

(1941) 07 BOM CK 0001
In the Bombay High Court

Sri Sri Baidyanathji

APPELLANT

Vs

Srimatt Urmila Devi

RESPONDENT

Date of Decision : 30-07-1941

Acts Referred:

Limitation Act, 1908 — Section 10

Citation : (1942) 44 BOMLR 183

Hon'ble Judges : Russell, J;George Rankin, J;Atkin, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Russell, J.—The only question which their Lordships have to determine in this appeal is whether the properties of the Baidyanath temple were vested in trust in the high priest of the temple within the meaning of Section 10 of the Indian Limitation Act (IX) of 1908. If the answer to this question is in the affirmative, the appellant's suit is not barred by any length of time and this appeal must succeed.

2. The suit was brought in the name of the deity of the temple, through the present high priest, against respondent No. 1 (who is the widow and executrix of the late high priest), to recover from her the principal moneys amounting to Rs. 4,200 due on certain war bonds (which formed part of the temple properties, but were retained by the widow as such executrix), together with a sum of interest thereon amounting to Rs. 2,577-8-0.

3. The suit was tried by the Subordinate Judge of Deoghar who, on June 28, 1935, ordered and decreed that the plaintiff was entitled to recover from the widow Rs. 6,777-8-0 with subsequent interest. He decided in favour of the plaintiff on the merits of the case, and upon the question whether the suit was barred by limitation (which was issue No. 5), he held that by virtue of a scheme for the temple management settled by a decree made on July 4, 1901, the late high priest was an express trustee of the war bonds with the result that the

action was not barred.

4. The widow appealed to the High Court of Judicature at Patna. On December 3, 1937, the appeal was allowed and the suit was dismissed with costs. While agreeing with the trial Judge as to merits, the learned Judges of the High Court were of opinion that the late high priest was not a trustee, and that Section 10 did not apply. In those circumstances, they held that Article 48 of the Indian Limitation Act applied, and that the suit had not been commenced within the requisite period of three years. It was therefore barred.

5. Their Lordships are unable to agree with the High Court; they agree with the view and reasoning of the Subordinate Judge.

6. The decree of July 4, 1901, was made in pursuance of the powers conferred by Section 539 of the old Code of Civil Procedure, 1882, which ran thus :?

539. In the case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General acting ex officio, or two or more persons having a direct interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree?

(a) appointing new trustees under the trust;

(b) vesting any property in the trustees under the trust;

(c) declaring the proportions in which its objects are entitled;

(d) authorising the whole or any part of its property to be let, sold, mortgaged or exchanged ;

(e) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate General may, outside the presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

* * * *

7. Such a suit was brought in 1897, complaining of the conduct of the then high priest of this temple (who was defendant No. 1 to the suit), and praying?" that a proper person may be appointed to be Sardar Panda, and that the debottar properties may be vested in such a person, and that the Court may frame rules for the management of the debottar properties, the said order to be made u/s 539 of the Code of Civil Procedure." After a lengthy trial a decree was made,

which was subsequently amended, but dated back to the date of the original decree, viz. July 4, 1901. The relevant portions of this decree are paragraphs 1 and 2, which run thus :?

1. That in the stead of defendant No. 1 a new Sardar Panda be elected to hold office for life according to the second rule given in schedule A annexed hereto and that the said defendant No, 1 be removed from the said office thereon. Defendant No. 2 being the heir entitled to succeed under the first rule is disqualified on account of his minority, but shall be entitled to succeed on the death of the Sardar Panda now to be elected provided he be then duly qualified under the first rule in the said schedule A. The said Sardar Panda being duly elected shall be trustee of all the properties moveable and Immovable devoted to the service of the God Mahadeva Vaidya Nath Jiu established in mauza Deoighar, district Santhal Perganas within the jurisdiction of this Court ; and that as such trustee he shall be bound to observe the conditions of his trust according to ancient usage and as laid down in schedule B.

2. 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.

8. The Sardar Panda, who was duly elected pursuant to that decree, was the high priest whose widow: and executrix is defendant No. 1 to the suit which is the subject of this appeal.

9. The High Court, in coming to their decision, relied upon the case of Vidya Varuthi Thirtha v. Balusami Ayyar : in which Mr. Ameer Ali, in delivering, the judgment of the Board, used the following language in reference to high priests of temples and persons in like positions (p. 311) :?

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 genera] sense for mal-administration.

10. This judgment of the Board is without doubt a correct statement of the general law. It was a novel view when propounded, and it was followed by the amendment made to Section 10 by the Indian Limitation Amendment Act (I) of 1929. But the present case is one which on its facts is an exception to the general rule.

11. In the present case the Court has exercised the powers conferred upon it by the Code, viz. to appoint a trustee and to vest the property in the trustee. The words of Section 539 and the words of the decree are equally plain : and by virtue of the decree pronounced under the section, the late high priest was a

"trustee of all the properties moveable and Immovable devoted to the service " of the temple God. The war bonds were accordingly in fact vested in him in trust for a specific purpose, and the plaintiff's suit, falling within the words of Section 10 of the Indian Limitation Act (IX) of 1908, cannot be barred by any length of time.

12. The appeal should therefore be allowed, the decree of the High Court should be set aside, and the decree of the Subordinate Judge should be restored. Their Lordships will humbly advise His Majesty accordingly.

13. Respondent No. 1 will pay to the appellant his costs of the appeal to the High Court and of the appeal to His Majesty in Council.