Commissioner of Income-Tax, Madras

Vs

Managing Trustees, Nagore Durgha, Nagore

Civil Appeals Nos. 213 and 214 of 64

(K. Subha Rao, J. C. Shah, S. M. Sikri JJ)

08.04.1965

JUDGMENT

SUBBA RAO, J. –

In the town of Nagore in Tanjore District, Madras State, there is a Durgha consecrated to Hazerath Sayed Shahul Hameed Quadir Ali Ganja Savoy Andavar, who lived some 400 years ago. The said Durgha receives large income from immovable properties endowed to it and the offerings in cash and kind made by the devotees. The Durgha and its properties are now being administered under a scheme settled by the Madras High Court on March 16, 1955. Under the scheme the management of the administration of the affairs of the said Durgha vests hereditarily in 8 trustees called Nattamaigars, who constitute a board of trustees. The said board of trustees shall from among themselves elect one as a managing trustee and he shall hold office for a term of 3 years. The managing trustee shall at the end of each fasli prepare a balance-sheet verified by the manager and ascertain the net amount available for payment to kasupangudars, who are the descendants of Saiyed Muhammed Eusoof, the foster son of the saint. The Managing Trustee shall declare the amount due to each of the kasupangu (share) and shall allocate the amount to each kasupangudar (sharer) in the list to be prepared for that purpose in each year. He shall pay the amount to each kasupangudar in accordance with the list. It is said that at present there are 640 kasupangudars. Briefly stated, under the scheme the management of the properties of the Durgha, both movable and immovable, vest in Nattamaigars, and the kasupangudars are entitled to the surplus in accordance with their shares.

For the assessment years 1953-54 and 1954-55 the Income-tax Officer assessed the surplus income in the hands of the Managing Trustee as an association of persons. The Appellate Assistant Commissioner, on appeal, confirmed the same. On further appeal, the Income-tax Appellate Tribunal took the same view. At the instance of the assessee, the Tribunal submitted the following question for the opinion of the High Court of Madras under s. 66(1) of the Income-tax Act, 1922, hereinafter called the Act :

> "Whether the provisions of Section 41 can be said to apply to the assesses in this case."

A Division Bench of the High Court, which heard the reference, held that the Managing Trustee qua the surplus income managed the property and derived the income on behalf of the kasupangudars and that the assessment should be made on the said Managing Trustee to the extent of the interest of each of the kasupangudars in the income received by him. In the result it answered the question in the affirmative and in favour of the assessee. The Commissioner of Income-tax, Madras, on a certificate of fitness granted by the High Court, has preferred the present appeals against the said

Order.

The learned Additional Solicitor-General, appearing for the Revenue, contended that the Natmaigars being trustees, the properties of the Durgha vested in them and, therefore, they or the Managing Trustee administered the trust properties in their own right and not on behalf of the kasupangudars and hence s. 41 of the Act did not apply, with the result the Income-tax Officer had rightly assessed the surplus income in the hands of the trustees as an association of persons.

Mr. A. V. Viswanatha Sastri, learned counsel for the assessee-respondent, argued, on the other hand, that the Nattamaigars of the Durgha were not trustees as understood in the law of trust but were only managers managing the properties on behalf of the Durgha and kasupangudars. On that assumption, his argument proceeded, as the Nattamaigars, as managers, held the surplus on behalf of the kasupangudars for distribution in definite shares, s. 41 of the Act was attracted.

At the outset we may make it clear that in this appeal we are concerned only with the surplus remaining on hand with the Nattamaigars after meeting the expenses of the Durgha.

The problem presented in these appeals falls to be decided on a true construction of s. 41 of the Act. The material part of s. 41 reads :

> (1) In the case of income, profits or gain chargeable under this Act, which the Courts of Wards, the Administrators-General, the Official Trustees or any receiver or manager (including any person whatever his designation who in fact manages property on behalf of another) appointed by or under any order of a Court, or any trustee or trustees appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including the trustee or trustees under any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913), are entitled to receive on behalf of any person, the tax shall be levied upon and recoverable from such Court of Wards, Administrators-General, Official Trustee, receiver or manager or trustee or trustees, in the like manner and to the same amount as it would be leviable upon and recoverable from the person on whose behalf such income, profits or gains are receivable, and all the provisions of this Act shall apply accordingly.

Under this section the income of properties receivable by the enumerated persons for the benefit of others is liable to be assessed to tax in their hands in the like manner and the same amount as it would be leviable upon and recoverable from the person or persons on whose behalf such income is receivable. This section centres on the basic fact that the person in whose hands the income is assessable shall be entitled to receive the same on behalf of any person; if he is not so entitled, the provisions of the section cannot be invoked. So, it is contended that, as the properties vested in the managing trustee and he received the income in his own right and not on behalf of the beneficiaries, though for their benefit, the said income in the hands of the managing trustee fell outside the scope of s. 41 of the Act.

There are two answers to this contention. The doctrine of vesting is not germane to this contention. In some of the enumerated persons in the section the property vests and in others it does not vest, but they only manage the property. In general law the property does not vest in a receiver or manager but it vests in a trustee, but both trustees and receivers are included in s. 41 of the Act. The common thread that passes through all of them is that they function legally or factually for others :

they manage the property for the benefit of others. That the technical doctrine of vesting is not imported in the section is apparent from the fact that a trustee appointed under a trust deed is brought under the section though legally the property vests in him. In the case of a Muslim Wakf the property vests in the Almighty; even so the mutawallis are brought under the section. A reasonable interpretation of the section is that all the categories of persons mentioned therein are deemed to receive the income on behalf of another person or persons or manage the same for his or their benefit. None of them has any beneficial interest in the income; he collects the income for the benefit of others. In this view, even if the Nattamaigars were trustees in whom the properties of the Durgha vested, they should be deemed to have received the income only on behalf of the kasupangudars in definite shares.

The same conclusion will be reached even if the problem was approached from a different angle. In the well-known decision of the Privy Council in Vidya Varuthi Thirtha v. Balusami Ayyar [(1921) L.R. 48 I.A. 302, 315] the inappropriateness of the use of the expression "trustee" to the manager of a Hindu or Mahommedan religious endowments was brought out. Therein their Lordships observed :

> "Neither under the Hindu Law nor in the Mahommedan system is any property "conveyed" to a shebait or a mutawalli, in the case of a dedication. Nor is any property vested in him; whatever property he holds for the idol or the institution he holds as manager with certain beneficial interests regulated by custom and usage. Under the Mahommedan Law, the moment a wakf is created all rights of property pass out of the wakf, and vest in God Almighty. The curator, whether called mutawalli or saijadanishin, or by any other name, is merely a manager. He is certainly not a "trustee" as understood in the English system."

The Privy Council, in the context of a wakf property, reaffirmed the said observations, in Allah Rakhi v. Mohammad Abdur Rahim [(1933) L.R. 61 I.A. 50]. The effect of the said decisions is that Nattamaigars are only the managers of the properties in which the Durgha and the kasupangudars have beneficial interests. The properties do not vest in them. They receive the income therefrom on behalf of both of them. After meeting the expenses of the Durgha they hold the balance on behalf of the kasupangudars and distribute the same in accordance with their shares. In this view, in terms of s. 41 of the Act the Nattamaigars are the managers of the properties on behalf of others and are entitled to receive the income therefrom on behalf of them. With the result, the income which they hold on behalf of the kasupangudars can be assessed only in their hands in the manner prescribed thereunder. But it is said that whatever may the doctrine of Hindu or Mahammadan law, under the terms of the aforesaid scheme the properties vested in the Nattamaigars and, therefore, they receive the income in their own right and not on behalf of the kasupangudars. A careful reading of the relevant part of the schame does not countenance this argument. Clause 3 of the scheme, which is the material clause, reads :

> "The management and administration of the affairs of the Nagore Durgha at Nagore, Tanjore District, and other thakias and shrines connected therewith (mentioned in Schedule A hereunder) and all properties - movables and immovables - which belong to or have been or may hereafter be given, dedicated, endowed thereto, shall subject to the provisions thereof vest hereditarily in the eight trustees or nattamaigars of the Durgha who shall constitute the Board of Trustees. Each trustee or nattamaigar is entitled to hold office for life, and after him the trusteeship shall devolve on his next male heir in accordance with the custom prevailing in respect of such office in the

Durgha."

Under this clause the management and administration of the Nagore Durgha and its properties vest in the Nattamaigars. What vests in the Nattamaigars is not the properties of the Durgha but the management and administration thereof. Unless the words are clear we are not prepared to hold that the High Court in framing a scheme for the endowments of the Durgha had introduced a foreign concept of "trust" in derogation of Mahommadan law. We, therefore, hold that the scheme did not vest the properties of the Durgha in the Nattamaigars.

Lastly, a faint argument was raised to the effect that under the scheme the managing trustee was not appointed under any order of a Court but was appointed by an agreement among the trustees. But in cl. 4 of the scheme the High Court gave a specific direction that the managing trustee shall be elected from among the Board of Trustees. The Managing Trustee elected was certainly appointed under an order of a Court, for the election was held pursuant to the order of the Court. That apart, in the view we have taken, namely, that the Nattamaigars are not trustees in the English sense of the term, this question does not arise for consideration.

In the result, we hold that the High Court has rightly answered the question referred to it in the affirmative and in favour of the assessee. The appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.

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