(1937) 12 PAT CK 0003

In the Patna High Court

Smt. Urmila Debi APPELLANT

Vs

Sree Sree Baidyanath Jee and Others RESPONDENT

Date of Decision : 03-12-1937

Acts Referred:
Limitation Act, 1963 — Article 48, 10

Citation : AIR 1938 Patna 273

Hon'ble Judges : Wort, J;Manohar Lall, J

Bench : Full Bench

Judgement

Wort, J.—The substantial question in this appeal is whether the action is barred by limitation. It is important in this connexion to notice the claim of the plain, tiff who is the respondent to this appeal. Clause (b) of the relief portion of the claim is to this effect:

On adjudication as above let a decree for delivery of the war bonds in suit or their substitutes, if any, to the plaintiff be passed against the defendants, or, in the alternative, a decree for Rs. 4200 being the value of the said war bonds be passed in favour of the plaintiff and against the defendants in case the delivery of the war bonds or their substitutes cannot be had.

2. Its phraseology may be cumbersome but it is perfectly clear that it is an action in detinue. I do not think there can be any serious dispute that Article 48, Lim. Act, applies.

3. The facts briefly are these. The plaintiff is the present high priest of a temple. The defendant is the widow of Umeshanand Ojha who was the priest up to the year 1921, he having died on 12th April of that year. He left a will, probate of which was granted to the widow (defendant 1) who is the appellant in this appeal. Amongst the property which was claimed to be the property of her deceased husband were the war bonds in suit, and one of the defences to the action was that these war bonds had been appropriated against the maintenance allowance to which the late high priest was entitled, under a scheme of

management which was the subject-matter of a decree passed by the Officiating District Judge of Burdwan in 1902. Having regard to the view that I take of the facts of the case it is perhaps unnecessary to go into the question of this defence of appropriation in detail. Under the order of the District Judge, the high priest was entitled to maintenance for himself and his family. A committee of management was appointed under this order and by a subsequent order of this committee the maintenance was not to exceed the sum of Rs. 5 per day. It would appear that the high priest had not drawn this sum for a number of years and then shortly after the purchase of the bonds, admittedly out of the temple funds, had appropriated them against his arrears of maintenance.

4. The learned Judge in the Court below has declined to believe the defendant''s case in this regard coming to the conclusion that the accounts (Exs. G and G.1) which were put in evidence to prove the appropriation, to use the Judge''s expression, were forged. By that I understand the Judge to mean that the accounts were fictitious, that they were a mere afterthought and had been produced for the purpose of supporting the defendant''s case in this particular. The plain reading of the accounts themselves, I think, justified the learned Judge in coming to that conclusion. But quite apart from the question whether the evidence established appropriation, I find it very difficult to understand exactly what appropriation meant in circumstances of this kind. The order of the committee was that the amount of maintenance should not exceed Rs. 5 per day as I have said. The order of the District Judge of Burdwan in 1902 allowing maintenance was perhaps unnecessary because from the very nature of the religious'' endowment the high priest and his family would be entitled to maintenance. But if, as appears to be the fact, the priest omitted to use the temple funds for the purpose of maintenance, this omission would by no means result in a debt owed by the temple funds to him, and under no circumstances therefore would he be entitled to pay himself these arrears. But as I have already stated, it is quite unnecessary to go into detail with regard to that matter. Suffice it to say that in my opinion the judgment of the learned Judge in the Court below on facts relating to this particular defence cannot be assailed. The substantial question is whether the action was barred by limitation.

5. In the first instance Mr. Basu on behalf of the respondents contends that the case comes within Section 10, Limitation Act, and therefore no period of limitation applies; that the property trust property and he is entitled to follow that property in whatsoever hands it may be found. Section 10, Limitation Act provides:

Notwithstanding anything hereinbefore contained, 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.

6. The amendment by which Hindu, Mahomedan or Buddhist religious or charitable endowments come within the section came into force in 1929 and does not apply to this case as established by their Lordship of the Judicial Committee of the Privy Council in (1934) 66 MLJ 431 (Privy Council) . It is contended by Mr. Basu that by the order of the District Judge to which I have referred the property or the funds of the temple became vested in the trustee and therefore he comes within those cases contemplated by Section 10, Limitation Act. About the origin of this religious endowment there can, in my judgment, be no dispute, nor does Mr. Basu contend that in its origin it was anything but an ordinary Hindu religious endowment if I may use that expression. The substance of the contention is that what ever may have been its origin, its nature was altered by the order of the District Judge. He relies more particularly upon paras. 2 and 3 of that order. Para. 2 says:

That the whole of the said properties, moveable and immovable, be vested in the said trustee immediately on his election subject to the conditions hereinafter set forth;

and para. 3 runs thus:

That the whole of the said properties are to be devoted to the expenses of the temple service etc. etc. and to the legitimate expenses of managing the temple properties and not to any personal use of the said trustee except so far as to provide himself and his family with the necessaries of life.

7. Now the final decision on this question in my judgment is the case in Vidya Varuthi Thritha v. Balusami Ayyar A.I.R.1922. P.C. 123. The question then before their Lordships of the Judicial Committee was whether Article 134, Limitation Act applied and for the purpose of determining that question, the question whether a Hindu religious-endowment was a trust within the meaning of Section 10, Limitation Act, came to be considered. Mr. Ameer Ali in delivering, the judgment of their Lordships made this statement in referring to the history of this Hindu religious endowment:

Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institutions of every kind and for all purposes considered meritorious in the Hindu social and religious system; to brahmans, goswamis, sanyasis etc.... Under the Hindu law the image of a deity of the Hindu pantheon is, as has been aptly called, a juristic entity.

8. Then later he says:

Religious institutions known under different names, are regarded as possessing the same "juristic" capacity and gifts are made to them eo nomine;

then later:

When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name he is only the manager and custodian of the idol or the institution. In almost every case he is given the right to a part of the usufruct, the mode of enjoyment and the amount of the usufruct depending again on usage and custom. In no case was the property conveyed to or vested in him, nor is he a "trustee" in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration.

9. As I have said the, origin of this particular endowment cannot be in dispute, and it is upon reference to the names which have been applied to the persons who would otherwise be known as managers that Mr. Basu relies for the contention that this is a trust within the meaning of Section 10, Lim. Act. I think it would be waste of words to say more or attempt to say more than the learned members of the Judicial Committee of the Privy Council said in the words to which I have already referred namely: "Called by whatever name, he is only the manager and custodian of the idol or the institution."

10. In this case, he may have been called a trustee but the property was vested in the deity and no description given of the custodian nor any words used in the order could possibly affect the nature of the endowment.

11. In my judgment it is abundantly clear that this endowment could not be considered a trust within the meaning of Section 10. To put it quite shortly--whatever words the District Judge used--the nature of the endowment and the position of its manager remained unaffected. The only other question is (as it is agreed that Article 48, Lim. Act, applied) at what time did the plaintiff come to learn in whose possession these bonds were? Col. 3 of Article 48 provides that limitation runs "when the person having the right to the possession of the property first learns in whose possession it is."

12. There are a number of documents which perhaps are somewhat equivocal in their meaning,, but it seems to me perfectly clear from the oral evidence in this case as well as certain other documents that the plaintiff came to know of the possession of defendant 1 in this case as early as 1921. (His Lordship then discussed the evidence and proceeded.) Mr. Basu contends that the onus was on the defendant, but no such question arises in the case for as I have already pointed out the evidence of the plaintiff himself clearly establishes his own knowledge as far back as the year 1921. It would be impossible to come to any either conclusion in this case than that the action was barred by limitation although we have not had the advantage of the finding of the learned Judge in the Court below on this particular question.

13. The only conclusion we can arrive at is that this appeal must succeed and the action dismissed with costs throughout.

Manohar Lall, J.

I agree.

