

## **PRIVY COUNCIL**

A.S.S. Subbaiya Pandaram

Vs.

Mohamad Mustafa Maracayar (since deceased)

P. C. A. No. 84 of 1920

(Lords Buckmaster, Dunedin Carson, J. Sir John Edge and Lord Salvesen JJ.)

26.6.1923

### **JUDGMENT**

#### **Lord Buckmaster J.**

1. The real question in this appeal is whether the suit is barred by the operation of the Statute of Limitation.

2. It was instituted by the appellant to recover, as against a purchaser under an execution sale and those who claimed under him, certain property which had by two deeds dated the 21st February, 1890 and the 13th December, 1894 been devoted to charitable purposes. The first of these two documents declared that the heirs of the settlor in the order of primogeniture should be trustees and conduct the said charities. The settlor died in 1895, leaving him surviving his widow and Arunachellam, his only son. Arunachellam is the father of the present appellant. He was trustee of the charity and having become involved in debt one of his creditors sued him and obtained a decree in execution of which the endowments of the charity were attached. The settlor's widow, on behalf of the appellant who was then an infant, filed an objection to the attachment, but it was dismissed on the ground that during the lifetime of the appellant's father he had no locus stand. In the same year another suit was instituted by the minor acting through the same next friend seeking to establish the validity of both the deeds, and while this suit was pending, the property was brought to sale under the decree against Arunachellam on the 22nd March, 1898. It was purchased by Maracayar who is since deceased, and whose legal personal representatives are the respondents Nos. 4 to 8 of this appeal ; the sale was confirmed on the 11th August, 1898, and delivery of possession was made to the purchaser, the settlor's widow being removed from possession. From that day until the institution of these proceedings, the

purchaser and those claiming under him have been in uninterrupted possession of the property.

3. On the 31st December, 1900, it was declared in the second suit of 1897 that the properties, including those seized under the execution sale, formed a trust estate for the purpose specified in the deed. On the 9th November, 1911, the appellant, who had come of age on the 6th August, 1910, petitioned the District Court asking for leave to bring a suit to remove Arunachel lam from the office of trustee, and such leave was granted ; the suit for removal was accordingly instituted and on the 21st July, 1913, a decree was obtained removing Arunachellam, and the appellant succeeded as trustee.

4. The present suit was then brought on the 23rd July, 1913, to recover the property.

5. Both the learned Judge, before whom the matter first came, and the learned judges of the High Court have decided against the appellant, but, on different grounds ; the result of the decisions was, however, in their Lordships' opinion, correct.

6. There is no doubt that whatever period of limitation be assigned, the full period had run before these proceedings were instituted, unless it could be alleged that by virtue of the proceedings to which reference has been made, there was some interruption in the period.

7. Now the real argument in favour of the appellant was that in the presence of the purchaser it was declared that the trust had been validly created and that the property was, in fact, trust property, and it is suggested that this effects *res judicata* as against the respondents and prevents them from now asserting that the property is their own.

8. Their Lordships do not think that the decree had that effect. At the moment when it, was passed, the possession of the purchaser was adverse, and the declaration that the property had been properly made subject to a trust disposition, and therefore ought not to have been seized, did not disturb, or affect the quality of his possession ; it merely emphasised the fact that it was adverse. No further step was taken in consequence of that declaration until the present proceedings were instituted, when, it was too late.

9. A further argument has been put forward to the effect that the Statute of Limitation begins to run afresh as each new trustee succeeds to the office, and in support of that view reliance is placed in the case of *Ishwar Shyam Chand Jin v. Ram Kanai Ghose*,<sup>1</sup> and in the case of *Vidya Varuthi Thirtha v. Balusami Ayyar* <sup>2</sup> but these authorities do not assist the appellant. In each case they relate to the effect of an attempt on the part of a trustee to dispose of the property by a permanent mokurari

lease. This he has no power to do, though he is at liberty to dispose of it during the period of his life and a grant made for a longer period is good, but good only to the extent of his own life interest.

10. It follows, therefore, that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he assumed the office. Such an argument has no relation to the case where, as here, property has been acquired under an execution sale and possession retained throughout.

11. Their Lordships are, therefore, of opinion that this suit is barred either under Section 134 or Section 144 of the First Schedule to the Limitation Act. The former fixes the period as 12 years where the suit is to recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration; and the latter as signs the same period where the claim is for possession of immovable property or any interest therein not thereby otherwise specially provided for.

12. This is not, in fact, a transfer by the trustee himself for a valuable consideration, though there is little difference in principle, between a transfer under an adverse execution and a sale by the trustee himself, but disregarding that section, Section 144 covers the exact case. Further, Section 10 of the Limitation Act appears also to contemplate the exact position: it is in these terms :-

"10. Notwithstanding anything herein-before 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 as signs 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." and it shows that, where it is sought to follow trust property, as in the present case, on the ground that the person in possession knew that it was trust estate, the claim is not barred, excepting in a case of assigns for valuable consideration, and the exception shows that in that event the claim may be defeated by adverse possession."

13. The purchaser in the present case is clearly within the terms of the exception, and consequently is not prevented, by reason of the fact that the property was to his knowledge trust property after the date of the decree, from relying on the provisions of the

statute which limit the time within which suits must be brought for recovery.

14. Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed with costs.

Appeal dismissed.

Cases Referred.

1.[1911] 38 Cal 526: 38 IA 76 : 15 CWN 417 : 14 CLJ 238 : 8 ALJ 528 : 13 Bom LR 421 : 21 MLJ 1145 : 9 MLT 448 : 10 IC 683 : (1911) 2 MWN 281 (PC),

2. AIR 1922 PC 123: 48 IA 302 : 44 Mad 831 : 41 MLJ 346 : (1921) MWN 449 : 26 C WN 537 : 15 MLW 78 : 3 P LT 245 : 20 ALJ 497 : 24 BL R 629 : 30 MLT 66 (PC),