
(1970) 08 MAD CK 0018
In the Madras High Court

V.R. Thulasai Sah (died) and Others

APPELLANT

Vs

Sri Katchapeswaraswamy Devasthanam and Others

RESPONDENT

Date of Decision : 10-08-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100
Madras Hindu Religious Endowments Act, 1926 — Section 73

Citation : (1970) 83 LW 678 : (1970) 2 MLJ 639

Hon'ble Judges : M.M. Ismail, J

Bench : Division Bench

Judgement

M.M. Ismail, J.—The legal representatives of the deceased first defendant in O.S. No. 456 of 1960 on the file of the Court of the District Munsif of Kancheepuram are now the appellants before this Court. The suit properties were endowed for the purpose of performing the Uchikala Kattalai and general pooja in the Sri Katchapcswaraswamy temple. One Pandaram family was the kattalai trustees in respect of the suit properties, and Ekambaram Pandaram who was the kattalai trustee at the relevant time, mortgaged the suit properties in favour of the father of the first defendant in the suit, on 9th September, 1919 under Exhibit B-1. The trustees of the temple filed O.S. No. 224 of 1937 on the file of the Court of the District Munsif of Kancheepuram for a declaration that the alienations effected in respect of the temple properties and Kattalai properties were not binding on the temple, and for recovery of possession of the same. One such alienation covered in that suit was Exhibit B-1, dated 9th September, 1919. The Court in O.S. No. 224 of 1937 came to the conclusion that the properties were kattalai properties, that the alienations were not valid and binding; but the temple as such was not entitled to recover possession of the property, and it was only the kattalai trustees who were entitled to be in possession of the properties. So far as Exhibit B-1 was concerned, the Court expressly pointed out that, being a mortgage unaccompanied by possession, no finding was necessary with regard to delivery of possession. Thereafter, O.S. No. 5 of 1943 on the file of the Court of the District Judge, Chingleput, was filed u/s 73 of the Madras Hindu Religious

Endowments Act (Madras Act II of 1927), and in that a scheme was framed, and a trustee called Sri Katchapeswara Uchikala and General pooja kattalai trustee was appointed and he was authorised to have possession of all the kattalai properties. The decree in that suit is marked as Exhibit A-1 in this case. The third defendant in the suit (O.S. No. 456 of 1960) was appointed as the kattalai trustee under the scheme on 26th June, 1947 by virtue of the final decree proceedings in the said suit which was marked as Exhibit A-3 in the present suit. Subsequent to these proceedings, the first defendant who is the son of the mortgagee under Exhibit B-1, filed O.S. No. 40 of 1942 on the file of the Court of the Subordinate Judge, Chingleput on the basis of Exhibit B-1 and brought the property to sale and purchased it himself. After the first defendant purchased the property and took delivery of the same, the third defendant herein filed an application under Order 21, Rule 100 of the Code of Civil Procedure, for redelivery of the property contending that neither the mortgage nor the sale was binding on the Kattalai. However, that application was filed three days after the period of limitation expired for the same, and therefore he filed an application to excuse the delay. However, the Court declined to excuse the delay, and the application for redelivery of possession was also dismissed. It is after all these events, the present suit was instituted by the Executive Officer of the temple for recovery of possession of the suit properties putting forward the contention that the mortgage and the sale were not binding on the temple and the kattalai, and the temple is entitled to recover possession of the properties. The learned District Munsif by his judgment and decree, dated 30th October, 1962, decreed the suit, and the same was confirmed by the learned District Judge of Chingleput, on appeal on 14th December, 1964, in A.S. No. 108 of 1963. Hence the present Second Appeal.

2. The principal question that is argued before me is that in the light of the judgment in O.S. No. 224 of 1937 as well as in the light of the appointment of a special trustee in O.S. No. 5 of 1943, the temple trustee has no right to sue for recovery of possession of the property and the only person entitled to recover the same was the special trustee appointed under the scheme in O.S. No. 5 of 1943, namely, the third defendant herein, and that defendant cannot any longer file the suit because he has not filed the suit within the period of limitation prescribed for the purpose of the suit under Order 21, Rule 103 of the Code of Civil Procedure, after the dismissal of his application for redelivery of possession. Though the Courts below have not considered this question from this point of view, none the less they took the view that the temple trustee had a right to recover possession of the properties in question. The question being purely one of law from this point of view, it is necessary to refer to decisions of this Court.

3. In an early decision of this Court in A. Subramania Iyer Vs. P. Nagarathna Naicker and Others, , the Court pointed out that in a suit by the worshippers of a temple to have the alienation of trust property by some of the trustees declared invalid and for possession to the trustees, the proper decree to be made, if the Court be of opinion that the alienation is invalid, is to decree possession to those

trustees, and the trustees need not be referred to a separate suit for the purpose. The reasoning of the learned Judges was that once the alienation is declared to be invalid, the person in possession of the property is not entitled to be in possession of the same and in a properly framed suit, the person entitled to possession can recover possession of the same from him, and if so, there is no justification whatever to dismiss the suit of the worshipper and to allow the trustees to file a separate suit for possession. The sum and substance of the decision is that even a worshipper is entitled to maintain a suit for a declaration that the alienation of the temple properties is not valid and for recovery of possession thereof, even though the Court will pass a decree for recovery of possession only for the benefit and on behalf of the temple. In *Ettiyar Ahmed Kutty and Others Vs. Vayalilakath Ayithraman Kutty and Others*, , this Court took a similar view. This Court pointed out that when there is a lawful trustee for an institution, he is the person competent to institute a suit in relation to the property of the institution, to take the necessary steps for safeguarding and preserving it and to eject a trespasser and recover possession thereof for the trust, but the recovery of the property is only for and on behalf of the institution which he represents; but where a trustee has alienated the trust property and therefore would not proceed to recover possession of the same or has disabled himself otherwise from maintaining a suit in respect thereof or declines to institute, it cannot be said that the institution is without a remedy; the worshippers, who are the beneficiaries entitled to participate in the benefits of the institution, are entitled to maintain a suit for preserving the trust property or restoring the property to the trust either by instituting a suit for declaration or for an injunction or even for possession; but whether the worshippers are entitled to claim all or any of the reliefs which a trustee is entitled to do in a properly framed suit would depend upon the circumstances of each case; it is desirable and necessary to make the trustee a party to the suit, and where he is made a party it is open to the Court to mould the relief as the circumstances may require ; if the suit is one brought for possession by the worshippers, the Court can, after declaring the property to be trust property and setting aside the alienation, direct delivery of possession to the trustee.

4. *Alagiriswami, J.* had occasion to consider this question in *Amir Jan Vs. Shaik Sulaiman Sahib and Others*, , and stated that the worshippers are entitled to maintain a suit for preserving the trust property or restoring the property to the trust either by instituting a suit for declaration or for an injunction or even for possession, and even if the suit is one brought for possession by the worshippers, the Court can after declaring the property to be trust property and setting aside the alienation, direct delivery of possession to the trustee. The same learned Judge had to consider a question very near to the present one in *Kariyan Chettiar and Another Vs. T. Rangia Goundar and Another*, . In that case, the trustee appointed for the temple filed a suit for recovery of possession of the property endowed for performing poojas and rathotsavams of the temple *Devasthanam*. The endowed property was alienated, and the alienee put forward

the contention that the temple trustee was not entitled to maintain the suit since the property was endowed only for a Kattalai. The learned Judge held that "" even apart from these considerations, it is well established that any worshipper of a temple can institute a suit to recover the temple property which has been wrongly alienated by a trustee." It is on this basis, the learned Judge came to the conclusion that the suit instituted by the temple trustee for recovery of possession was maintainable in that case.

5. Therefore, the conclusion that flows from these decisions is that the temple or its trustee or even a worshipper is entitled to file a suit for declaration that the alienation of the property endowed for the temple or an institution attached thereto is not valid and binding, and for recovery of possession in favour of the person who is lawfully entitled to hold the same. The basis of this conclusion is that the property belongs to a public institution and a worshipper is a beneficiary thereof, and as such he has got sufficient interest to maintain the suit. If so, a fortiori a general trustee of the temple can file a suit for recovery of possession of the property alienated by the Kattalai trustee, because a specific endowment is attached to the temple and as such the general trustee of the temple not only has got a power to supervise the performance of the service or charity relatable to the specific endowments, but also has an interest for the maintenance and preservation of those specific endowments. Hence the suit by the Executive Officer of the temple for recovery of possession of the property after declaring the mortgage and the sale invalid is maintainable.

6. As against the decisions cited supra, Mr. R. Alagar, the learned Counsel for the appellants brought to my notice two Bench decisions of this Court, the first of which in *Matte Sarayya Vs. Vepparathi Vydynatham*, , and the other in *Tangirala Chiranjivi, being minor by his mother and next friend Lakshamma and Others Vs. Raja Manikya Rao Rajya Lakshamma and Others*, . As far as these two cases are concerned, they dealt with cases of either service inam or personal inam burdened with an obligation to perform a certain service in the temple. In the first case, in a very short judgment, the learned Judges pointed out thus:

There is nothing here to suggest that the inam was granted by the temple authorities. Exhibit-D, is the title-deed given by the Government to the person doing service in the temple and makes the title conditional on the fulfilment of the terms of the grant. There is no ground on which the temple trustees can intervene to prevent the alienation of the inam. No doubt, the Government might resume and regrant it if moved to do so, and it may be that if the present servant who is responsible for the alienation were removed from office, her successor in the office could recover the inam on the principle enunciated in *Matte Sarayya Vs. Vepparathi Vydynatham*, , But the trustees cannot recover possession of the land in the present suit and we must reverse the decree of the Subordinate Judge and dismiss the suit.

In the second case, the learned Judges pointed out thus:

Again, the Judge did not try the question whether the plaintiffs neglected or refused to have the services properly performed. Further, unless the Dharmakartas could prove their right to take possession of the lands, the plaintiff's suit must succeed, even if they failed to perform the services or forfeited their right to the services, the right of resumption of the inam being prima facie in Government alone.

Thus, both the cases dealt with service and personal inams and pointed out that the right of resumption being available with the Government, the trustee of the temple as such cannot file a suit or recovery of possession. As a matter of fact, it may be, that so long as the service is performed regularly and satisfactorily, whether the property has been alienated or not, it may not be even the concern of the temple because the grant not being obviously to the temple, the temple was interested only in securing performance of the service. It may be that the successor to the alienor may seek to recover the property on the ground that the property being attached to the office is not alienable. But none of these considerations will apply to the present case where the grant is not made by the Government either as a personal inam or a service inam, but where the property is endowed for the performance of a specific Kattalai. Hence neither of these two decisions relied on by the learned Counsel for the appellants is of any assistance to him in the present case. But on the other hand, the other decisions referred to by me are clearly in support of the decree passed by the Courts below. Under these circumstances, I hold that the suit for recovery of possession of the property by the Executive Officer of the temple is maintainable. At the same time, in view of the decision of the Court in O.S. No. 224 of 1937 and the appointment of a special Kattalai trustee under the scheme framed in O.S. No. 5 of 1943, the person to whom possession must be delivered is only such a special trustee. The third defendant in the present case was such a special trustee but he not having filed the application for redelivery in time and not having filed the suit as contemplated in Order 21 Rule 103 of the CPC within the period of limitation, has disabled himself from recovering possession of the property and equally disabled himself from performing and continuing to perform the office of the special trustee of the Kattalai properties. Consequently, as far as the appellants are concerned, they will have to hand over possession of the properties to the temple. But the Executive Officer of the temple will move the Court for the appointment of a new special trustee in terms of the scheme framed in O.S. No. 5 of 1943 within a period of six months from today and will hand over possession of the property to the special trustee to be so appointed by the Court.

7. However, Mr. Alagar wanted to argue that if the present suit by the temple is to be construed as one on behalf of the Uchikala Kattalai, then the suit is barred by limitation in view of the fact that the third defendant had not preferred the suit under Order 21 Rule 103 of the CPC within the period of limitation prescribed therefor. I am unable to see any substance in this argument because the suit itself cannot be said to be on behalf of the Uchikala Kattalai, though the suit

property once recovered from the alienee will have to be held as on behalf of and for the benefit of the Uchikala Kattalai. Under these circumstances, the Second Appeal fails and the same is dismissed. There will be no order as to costs. No leave.