(1985) 03 GUJ CK 0026

In the Gujarat High Court

Shambhuprasad Chhotalal Raval Since deceased through is appointed successor Gunvantlal S. Trivedi — APPELLANT

Vs

Madhsudan Girdharlal Achariya and Others — RESPONDENT

Date of Decision : 12-03-1985

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 22, 22, 72
Limitation Act, 1963 — Section 10

Citation : (1985) 2 GLR 907

Hon'ble Judges : R.A. Mehta, J;A.P. Ravani, J

Bench : Division Bench

Judgement

R.A. Mehta, J.—This appeal by the trustees of a Public Trust arises from the proceedings u/s 22 of the Bombay Public Trusts Act and is directed against the order of the City Civil Court in the application u/s 72 of the Bombay Public Trusts Act. In the inquiry No. 1053/68 by an order dated 29th December, 1978 it was held that the suit property was the property of the Public Trust. In Appeal No. 21/71 the Joint Charity Commissioner confirmed that finding by his order dated 29th October, 1974. Being aggrieved thereby Respondent No. 1 Madhusudan Girdharlal Achariya filed an application u/s 72 of the Act being Civil Miscellaneous Application No. 4 of 1975 before the City Civil Court. The City Civil Court by its Judgment dated 17th August, 1976 allowed his application and it was held that the suit property was not the property of the Public Trust by upholding the contention of the first respondent that he had become the owner by adverse possession. The trustees have, therefore, filed this appeal.

2. The land bearing survey No. 573 Wadaj (final plot No. 324 in T.P. Scheme No. 15) admeasuring 2 acres, 25 gunthas originally belonging to Manilal and Girdharlal, sons of Pitambardas. Manilal and Girdharlal by a registered gift deed dated 22nd September, 1923 (Exh. 59) donated one-half of their shares to Akhil Bharat Vershiya Audichya Sahastra Brahm Samaj (the trust) and they retained one-half of the property to themselves. Manilal was also Secretary and trustee of the above Samaj. The Gift Deed also recites that the possession of the half

portion of the northern side of survey No. 573 was actually handed over. In pursuance of the said Gift Deed revenue entry was mutated and it is exhibited at Exh. 87 and survey No. 573 was given sub-numbers namely 573/ 1 and 573/2, and Survey No. 573/2 was entered and mutated in the name of donees (Trust) and the area shown was 1 acre and 7 gunthas.

3. On 5th December, 1939 by another registered Gift Deed (Exh. 52) Manilal purported to convey the entire property of survey No. 573 in favour of Madhusudan Girdharlal and Lalshanker Girdharlal. They are respondent Nos. 1 and 2 herein. In pursuance of the said Gift Deed a revenue entry is mutated on 9th April, 1940 (Exh. 62) in favour of Madhusudan and Lalshanker.

4. The learned City Civil Judge held that the application of the Trustees u/s 22-A was maintainable and the gift in favour of the Trust was proved. It was also held that the respondent Madhusudan had not become the owner on account of the Gift Deed dated 5th December, 1939 (Exh. 52) and that the standing of the reconstituted final plot in the name of Madhusudan under the Town Planning Scheme No. 15 was of no effect. Inspite of all these findings the trustees failed because the learned City Civil Judge held that the said Madhusudan had established his claim of adverse possession by his being in possession openly, continuously and exclusively for more than 12 years on the date of the application u/s 22-A. Thus the respondent Madhusdan has succeeded against the Public Trust only on the ground of adverse possession.

5. The appellants-trustees have contended that the first respondent has failed to establish his claim for adverse possession in fact as well as in law and it is submitted that in view of the provisions of Section 10 of the Limitation Act, the plea of adverse possession by the first respondent is not at all tenable. Section 10 of the Limitation Act with Explanation reads as follows:

10. Suits against trustees and their representatives : Notwithstanding anything contained in the foregoing provisions of this Act, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. Explanation :- For the purpose of this section any property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manage of the property shall be deemed to be the trustee thereof.

6. The plea of adverse possession is based under Article 65 of the Limitation Act read with Section 27 of the limitation Act. Under Article 65, a suit for possession for immovable property would be barred by a period of limitation of 12 years from the time when the possession of the defendant becomes adverse to the plaintiff. It is the case of the respondents that they are openly, continuously and exclusively in possession of the suit land for more than 12 years on the date of

the application u/s 22-A and, therefore, even if the trustees were to file a suit for possession, that will be time barred and u/s 27 of the Limitation Act at the determination of the period specified by the Limitation Act for instituting a suit for adverse possession of any property, the rights of such persons or trustees to such property shall be extinguished and, therefore, the respondents have become absolute owners of the suit property. Now, therefore, the question is whether the right, title and interest of the Public Trust in the suit property has been extinguished and whether there is any period of limitation in such a case.

7. Section 10 of the Limitation Act provides that no suit shall be barred by any length of time against (1) a person in whom property has become vested in trust for any specific purpose, or (2) against his legal representatives, or (3) assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property. It is not disputed that by virtue of the registered gift deed dated 22-9-1923 (Exh. 59) the property had become vested in the trustees including Manilal. It is also not disputed that the respondents are assigns without any valuable consideration under the gift deed dated 5-12-1939 (Ex. 52) from Manilal. Therefore, the suit for the purpose of following the property which had become vested in the hands of the trustee or a donee from the trustee is not barred by any length of time. In the present case. Section 10 would directly apply and the suit would not be barred by any length of time against the present respondents and, therefore, the plea of limitation of 12 years of adverse possession would be of no avail to the respondents and the finding of the learned trial Judge on that issue is clearly illegal and is not according to law. The learned Judge has considered the question of the adverse possession only from the view point of factual adverse possession and not whether Section 10 would apply to the facts of the present case or not.

8. In view of our finding and that in the facts and circumstances of the case, Section 10 is clearly attracted, even if the respondents proved adverse possession they cannot succeed on such plea in view of Section 10 of the Limitation Act. It ,is not necessary to go into the factual finding regarding adverse possession. The learned Judge has based his finding of adverse possession on the Gift Deed Exh. 52 and consequently revenue entries Exhs. 60 & 62, and the fact that the respondent had put up superstructure and were paying taxes and were recovering rent, however, there does not appear to be satisfactory evidence about the same. No documentary evidence has been produced to show that superstructure was constructed on the suit land by the respondents nor permission to construct, no account, no plan has been produced or proved. It is also not clear as to where the alleged construction stands whether in survey No. 573/1 or in 573/2. No tenant has been examined to prove the payment of rent Therefore, the plea of adverse possession cannot be upheld even factually.

9. In the result, the appeal succeeds and the judgment and order of the City Civil Court in Miscellaneous Civil Application No. 4 of 1975 is quashed and reversed

and the judgment and orders of the Assistant Charity Commissioner and the Joint Charity Commissioner dated 29th December, 1970 and 29th October, 1974 are restored and it is declared that the suit property of survey No. 573/ 2 of Wadaj is the property of the Public Trust. Appeal is allowed accordingly. Respondent No. 1 to pay the cost of the Charity Commissioner throughout. Other parties to bear their own costs.

