

(2003) 11 KAR CK 0011

In the Karnataka High Court

Case No : Regular First Appeal No's. 584, 644, 655 and 715 of 1996

Sri. G.R. Nagabhushan (deceased) by L.Rs.

APPELLANT

Vs

Sri. Swami Hathiramjee Mutt

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Limitation Act, 1963 — Section 65

Citation : (2004) 1 KCCR 627

Hon'ble Judges : K.L. Manjunath, J

Bench : Single Bench

Advocate : C.V. Kumar, in Regular First Appeal No. 655 of 1996, S.N. Krishnamurthy, in Regular First Appeal No. 584 of 1996, Kumar and Kumar, in Regular First Appeal No. 715 of 1996 and V. Tarakaram, for Tarakaram Associates in Regular First Appeal No. 644 of 1996, for the Appellant; Krishnakumar, for S.V. Raghavachar, for Respondent 1 in Regular First Appeal Nos. 584, 655 and 715 of 1996 and S.N. Keshvamurthy, for Respondents 2, 4 and 6 to 8 in Regular First Appeal No. 715, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Manjunath, J.—All these appeals are arising out of a Judgment and decree passed by in O.S. No. 200 of 1980 on the file of the I Additional City Civil Judge, Bangalore.

2. R.F.A. No. 655 of 1996 has been preferred by one G.R. Nagebhushan who was not a party to the suit. He died on 18.6.2002 and after his death his L. Rs. have been brought on record.

3. R.F.A. No. 584 of 1996 has been filed by one K.S. Kamalamma, who was the first Defendant in the suit.

4. R.F.A. No. 715 of 1996 has been preferred by Lalchand Mehta and seven others. The Appellants 1 to 7 in the said appeal were not parties to the suit before the trial Court. The 8th Defendant in the appeal was the 34th Defendant before the trial Court.

5. R.F.A. No. 644 of 1996 has been filed by one K.V. Krishnamurthy and Ors. K.V. Krishnamurthy was the 20th Defendant before the trial Court. The Appellants 2 to 14 in the said appeal were not parties in the suit.

6. For the sake of convenience, the parties would be referred to as per their status before the trial Court.

7. Sri Swamy Hati Ramji Mutt of Thirupathi is the Plaintiff in the suit. The Plaintiff filed the suit for recovery of possession of the suit schedule property from the Defendant's free from encumbrance and alienation to Defendants in the suit. The subject matter of the suit is premises bearing old Nos. 78, 93, 98 New No. 126 situated in Bull Temple Road, Basavanagudi measuring 190" x 240" with an existing bungalow and sites. According to the plaint averments, the Plaintiff is a religious institution situated in Thirupathi having vast properties situated in the State of Tamil Nadu, Andhra Pradesh and in Bangalore.

8. The plaint schedule property was purchased by the Mahanth of the Plaintiff from one Sri Krishnaswamy Mudaliar under a registered Sale Deed dated 24.6.1930 for a valuable sale consideration out of the Mutt's fund and that the Mahanth was in-charge of the Mutt as custodian and Manager of the Plaintiff's Mutt. One Prayagdossji was the Mahanth and that the properties purchased by him in his name were trust properties of the Mutt and that he died in the year 1947. After the death of Prayagdossji, one Narayanadossji was appointed as Mahanth of the Plaintiff's Mutt and he continued to be in custody and possession of all the Mutt properties, including the plaint schedule property. After the death of Narayanadossji, the plaint schedule property was devolved on the Plaintiff's Mutt. It is further contended that Narayanadossji who was appointed as Mahanth and custodian of the trust properties started misappropriating the income of the Mutt and lead an extravagant life and he also began to alienate the trust properties without any justifiable cause or necessity of the Mutt. It is further averred that the Mahanth Narayanadossji executed an unregistered Will on 25.9.1958 bequeathing the plaint schedule property in favour of Smt. G.S. Kamamma - the first Defendant and her children Defendants 8, 12 to 16. Narayanadossji died on 9.12.1958 and after his death based on the Will said to have been executed by Narayanadossji in favour of and G.S. Kamamma, she has sold different portions of the schedule property in favour of different persons, which transactions are not binding on the Mutt.

9. It is further averred that the plaint schedule property is the property of the Plaintiffs-Mutt and that it was never a personal property of Prayagdossji or Narayanadossji and the Mahanth Narayanadossji had no competence to bequeath or dispose of the trust properties either in favour of the first Defendant or in favour of any other persons; contending that the transactions made by the I Defendant and her children pursuant to the Will as null and void, the suit was filed seeking for possession of the property free from encumbrances made by the first Defendant and her children.

10. The suit is contested by the Defendants. According to them, it was the personal property of Mahanth Prayagdossji and that the same was not purchased out of the funds of the Plaintiffs-Mutt. According to them after the death of Prayagdossji, Narayanadossji succeeded as Mahanth of the Mutt and to the personal properties of Prayagdossji as his disciple and treated that suit schedule property as his personal property. Considering the services rendered by the husband of the first Defendant, he bequeathed the suit property in favour of the first Defendant and her children. Therefore, they contended that the suit filed by the Plaintiff as not maintainable and that they being the legatee under the Will are entitled to deal with the property in any manner they like. They further contend that the suit filed by the Plaintiffs as barred by limitation and requests the Court to dismiss the suit.

11. Thereafter, the Plaintiffs filed reply to the written statement contending that the Plaintiff-Mutt as a religious and charitable institution and as per the Judgment of the Supreme Court it has to be considered as a religious and charitable institution and that the Mahanth Sri Prayagdossji had not purchased the suit schedule property out of his self acquired funds and that the same was purchased out of the funds of the Mutt and it was never treated as the personal property of Mahanth Prayagdossji. It is also the case of the Plaintiffs that the suit property was purchased for and on behalf of the Plaintiffs-Mutt and for the benefit of the Mutt.

12. After the death of Sri Prayagdossji, a dispute arose over the succession ship of Plaintiffs-Mutt. The Hindu Religious Endowment Act, Madras appointed an interim trustee to the Plaintiff's Mutt and the said trustee had taken an inventory of moveable and immovable properties of the Mutt and a register was also maintained to that effect. After Narayanadossji was appointed as Mahanth the properties of the Mutt was handed over to him along with the inventory register to enable him to manage and maintain the Mutts property as Mahanth. The plaint schedule property was also included in the inventory register handed over by the interim trustee to Narayanadossji, while Narayanadossji taking charge of the Mutt as Mahanth. It is further pleaded that a registered agreement dated 29.10.1947 came into existence in regard to the succession of the Mahanth and administration of the Mutt. In terms of the agreement Narayanadossji was nominated as successor of Prayagdossji and by virtue of the same, Narayanadossji filed a suit in O.S. No. 6 of 1955 on the file of Sub-Court of Chithoor claiming the Mutt as a private institution and that the provisions of the Madras Act as not applicable. On merits the suit filed by Narayanadossji came to be dismissed. Against which he filed an appeal before the High Court of Andhra Pradesh in AS. No. 20 of 1959 which Court also confirmed the order of the lower Court.

13. After the death of Narayanadossji, one Ramdossji was appointed as an interim Mahanth and he was directed to take action to set aside the unauthorised alienation in question. But Ramdossji instead of taking action to set

aside the alienation, misappropriated the mutts property, as a result of which he was suspended from the office. Then the Assistant Commissioner was placed in-charge of the mutt with effect from 15.9.1965 and thereafter, the present suit was filed.

14. Based on the above pleadings, the trial Court framed the following issues.

1. Whether the Assistant Commissioner (Liaison Officer) Endowments Department, Thirupathi, Andhra Pradesh is competent to institute the suit on behalf of the Plaintiff-Mutt ?

2. Whether the plaint "A" schedule properties purchased on 24.6.1930 are the Plaintiffs-mutt properties and whether they were purchased by Sri Mahanth Prayagdossji varu for and on behalf of the mutt out of the funds of the Plaintiffs-mutt ?

3. Whether the plaint-A schedule properties have been treated as trust properties of the mutt during the life time of the said Sri Mahanth Prayagdossji Varu and also subsequently? In any event, whether the plaint-A schedule properties after the death of Mahanth Prayagdossji Varu devolved on the Plaintiffs-mutt and become the trust properties ?

4. Whether Sri Mahant Narayanadossji Varu had competence be bequeath or dispose of the plaint-A schedule properties ?

5. Whether the plaint-A schedule properties are the personal properties of Sri Mahant Prayagdossji Varu and Mahant Narayanadossji Varu or whether they are Plaintiffs-mutt properties ?

6. Whether the Will dated 25.9.1958 is a genuine and valid document ?

7. Whether the alienations in favour of Defendants 2 and 11 are valid and binding on the Plaintiff-mutt ?

8. Whether Sri Mahant Narayanadossji Varu was competent to alienate the plaint-A schedule properties by means of a Will dated 25.9.1958 and whether the said bequest is invalid and not binding on the Plaintiff-mutt ?

9. Whether the Defendants 1 to 16 are in illegal possession of the plaint "A" schedule properties ?

10. Whether the suit is barred by limitation and adverse possession ?

15. On behalf of the Plaintiff, 4 witnesses were examined as P Ws1 to 4. The Plaintiff relied upon Exs. P1 to P9.

16. On behalf of the Defendants three witnesses were examined as D Ws.1 to 3. Defendant No. 1-G.S. Kamalamma has been examined as DW.1. The 9th Defendant Seethamma has been examined as DW.2. 12th Defendant Ramadevi has been examined as DW.3. Defendants 2 and 3 are the daughters of Kamalamma. The Defendants have relied upon D.1 to D.21 and Exs. C1 to C3

were marked on commission as DW.1 Kamalamma has been examined on Commission and the said documents were marked through her.

17. The trial Court after appreciating the oral and documentary evidence by the parties held issues 1 to 3 in the affirmative, issue No. 4 in the negative, issue No. 5 that the plaint "A" schedule properties are the mutt properties, issue No. 6 in the negative, issue No. 7 by holding that the alienations are not binding on the Plaintiffs-mutt. Issue No. 8 bequest held invalid. Issue No. 9 held in the affirmative and issue No. 10 also held against the Defendants. Ultimately, the suit of the Plaintiff is decreed. The Defendants were directed to hand over the possession of the plaint schedule property.

18. Being aggrieved by the Judgment and decree of the trial Court, these four appeals have been preferred by some of the Defendants and also by some of the purchasers who are not parties before the trial Court.

19. Though several contentions are urged by the Appellants in their appeal memo, at the time of arguments, they have attacked Judgment and decree of the trial Court on the following grounds. (1) The plaint schedule property was purchased by Sri Prayagdossji out of his self acquired funds and he never treated the same as mutts property. (2) After the death of Prayagdossji, Narayanadossji who succeeded as Mahant has inherited the personal property of Prayagdossji and therefore, he had a right to bequeath the property in favour of Kamalamma and her children. (3) Smt. Kamalamma and children being the legatees under the Will were entitled to deal with the property in any manner they like and therefore, the alienations made by them are binding not only on the Plaintiffs-mutt but also against the whole world. Therefore, the learned Counsel for the Appellants in different appeals request this Court to set aside Judgment and decree of the trial Court.

20. Per contra, the learned Counsel for the Plaintiffs contended that at no point to time Prayagdossji had considered the plaint schedule property as his personal property and that the properties purchased by a Mahant out of the funds of the mutt cannot be treated as his personal property and further contends that after the death of Prayagdossji, an inventory was prepared and as per the inventory, the properties along with the other documents of title were handed over to Narayanadossji on his appointment as Mahant of the Plaintiffs-mutt to manage and maintain the mutts property. When Narayanadossji has taken possession of the properties of Mutt as per the inventory register he cannot contend that the property contained in the inventory register as his personal properties. When once Mahant has taken possession of the mutts property on his appointment as Mahant of the mutt, Mahant cannot bequeath the mutts property to any 3rd parties. Even if such a Will is executed by Narayanadossji bequeathing mutts property the action of Narayanadossji will not bind the mutt.

21. Relying upon the inventory register which is marked as Ex. P1 and also Ex. P9 registered agreement dated 29.10.1947 came into existence to follow the

procedure in appointing a successor on the death of Prayagdossji Varu. Under Ex. P9 it is recited that the Plaintiffs-mutt is having vast property in different States including Bangalore. Narayanadossji Varu is a party to the said document. Except the plaint schedule property, the Plaintiffs-mutt or Prayagdossji did not possess any other immovable property in Bangalore. Therefore, he contends that the plaint schedule property cannot be treated as personal property of a Mahant. Alternatively, he further contends that even if Prayagdossji had considered the schedule property as his personal property, Narayanadossji Varu cannot claim any right over the plaint schedule property as he was put in possession of the plaint schedule property along with the documents of title pursuant to his appointment as Mahant of the mutt as per Ex. P1. Therefore, he requests this Court to dismiss all the appeals.

22. Having heard the learned Counsel for the parties, the following points will emerge for consideration in these appeal.

1. Whether the plaint schedule property can be considered as the personal property of Narayanadossji and whether he had any right to bequeath the plaint schedule property in favour of G.S. Kamalamma and her children and whether the Judgment and the decree of the trial Court are required to be set aside or modified ?

2. Whether the suit of the Plaintiff was barred by limitation ?

23. It is not in dispute that Prayagdossji purchased the suit schedule property from one Krishnaswamy Mudaliyar under a registered sale deed dated 24.6.1930. It is also not in dispute that Prayagdossji was the Mahant of the mutt. According to the Plaintiff, the suit schedule property was purchased not out of his own funds. The Plaintiffs have produced certain records to show that the plaint schedule property was being maintained by the Plaintiffs-mutt at its cost. but unfortunately, no positive evidence has been let in to show that the plaint schedule property was purchased either out of his self acquired funds of Prayagdossji or out of the funds of the Plaintiffs-mutt.

24. Ex. P8 is the Judgment passed in OS. No. 6 of 1955 on the file of Subordinate Court of Chithoor, which suit was instituted by Narayanadossji against the Commissioner for Hindu Religious and Charitable Endowment, Andhra Pradesh, Guntur. During the course of the said Judgment, the said Court has discussed about a document produced by Narayanadossji as Ex. B7 which is a copy of the petition filed by Narayanadossji in 1945 seeking consent of the Board for removal of Prayagdossji from Mahantship on the ground that he was acting adverse to the interest of the mutt. It has also transpired during the course of the said Judgment that the Plaintiff Narayanadossji had prepared a plaint to file a suit against Prayagdossji to declare all the properties purchased by Prayagdossji as mutts property.

25. Ex. P9 is a registered agreement executed by the management of Sri Swami Hathi Ramji Mutt, Thirupathi Thirumalai etc., for a better management, control of

affairs and administration of the mutt. Narayanadossji is a party to this said agreement. The said agreement came into existence to avoid the said institution involving into unnecessary litigation and in order to protect and safeguard the rights and interest and privileges of its members, disciples and with the advice and concurrence of the disciples, well wishers and persons interested in the mutt, for the management of the said mutt and all its movables and immovables and properties in the Presidency of Madras, Bombay domineer, Bangalore, Vellore, Ooty, Adoni, Tanjore and elsewhere in India.

26. Ex. P1 is an inventory of Plaintiffs-mutt of the year 1947. Ex. P1(a) at page 8 of the book discloses that the description of the original sale deed dated 24.6.1930 executed by Krishnaswamy Mudaliyar in respect of the plaint schedule property. At page 219, the then Inam Trustee Bhujanga Rao has handed over charge and Sri Narayanadossji has taken charge pursuant to the directions of HRE Board dated 5.12.1947. There is also an endorsement at pages 12 and 13 that he has taken charge of the articles mentioned therein on 12.12.1947 which is marked as Ex. P1(b) and the signature of Narayanadossji as Ex. P1(c). From this it is clear that Narayanadossji himself has contended before the HRE Board even during the life time of Prayagdossji that the properties acquired by Prayagdossji varu in his name as properties of the mutt and as per Ex. P9 the agreement came into existence on 29.10.1947 to safe guard the interest of the mutts property situated in different places which is inclusive of Bangalore property. Narayanadossji is signatory to this document. After the death of Prayagdossji an interim trustee had been appointed, an inventory was conducted in regard to all the properties of the mutt. Ex. P1 is the inventory register maintained by the mutt and after Narayanadossji was appointed as Mahant the interim trustee pursuant to the orders of HRE Board has handed over the custody and possession of all the articles, documents and properties of the mutt to Sri Narayanadossji. Narayanadossji has taken over charge of these articles, documents and properties as Mahant of the mutt.

27. The Plaintiff has also produced certain documents to show the amount spent by the Plaintiffs-mutt for the maintenance of the suit property. They are marked as Ex. P4 to P7. They are the entries in a cash book maintained by the mutt after the death of Prayagdossji.

28. From these documents, it is clear that the Plaintiffs-mutt has established that Narayanadossji came in possession of the suit schedule property as a Mahant of Plaintiffs-mutt and Narayanadossji did not inherit the suit properties as a disciple of Prayagdossji. Therefore, the onus will shift on the Defendant to show that Narayanadossji had exercised the right of ownership in respect of the suit schedule property not as a Mahant of Plaintiffs-mutt but as a disciple of Prayagdossji and that after the death of Prayagdossji he had a right to alienate or bequeath the property. Therefore, in this background this Court has to consider the evidence let in by the Defendants.

29. DW.1 Kamalamma in whose favour Narayanadossji has bequeathed the

property. If the Court considers the evidence of Kamalamma, it is not possible to hold that Prayagdossji had purchased the property out of his self acquired funds as she has no personal knowledge how Prayagdossji has purchased the property. Except saying that Prayagdossji has purchased the property out of his self acquired funds, she has not even deposed before the Court how Narayanadossji became an absolute owner of this property to bequeath the same in her favour and her children. It is her case that during the life time of her husband he was rendering service to Narayanadossji, and after the death of Shama Iyengar, the suit schedule property was bequeathed by Narayanadossji in her favour. Therefore, the evidence of DW.1 is of no assistance to hold that the Defendants have proved Narayanadossji was enjoying the suit schedule property as his self acquired property.

30. The evidence of DW.2 is also of no assistance, as this witness has seen Narayanadossji for the first time in the year 1950. DW.2 is the daughter of DW.1. She is not having any personal knowledge how Narayanadossji became the absolute owner of the suit schedule property. Similarly, evidence of DW.3 is also of no assistance to the Defendants. DW.3 has been examined only to identify the signature of Narayanadossji on Ex. C(1) Will.

31. From these documents and evidence of Defendants; it is clear that they have not discharged the onus shifted on them. Therefore, in these circumstances, this Court has to hold that the Plaintiff has successfully proved that Narayanadossji was a Mahant of Plaintiffs-mutt and he was managing the suit property on behalf of the Plaintiffs-mutt and that he had no right to alienate or bequeath the property in favour of the Defendants. From the evidence and the documents produced by the parties, it is clear to me that Defendants have failed to discharge the burden on them. As pointed out, Prayagdossji was never in possession of the suit property as an absolute owner and there is no evidence to show that he had purchased the suit property out of his funds. As a matter of fact, Narayanadossji prior to his appointment as Mahant of the Plaintiff-Mutt was contending that the properties purchased in the name of Prayagdossji as mutt's property and not personal properties of Prayagdossji. Therefore, it is not possible to hold that Narayanadossji had received these properties as a disciple of Prayagdossji, but it has to be held that Narayanadossji was in possession of the suit property along with other properties as Mahant of the Plaintiff-Mutt. A Mahant is only a custodian of the Mutt's property and he cannot claim Mutt's property as his individual property. Considering the past conduct of Narayanadossji prior to his appointment as Mahant and considering the documents produced by the Plaintiff that, the original documents of title in respect of suit property and suit property were delivered to Narayanadossji by Mutt as Mahant, Narayanadossji under any circumstances cannot treat the suit property as his self acquired property; as a disciple of Prayagdossji and bequeath the same in favour of the 1st Defendant and her children. Therefore, it has to be held that even if the Will is executed by Narayanadossji, it does not bind the Mutt and the 1st Defendant and her children will not get any right over the same.

32. Then the other point to be considered by this Court is as to whether the suit filed by the Plaintiff as barred by limitation. It is not in dispute that Narayanadossji died on 9.12.1958. The said suit is instituted by the Plaintiff on 26.11.1970. The Defendants are relying upon Exs. C1 the Will of Narayanadossji which Will came into force after the death of Narayanadossji and that by virtue of the said Will, the Defendants are claiming the possession of the suit schedule property. Therefore, prior to 9.12.1958 the Defendants have no right over the suit schedule property. The first Defendant and her children have alienated the property subsequent to 9.12.1958. The present suit is filed on 26.11.1970 which is well within 12 years from the date of death of Narayanadossji. Considering Article 65 of the Limitation Act 1963, if a suit is instituted within 12 years from the date of possession of the Defendants becomes adverse to the Plaintiff, it has to be held that the suit filed by the Plaintiff is well in time.

33. At best, the Defendants can claim possession of the property adverse to the interest of the Plaintiff only after the death of Narayanadossji as they are claiming ownership under the Will executed by Narayanadossji. I have also held that Narayanadossji was in possession of the property as Mahant of the Plaintiff-mutt. I have also held that Narayanadossji had no right to bequeath the suit schedule property in favour of the first Defendant and her children. Therefore, this suit cannot be held as barred by limitation, as the same is instituted within 12 years from the date of death of Narayanadossji.

34. The Plaintiff-Respondent No. 1 has filed cross-objections in RFA No. 584 of 1986 contending that the trial Court has not granted future mesne profits. The cross-objections are filed on 5.8.1998. The delay is not properly explained by the applicant. One Muktheswar Rao has sworn to an affidavit requesting this Court to condone the delay. According to him, due to oversight, and inadvertence he could not notice rejection of the prayer of the Plaintiff to grant mesne profits. This cannot be believed by this Court. Person who is sworn to an affidavit is working as a Special Grade Deputy Collector. Therefore, only on the ground of limitation, the cross-objections are to be dismissed.

35. In the result, the appeals are dismissed. The cross-objection is also dismissed. Considering the nature of litigation, the parties are directed to bear the cost.