Samadhis. Since the objects of the trust are mainly for the purpose of Guru Pooja and also for maintenance of Samadhis, the same would not be a religious or charitable institution falling within the provisions of TamilNadu Hindu Religious and Charitable Endowments Act. At the most it can only be taken as a Private Trust.

15. Drawing our attention to certain passage in Upendra Nath Mitra's Law of Limitaion of Prescription in Volume I of Tagore Law Lectures 1882 6th Edition of Madras Law Journal (Page Nos. 259-260). It was submitted that Articles of Limitation Act, 1877 and 1908 prescribe longer periods of limitation and the Articles are to be construed liberally in favour of the right to proceed. It was therefore contented that even though article 94 to 96 also deal with setting aside a transfer of religious or charitable endowment, the Articles are to be liberally construed in favour of the appellant's right to proceed and therefore Article 96 is applicable and the Suit is well within the period of limitation.

16. Article 96 reads as under:-

Art. 96

By the Manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.

Twelve. years

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

17. For Article 96 to apply. Four requirements should be satisfied:-

- (a) suit must be for recovery of possession of movable or immovable property;
- (b) The property must be comprised in a Hindu, Muslim or Buddhist religious or charitable endowment;
- (c) The alienation must have been by a previous Manager of the Endowment; and
- (d) the alienation must have been made for valuable consideration.

18. Even at the outset it is to be pointed out that to fall under Article 96 the Suit must be for recovery of possession of movable or immovable property. The appellant has filed the Suit - C.S. No. 673 of 1997 for a declaration that the three settlement deeds, all dated 27.3.1978 are null and void and to direct defendants 1 to 3 deliver vacant possession of Suit ABC Schedule properties respectively and also for damages suit C.S. No. 673 of 1997 is not only for recovery of possession but also to set aside the transfer of immovable property in which case only Article 94 would be applicable. As per Article 94, the starting point of limitation is twelve years when the transfer becomes known to the plaintiff, Admittedly the plaintiff had known about the settlement deeds even in 1978 and the Suits should have been filed within twelve years from the date of his knowledge i.e., 1978.

19. Yet another requirement of Article 96 is that the alienation must have been made for a valuable consideration. As pointed out earlier, the properties were alienated to defendants 1 to 3 not for valuable consideration but by way of settlement deeds. Therefore, those settlement deeds cannot be termed as "transfer for valuable consideration".

20. The suit is one for recovery of possession of the property which was transferred by the Trustee. For recovery of possession of Trust property only article 92 would be applicable. As per Article 92, Suit for recovery of possession of immovable property bequeathed in Trust and transferred by the trustee has to be filed within twelve years when the transfer becomes known to the Trustee. Likewise under Article 94, Suit to set aside the transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable Endowment has to be filed within twelve years when the transfer becomes known to the trustee.

21. Taking the property as a trust property, under Article 92, the Suit for

recovery of possession of immovable property conveyed or bequeathed in the Trust ought to have been filed within twelve years from the time when transfer becomes known to the plaintiff. Under Article 92, the plaintiff should have filed the suit within twelve years from 1978 when the settlement became known to the plaintiff.

22. In the plaint at paragraph No. 4 the appellant/plaintiff has clearly alleged that immediately after the death of settlor on 24.12.1978 the settlements were questioned by the appellant and the mother of the appellant and the defendants-Vijaya Saradambal who was the earlier trustee, promised to settle the disputes recovering the schedule properties to the plaintiff Trust; but only the defendants influenced her and did not deliver the schedule properties to the plaintiff. By a reading of plaint averments, it is clear that the plaintiff had knowledge about the settlement deeds even in 1978. Having known about the settlement deeds, way back in 1978, the plaintiff ought to have filed the Suit to set aside the settlement deeds within twelve years from the date of his knowledge. When plaintiff had chosen to file the Suit only in the year 1997, the learned single judge rightly held that the Suit is barred by limitation.

23. The only grievance of the appellant is that after framing the issues, the learned single Judge had taken up the question of limitation as a preliminary issue and the question of limitation is a mixed question of law and facts and the appellant ought to have been given an opportunity to establish that the suit property is a trust property and also the circumstances under which the plaintiff could not bring the Suit within the stipulated time and also to show as to how the Suit is well within the time.

24. It was contented that under Order 14 Rule 2 Sub Rule (2) of Civil Procedure Code, Court is not bound to take up any issue as a preliminary issue and that it is purely the discretion of the Court to take up the issue as a Preliminary issue. Reliance was placed upon full Bench decision of the Allahabad High Court in *Sunni Central Wagf Board and others vs. Gopal Singh Vishrad and others*, (AIR 1991 Allahabad 89), wherein the Allahabad High Court held as under:

After the amendment to Civil P.C. brought about in the year 1976 it is discretionary within the Court to take up an issue as a preliminary issue. The Court is not bound to take up any issue as a preliminary issue. All Judicial discretions have to be exercised reasonably. Even if some of the issues fall within the ambit of cls. (a) and (b) of R. 2 (2) of O. 14 of the court can on reasonable exercise of discretion refuse to try those issues as preliminary issues...

25. The above said decision was a case relating to the dispute regarding Babri Masjid where the dispute was between two major communities of the country. Observing that the entire nation was waiting for resolution of the dispute and in the peculiar facts and circumstances arising in the said case, Full Bench of the Allahabad High Court held that the decision of the preliminary issues will cause delay in the final resolution of the dispute and that even if some issues fall within

the ambit of clause (a) and (b) of Rule 2 (2) of order 14, the Court declined to try them as preliminary issues.

26. Under Order 14 Rule 2 C.P.C. the Court must give judgment on all issues; but where any issue of law relates to the jurisdiction of the Court or a bar of suit,, the Court may postpone settlement of other issues until the aforesaid issue has been determined as a preliminary issue and the Court may deal with the suit in accordance with the decision of that preliminary issue. As per Order 14 Rule 2, sub-rule 2(a) and (b) the Court has a discretion to take up the issues relating to jurisdiction and bar of Suit. Of course, the issue which is taken up as a preliminary issue must be a question of law, as distinguished from mixed question of law and fact, as the code gives no jurisdiction to try mixed question of law and fact as a preliminary issue. As a general law, Suit may not be disposed off on a preliminary issue point unless the bar is made very clear. The discretion to take up the question of limitation as a preliminary issue has to be exercised sparingly.

27. As pointed out earlier, even going by the plaint averments, the plaintiff had knowledge of the settlement deeds in favour of his sisters and niece (3rd defendant) even in the year 1978 and the plaintiff had not chosen to file the Suit within the stipulated period. Having regard to the inordinate delay of nineteen years in filing the Suit, it cannot be said that the learned single judge erroneously preliminary issue. In fact, by perusal of the judgment, it is seen that after framing issues, the Issue No. 1 was taken up as a preliminary issue and arguments of both sides were heard and appellant/plaintiff having consented to take up the issue as preliminary issue, it is not open to the appellant to contend that no opportunity was afforded to him. By consenting to take up a preliminary issue and by advancing the arguments on preliminary issue it is not open to the appellant to contend that no opportunity was afforded to him. By consenting to take up as preliminary issue, the appellant must be deemed to have acquiesced in taking up the issue as preliminary issue and is estopped from contenting that the issue cannot be taken as a preliminary issue without giving opportunity to adduce evidence. Therefore, the impugned order does not suffer from any perversity warranting interference. In the result, the Original side appeal is dismissed. However, there is no order as to costs.