Sri Vedaraneeswararswamy Devasthanam

Vs

The Dominion of India and Another

Civil Appeal No. 371 of 1956

(K. N. Wanchoo, P. B. Gajendragadkar JJ)

15.02.1961

JUDGMENT

GAJENDRAGADKAR, J. -

This appeal has been brought with a certificate issued by the Madras High Court and it arises out of a suit filed by the Managing Trustee of the appellant Sri Vedaraneeswararswamy Devasthanam against respondents 1 and 2 the Dominion of India and the Province of Madras respectively. In this suit the appellant claimed a declaration that the properties in suit belong to the appellant and asked for a direction against respondent 1 to put the appellant in possession of the same. A further direction was claimed against the said respondent calling upon it to account for and pay to the appellant mesne profits past and future and an alternative plea was also made by which the court was requested to determine the proper rent payable by the said respondent to the appellant. This claim has been rejected by the learned Subordinate Judge of Mayuram who tried the case and an appeal preferred by the appellant against the trial court's decision has likewise failed. That is why the appellant has come to this Court.

According to the appellant the suit properties which admeasure about 2,400 acres are situated in the village of Agastiyampalli and the said village was granted in inam absolutely to the appellant by the Tanjore Rajas several centuries ago. From the time of the said grant the appellant was in exclusive possession and enjoyment of the said properties, and its trustees and managers used to look after them and collect their profits for the use and benefit of the appellant. In 1806 an agreement was reached between the East India Company and the appellant under which the Company took possession of the appellant's properties in suit and in return promised to pay a sum of 1848 Pagodas annually. Out of this amount 1200 Pagodas represented the rent of the property. Pursuant to this agreement the Company took possession of the said property and was paying the agreed rent until 1858. In that year respondent 2 which succeeded the Company entered into possession of the property on the same terms and was making the annual payment of the said sum until 1937. Thereafter respondent 1 took over the salt revenue administration and as such the properties came into its possession. Respondent 1 has been paying the appellant the agreed amount from year to year. The appellant's case was that the true legal relationship between the parties was that of a lessor and lessee and that the lease itself was not of a permanent character but was one in the nature of annual or yearly lease which was continued from year to year. It is on this basis that the appellant made the two alternative claims specified above.

Respondent 1 disputed this claim. It denied that it held the properties under an annual or yearly lease. Its case was that when the suit lands were taken over by the Company compensation was fixed once for all, the average income of the appellant from the manufacture of salt carried on by

the appellant during the previous ten years having been taken as the basis for the purpose of calculating the said compensation. The properties came under the possession and control of the Company as a result of the proceedings taken under Regulation 1 of 1805 and the amount of Rs. 4,200/- corresponding to 1848 Pagodas represents the compensation annually payable to the appellant. Respondent 1 made certain other pleas on the merits and urged a bar of limitation.

On these pleadings the trial court framed ten issues. On the principal point of dispute between the parties it held that a reading of the relevant documents clearly showed that "at the time when the Company took possession whatever the idea may then have been it must have been only to take over the properties permanently from the plaintiff Devasthanam and not to place themselves at the mercy of the trustees who might evict them at any time". According to the trial court the arrangement evidenced by the said documents was a permanent arrangement; and that being so, the appellant was not entitled to claim possession. The trial court also held that even if the relationship between the parties could be said to be that of a lessor and lessee the lease in question was a permanent lease subject only to the payment of a fixed rent of Rs. 4,200/- per annum. On these findings the trial court dismissed the appellant's suit.

The appellant then took its case before the Madras High Court. The High Court in substance agreed with the conclusions of the trial court. It considered the whole of the documentary evidence and came to the conclusion that the trial judge was right in holding that the documentary evidence showed that the arrangement by which the Company took possession of the appellant's properties was a permanent arrangement and that if it was held to be a lease it must be regarded as a permanent lease. According to the High Court the appellant's claim was also barred by limitation under Art. 134(B) of the Limitation Act. The High Court therefore confirmed the trial court's decree and dismissed the appeal preferred by the appellant.

In the present appeal the principal question which has been raised before us by Mr. Viswanatha Sastri for the appellant is about the true nature of the relationship between the parties in respect of the properties in suit. He contends that the principal document Ex. A. 1 on which reliance is placed by respondent 1 should be construed not as a permanent but as an annual lease; and according to him the contrary view taken by the High Court is not supported by the tenor of the document, and he also argues that in construing the said document the High Court has not borne in mind relevant principles of law governing the powers of the manager of a Hindu religious institution.

Let us then briefly consider the relevant documents bearing on the point. The principal documents is Ex. A. 1. It purports to be a copy of the order passed by Mr. Wallace on December 31, 1806. It is addressed to the manager of the temple and it reads thus : "As the Government have taken charge of the pagoda salt pans and Sea Customs of Thopputhurai, belonging to the above temple, the sum of 1848 Pagodas shall be given to the temple annually in cash from the treasury being calculated on the average amount of 10 years' revenue besides which every possible assistance will be given to the temple." It would be noticed that there is no duration specified in the document, and prima facie it reads as if the Government had taken charge of the salt pans and Sea Customs permanently promising in return to pay to the temple the amount specified annually from year to year.

In construing this document reference may be made to the previous correspondence that passed between the Collector and the Members of the Board of Revenue. It is not disputed that this correspondence can be considered for the purpose of construing the effect of the terms of Ex. A. 1. On July 17, 1806, a letter was addressed to the President and Members of the Board of Revenue in which the idea of acquiring this property was fully explained. In this letter in was stated that "it

would be better to grant to the temple commutation in land because that would be more certain and permanent than ready money payment". In computing the compensation which may be paid to the temple the accounts of the pagoda were examined. It was found that the pagoda enjoyed revenue from the duties levied at ports at Thopputhurai and Kodikarai. Ten years' account showed that the average annual income in that behalf was 283 Pagodas. To this amount was added the amount of magama or charitable and litigious fees and the total worked out at an average of 532 Pagodas. From this was deducted 46 Pagodas which was the average of charges and expenses incurred in collecting the port duties. Thus the net annual average revenue was 486 Pagodas. Then an account was made of the income received by the temple from salt manufacture in the salt pans and it was ascertained that an average income in that behalf would be Star Pagodas 1362. That is how the whole annual income was found to be 1848 Pagodas. It would thus be seen that elaborate calculations were made to determine the amount of compensation which should be legitimately paid to the temple for depriving the temple of the possession of its properties in question. It was then considered whether the commutation for the amount should be in land or in money, and, as we have already pointed out, a recommendation was made that payment of commutation in the form of land would be more certain and permanent. Thus the perusal of this document leaves no doubt that the property was intended to be acquired permanently for the purpose of manufacturing salt. It is on that basis that calculations were made and the amount of compensation determined.

It appears that this proposal made by the Collector was not approved by the Government at Fort St. George. In the letter written by the Secretary to the Government on October 28, 1806, it was recommended that a payment should be made from the public treasury of a compensation for the loss which the pagoda had sustained by the introduction of salt monopoly in the Province of Tanjore not exceeding Star Pagodas 1848 per annum. The proposal thus made by the Government was accepted by the Board and its decision was communicated by the letter of November 17, 1806. It is in the background of this correspondence that we have to decide the effect of the terms contained in Ex. A. 1. Thus considered there can be little doubt that though the property was not purchased outright it was taken charge of on a permanent basis for the purpose of manufacturing salt and compensation was determined on the same basis but made payable annually at the rate of 1848 Pagodas.

There are, however, some other documents on which Mr. Sastri relies. An extract from the inam register prepared on November 27, 1862 (Ex. A. 18) has been pressed into service by the appellant. The main argument is that the relevant columns 16 to 20 which give particulars regarding the owners do not refer to the Company's right under this permanent arrangement. If the transaction was a permanent lease, it is urged, the lessee's rights would have been specified in the relevant columns. We are satisfied that this argument is not wellfounded. The main column deals with particulars regarding the owners. It also provides that if the inam was sub-divided the name etc. of each sharer shall be entered in its columns. We are, therefore, not satisfied that the name of the permanent lessee was expected to be shown in this column. It is true that in determining the additional assessment on excess area payable by the temple the whole of the property is assumed to belong to the temple; but that is not inconsistent with the temple continuing to be the lessor of the suit property at all. There is no doubt that if the Company had become the lessee of the said suit property by a document duly executed in that behalf entries made in the inam register cannot change or affect the character of the said right. Therefore, in our opinion, there is nothing in Ex. A. 18 which militates against the case set up by respondent 1.

Then Mr. Sastri has relied on Ex. A. 2 which is a title deed issued by the Inam Commissioner is favour of the temple. In this document the temple's title to the Devadayam or pagoda inam village

of Agastiyampalli is recognised and specific mention has been made of the porambokes in the said village. It is stated that the whole of the property is held for the support of the pagoda in the village of Vedaranyam. What we have said about the extract from the Inam Register applies with equal force to this document.

It appears that from 1806 when the Company took possession of the property until 1941 the appellant has allowed the Company and its successors to be in quiet enjoyment of the property on receipt of an annual compensation paid from year to year. In 1941 the factory officer wrote to the trustee of the appellant to let him know the name or the names of the revenue villages to which the area covered by the salt factory was originally attached prior to the acquisition, and he enquired whether any compensation amount had been paid to the temple for the said acquisition. It is this letter which presumably started the appellant's present claim. Soon after receiving this letter the appellant wrote to the factory officer on April 8, 1941 alleging that the property had been leased out to Government for the manufacture of salt for a monthly lease of Rs. 350 or annually Rs. 4,200. The appellant thus set up a relationship of lessor and lessee between itself and respondent 1. Then the appellant moved the relevant authorities for appropriate relief on one ground or another. All its efforts to obtain possession of the property or even to have the amount of compensation enhanced failed and that led to the present dispute.

The main argument which has been urged before us by Mr. Sastri is that in construing Ex. A. 1 we ought to bear in mind the limitations on the powers of the manager of the temple at the relevant time. Mr. Sastri has relied on the fact that the manager of a temple could not have entered into a transaction of permanent lease unless there was a compelling necessity so to do. A permanent lease amounts to an alienation of the property and would have to be justified as such. An annual lease, on the order hand, can be executed by the manager in his capacity as the manager and the same is treated as an act of prudent management. That, however, is not true about a permanent lease, and so in construing the document we should attribute to the manager the desire and intention to act within his powers and not without them. In support of this argument Mr. Sastri has referred us to the decisions of the Privy Council in Maharanee Shibessouree Debia v. Mothooranath Acharjo [(1869) 13 Moo. I.A. 270, 273, 275.], Nainapillai Marakayar v. Ramanathan Chettiar [(1923) L.R. 51 I.A. 83, 97, 98.], and Palaniappa Chetty v. Deivasikamony Pandara [(1917) L.R. 44 I.A. 147, 155, 156.]. The argument is that a fair and reasonable rule of construction would be to treat the document as executed in pursuance of the legitimate authority available to the manager of the temple and not as one which is executed in breach of the said authority. This position cannot be and is not disputed.

In the application of this rule to the present case, however, two relevant facts cannot be ignored. The first important fact is that after the execution of the document more than a century has elapsed; and so, as observed by the Privy Council in Bawa Magniram Sitaram v. Kasturbai Manibhai [(1921) L.R. 49 I.A. 54.], "where the validity of a permanent lease granted by a shebait comes in question a long time (in the present case nearly 100 years) after the grant, so that it is not possible to ascertain what were the circumstances in which it was made, the Court should assume that the grant was made for necessity so as to be valid beyond the life of the grantor". In the present case more than a century has elapsed after the grant was made, and so the principle laid down by the Privy Council in that case can well be invoked by respondent 1.

Besides, it is common ground that under the relevant provisions of Regulation 1 of 1805 the manufacture and sale of salt was made subject to the immediate direction and control of the general agent appointed by the Government, and the said manufacture and sale as well as transit, export and import of salt, whether by sea or by land in the territory subject to the Presidency of Fort St. George

was prohibited except on account of Government or with their express sanction. It was also provided that all salt manufactured, sold, conveyed, exported or imported, directly or indirectly, otherwise than is provided for in the said Regulation, shall be liable to seizure and confiscation. In other words, part of this property belonging to the temple on which salt was being manufactured became absolutely useless for that purpose as the temple could no longer manufacture, or permit the manufacture of, salt. Faced with this situation it is not at all unlikely that the manager of the temple was compelled to enter into an arrangement with the Company and secure for the benefit of the temple a substantial permanent income accruing from year to year. It is common ground that the whole of the property was marshy and the only use to which it could be profitably put was for the manufacture of salt, and that could no longer be done after Regulation 1 of 1805 was passed. That is why we think that even the test of the rule of construction on which Mr. Sastri relies can be said to be satisfied in the present case. Circumstanced as he was the then manager or trustee had no option but to enter into an agreement like the one which was evidenced by Ex. A. 1; thereby the manager provided for a recurring income to the temple and thus arranged for the upkeep of the temple, the worship of the idol and discharge his duties as trustee.

We have already seen how the previous correspondence which preceded the execution of the document unambiguously shows that the intention of the Company was to take possession of the property on a permanent footing, and realising the limitations imposed by the Regulation the manager of the temple would also have wanted to give the property to the Company permanently and thereby create a permanent source of income for the temple. The subsequent conduct of the temple for over a century is consistent with the view that the temple knew that the property has been permanently given to the Company and is inconsistent with the present case that the lease is an annual lease. The payment and acceptance of the same uniform rent for over a century when so many political and other changes took place also support the same conclusion. The pleas set up by the appellant from stage to stage in respect of its relationship with respondent 1 in regard to the possession of this land have changed from time to time and that shows that the appellant was at pains to put forward a basis on which it could claim either possession or enhanced rent. The fact that respondent 1 is making large profits out of this property may explain the appellant's desire to get some more share in the said income but that cannot assist the appellant if it has parted with the property permanently as early as 1805 on the terms and conditions specified in Ex. A. 1. In our opinion, the High Court was right in coming to the conclusion that the transaction evidenced by Ex. A. 1 is a permanent lease and that respondent 1 is entitled to retain possession of the whole of the property on the terms and conditions specified in the said document. We must accordingly hold that the appellant's claim either for possession or for enhancement of rent has been properly rejected by the courts below.

In the result the appeal fails but there will be no order as to costs.

Appeal dismissed.

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