SUPREME COURT OF INDIA

Srinivasa Reddiar

Vs.

N. Ramaswamy Reddiar

C.A.No.801 of 1963

(P. B. Gajendragadkar, C.J.I., K. N. Wanchoo, V. Ramaswami and P. Satyanarayana Raju, JJ.)

16.12.1965

JUDGEMENT

GAJENDRAGADKAR, C. J.:

1. The present appeal has been brought to this Court by special leave and it arises from a suit filed by the appellants against four respondents. The properties involved in the suit consist of agricultural lands situated in Eragudi village, Musiri taluk, Tiruchirappalli district. According to the appellants, the said lands had been granted in Inam to the ancestor of one Ambalathadum Pachai Kandai Udayavar by the Carnatic Rulers before the advent of the British power in India. The original grant-deeds are not available; but at the time of the settlement of the Inams in the sixties of the last century, Inam title deeds were issued in favour of the family of Pachai Kandai Udayavar. The appellants averred that the properties covered by the grant had been granted in Inam to the original grantee burdened with the obligation of performing certain services in a Matam. The said properties were alienated from time to time, and as a result of the last alienation, the appellants became entitled to them. The appellants in the present litigation claimed a declaration about their title to the properties in suit and a permanent injunction restraining respondents 1 to 3, who claimed to be the trustees of an alleged Pachai Kandai Udayavar Temple at Eragudi, from interfering with their possession of the same. Respondent No. 4 is the Deputy Commissioner, Hindu Religious and

Charitable Endowments, Tiruchirapalli, and he has been impleaded because he has purported to appoint respondents 1 to 3 as trustees of the said alleged Temple on the 7th March 1951. This suit (No. 103 of 1954) was instituted on the 13th September 1954, under S. 87 of the Madras Hindu Religious and Charitable Endowments Act (No. XIX of 1951) (hereinafter called 'the Act'), in the Court of the District Munsif at Turaiyur.

2. Respondents 1 to 3 who have been appointed as trustees of the said temple by respondent No. 4, obtained a certificate from him that the properties in question belonged to the Temple; and on the basis of the said certificate, they had filed an application before the Magistrate having jurisdiction in the area under S. 87 of the Act for possession. Notice of this application was served on the appellants and they pleaded their own title to the properties. The Magistrate, however, overruled the claim made by the appellants and directed them to deliver possession of the properties to respondents 1 to 3. Before this order could be executed and possession delivered to respondents 1 to 3, the appellants instituted the present suit.

3. Respondents 1 to 3 resisted this suit and contended that the properties in suit had not been granted to the predecessor of Pachai Kandai Udayavar as alleged by the appellants. Their case was that the said properties had been granted to the Pachai Kandai Udayavar Temple and formed part of its properties. As trustees appointed by respondent No. 4, they claimed that they were entitled to the possession of the properties.

4. On these pleadings, four substantive issues were framed by the learned trial Judge, they were: whether the grant of the Inam was a personal Inam; whether the grant of the Inam was a religious endowment; whether plaintiffs have title to the suit properties. and whether plaintiffs have acquired title by prescription? On the first two issues, oral and documentary evidence was adduced by the parties. The learned trial Judge examined the whole evidence and came to the conclusion that the grant of the Inam was a personal Inam, and that it was not a grant in favour of the religious endowment within the meaning of the Act. That is how the first two issues were answered in favour of the appellants. In consequence, the learned trial Judge also held that the appellants had proved their title to the suit properties. The alternative plea made by the appellants that they had acquired title to the properties by prescription, was also upheld by the trial Judge. In the result, the appellants' suit was decree on the 14th February 1955.

5. Respondents 1 to 3 preferred an appeal (No. 129 of 1955) in the Court of the Subordinate Judge at Tiruchirapalli, challenging the correctness of the said decree. The lower appellate Court considered three main points; they were: whether the grant was in favour of Ambalathadum Pachai Kandi Udayavar; whether there is a temple and whether the plaintiffs had prescribed their title to the suit properties by adverse possession. The lower appellate Court made a finding against respondents 1 to 3 on point No. 2. It held that the evidence adduced by the respondents did not prove the existence of any temple in favour of which the original grant had been alleged to have been made according to them. On that view, it thought it unnecessary to consider the first point. In regard to the

third point based on the appellants' claim that they had acquired title by adverse possession, the lower appellate Court found that "it was evident that from the very beginning Pachai Kandai Udayavar and his family had been claiming beneficial interest in the property and they were not holding the same as mangers of the trust. The alienation's must, therefore, be regarded only as repudiation of the trust". In the result, the lower appellate Court's finding was that the appellants had established their claim of prescriptive title. The appeal preferred by respondents 1 to 3, therefore, failed and was dismissed with costs on March 29, 1957.

6. This decision was challenged by respondents 2 and 3 before the Madras High Court in Second Appeal (No. 774 of 1957). Subramanyam, J., who heard this appeal, held that the original grant had been made in favour of the Temple. There was evidence to show that the properties originally granted had been resumed by the Collector but the learned Judge took the view that the said resumption was only of the melwaram or assessment, and that since the lands had been granted in Inam to the deity and its matam, their title to the lands remained unaffected by the resumption proceedings. In other words, he negatived the appellants claim that the original grant was in favour of their predecessors-in-title, though burdened with an obligation to render service to the matam. The learned Judge reversed the finding of the lower appellate Court that the existence of the Temple had not been proved.

7. Having thus held that the properties belonged to the Temple. The learned Judge proceeded to consider the question of limitation by reference to the several alienations with which the present litigation is concerned. In dealing with the question of limitation, the learned Judge took the view that the present suit would be governed by Article 134-B of the Indian Limitation Act. This article has been introduced in the said Act be Amending Act I of 1929 and came into force on 1st January 1929 It was conceded before the lower appellate Court that the new article was not retrospective in operation and that if the title of the alienees in regard to 'dharmadayam' properties had been acquired by adverse possession prior to 1st January 1929, it would not be affected by the provisions of Art. 134-B. Thus considered, the alienations in regard to items 1, 2, part of item 3, items 7 and 8, and a portion of the well in item 5 sold under Ex. A-2 in 1914 were held to be outside the mischief of Art. 134-B. The possession of the vendees in regard to the properties covered by the said sale-deed was held to have conferred title on them. Similarly item 4 and a part of item 6 which had been sold in auction in execution of a decree in 1927 (vide Exs. A-7 and A-8), were also held to be outside the scope of Art. 134-B, because the said article does not cover auction sales.

8. That left the alienations covered by Exts. A-3, A-6 and A-12 to be considered. These three alienations were effected on the 7th October, 1917, 2nd July 1926, and 2nd July 1926 respectively. The High Court held that the properties covered by these sale-deeds fell within the purview of Article 134-B, and the appellants title in respect thereof was open to challenge. In the result, the appellants' claim regard to the properties covered by these three sale-deeds was rejected, whereas their claim in regard to the other properties was upheld. In consequence, the appeal preferred by respondents 2 and 3 was partly allowed and the decree passed by the lower appellate Court in regard to Exs. A-3, A-6 and A-12 was set aside. This judgment was pronounced on the 2nd September 1959. It is against this decision that the appellants have come to this Court by special leave.

9. Mr. Tatachari for the appellants has raised before us an interesting question of law. He contends that Art. 134-B would not apply to the present case, because the alienations evidenced by Exs. A-3, A-6 and A-12 show that the alienors purported to transfer the properties not as Poojaris or managers of a temple, but in their individual character as owners of the said properties. The documents recite that the properties belonged to the alienors as their separate secular properties, though burdened with an obligation to render service to the Matam; and that shows that the transfer was effected not by the Poojaris of the temple but by persons who claimed that the properties belonged to them. Such a case falls outside the purview of Art. 134-B and must be governed by Art. 144 of the First Schedule to the Limitation Act.

10. Mr. Tatachari also argues that in applying Art. 144, we must assume that the possession of the alienees was adverse to the temple from the respective dates of the alienations when they were put in possession of the properties covered by the transactions in question. In support of this argument, Mr. Tatachari has relied on the statement of the law made by Mr. Justice Mukherjea in his lectures on the Hindu Law of Religious and Charitable Trust*. Says Mr. Justice Mukherjea,

* Mr. Justice B. K. Mukherjea on 'Hindu Law of Religious and Charitable Trust' II Edn. (1962) p. 282.

"if the transfer (of debutter property) is not of particular items of property), but of the entire endowment with all its properties, the possession of the transferee is unlawful from the very beginning. The decisions in Gnanasambanda Pandara Sannadhi v. Velu Pandaram, (1900) 27 Ind App 69 (PC) and Damodar Das v. Adhikari Lakhan Das (1910) 37 Ind App 147 (PC), are illustrations of this type of cases".

He also added that transfer would similarly be void and limitation would run from the date of the transfer, if the manager transfers the property as his own property and not as the property of the deity. The same statement has been made by the learned author in two other places in the course of his lectures.

11. The argument is that in cases falling under Art. 134-B, the transfer made by the manager of a Hindu endowment is challenged by his successor on the ground that it was beyond the authority of the manger; and such a challenge necessarily postulates that the transfer was effected by the manager as manager purporting to deal with the property as belonging to the religious endowment. Where, however, the transfer is made by the manager not as manager, but as an individual, and he deals with the property not on the basis that it belongs to the religious endowment, but on the basis that it belongs to himself, considerations which would govern the application of limitation are substantially different; and in such a case, the transfer being void ab initio the possession of the

transferee is adverse from the date of the transfer. That is how Mr. Tatachari has attempted to avoid the application of Art. 134-B in the present case. There can be no doubt that if the assumption made by Mr. Tatachari is well founded, the appellants' title to the three transactions in question would have to be upheld.

12. It is well known that the law of limitation in regard to suits instituted to set aside unauthorised alienation of endowed property by a Shebait or a Mahat or a manager of a Hindu religious endowment was very uncertain prior to the decision of the Privy Council in Vidya Varuthi Thirtha v. Balusami Ayyar, 48 Ind App 302: (AIR 1922 PC 123). That is why subsequent to the said decision, any discussion about the question of limitation relating to such suits necessarily begins with a reference to the principles laid down by the Privy Council in Vidya Varuthi's case, 48 Ind App 302: (AIR 1922 PC 123). In that case, the Privy Council held that the endowments of a Hindu math are not "conveyed in trust", nor is the head of the math a "trustee" with regard to them, save as to specific property proved to have been vested in him for a specific object. The question which the Privy Council had to consider in that case was whether Art. 134 applied to a suit in which the validity of a permanent lease of part of the math property granted by the head of a math was challenged. Art 134 covers suits brought with a view 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. These words used in Column 1 of Art. 134 necessarily raise the question as to whether the head of a math is a trustee within their meaning; and Mr. Justice Ameer Ali, who spoke for the Privy Council, answered that question in the negative. In consequence, the argument that Article 134 applied, was repelled, and it was held that Art. 144 would govern such a case.

13. In fact, it is substantially because of this decision that Arts. 134-A, 134-B and 134-C and Arts. 48-A and 48-B came to be inserted in the First Schedule to the Limitation Act by Amending Act I of 1929. At the same time, S. 10 of the Limitation Act was amended by addition of an explanatory clause which provided, inter alia, that for the purposes of S. 10, any property comprised in a Hindu religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose, and the manager of any such property shall be deemed to be the trustee thereof. As we have already noticed, these newly added provisions in the Limitation Act came into force on the 1st January 1929.

14. Reverting then to the question as to whether a transfer effected by the manager of a temple in regard to properties belonging to the temple falls outside the purview of Art. 134-B if it is shown to have been made on the basis that the transferor treated the properties as his own, it does appear that the two earlier Privy Council decisions in Ganasambanda's and Damodar Das's cases (1900) 27 Ind App 69 (PC) and 37 Ind App 147 (PC) (supra) lend some support to the contention. In Ganasambanda's case, 27Ind App 69 (PC), it was held by the Privy Council that where hereditary trustees of a religious endowment sold their hereditary right of management and transferred the endowed property, the sales were null and void, in the absence of a custom allowing them; and that the possession taken by the purchaser was adverse to the vendors and those claiming under them. In appreciating the effect of this decision, it is necessary to bear in mind that the plea of limitation with

which the Privy Council was concerned in that case was based on Art. 124 of the Limitation Act. Article 124 relates to suits filed for possession of a hereditary office, and the limitation prescribed for such suits starts when the defendant takes possession of the office adversely to the plaintiff. It is clear that in that case, what had been sold was the hereditary office, as well as the properties belonging to the endowment and so, it was plain that limitation began as soon as the purchaser took possession of the office under Art. 124. It is true that immovable properties belonging to the temple had also been sold; but the Privy Council expressly ruled that there was no distinction between the office and the property of the endowment. The one is attached to the other; but if there is, Art. 144 of the same Schedule is applicable to the property; and that bars the suit after 12 years' adverse possession. It may be permissible to state that this latter observation was made in 1899 long before the Privy Council enunciated the true legal position in regard to the status of the managers of Hindu religious endowments in Vidya Varuthi's case, 46 Ind App 302: (AIR 1922 PC 123) (supra).

15. Similarly, in Damodar Das's case, 37 Ind App 147 (PC), while dealing with the validity of an 'ikrarnama' of a debottar property executed by the manager of the property, the Privy Council observed that from the date of the ikaranama, the possession of the transferee was adverse to the right of the idol and that led to the conclusion that the suit instituted against the transferee was barred by limitation. There is no discussion about the status and character of the Chela who made the transfer nor about the right of the succeeding Chela to challenge the validity of the transfer effected by his predecessor which was subsequently recognised by the Privy Council in Vidya Varuthi's case, 48 Ind App 302: (AIR 1922 PC 123).

16. These two judgments have, no doubt been incidentally referred to by the Privy Council in Ram Charan Das v. Naurangi Lal,. 60 Ind App 124: (AIR 1933 PC 75), and in Mahadeo Prasad Singh v. Karia Bharti, 62 Ind App 47: (AIR 1935 PC 44), though the decision in the said two cases proceeded in the light of the legal position enunciated by the Privy Council in Vidya Varuthi's case, 48 Ind App 302: (AIR 1922 PC 123).

17. It would thus be seen that the observations made by Mr. Justice Mukherjea on which Mr. Tatachari relies, really purport to extend the principle which has apparently been mentioned by the Privy Council in Gnanasambanda's case, (1900) 27 Ind App 69 (PC). It does appear that Mr. Justice Mukherjea had expressed this view as a Judge of the Calcutta High Court in the case of Hemanta Kumari v. Sree Ishwar Sridhar Jew, ILR (1946) 2 Cal 38: (AIR 1946 Cal 473), and had relied on the two Privy Council's decisions in Gnanasambanda's and Damodar Das' cases, (1900) 27 Ind App 69 (PC) and 37 Ind App 147 (PC) (supra). In the case of Hemanta Kumari Basu, ILR (1946) 2 Cal 38: (AIR 1946 Cal 473) (supra), the attention of Mukherjea, J. was drawn to the fact that in an earlier decision of the Calcutta High Court in Ronald Duncan Cromartic v. Ishwar Radha Damodar Jew, 62 LJ 10, D. N. Mitter, J., had made observations which were inconsistent with the view which Mukherjea, J., was disposed to take; but the learned Judge commented on the said observations by saying that they were open to criticism.

18. Thus, on the question raised by Mr. Tatachari before us, there does appear to be some divergence of opinion in the Calcutta High Court itself. No other decision has been cited before us which has accepted the proposition that if any part of the property belonging to a Hindu religious endowment is transferred by its manager, the transfer is void and the possession of the transferee becomes adverse to the endowment from the very beginning. In fact, as we have already indicated, in the case of Gnanasambanda (1900) 27 Ind App 69 (PC) (supra) what had been transferred unauthorisedly was the religious office itself and all the properties appertaining thereto. It is open to doubt whether the said decision could lead to the inference that if a part of the property is transferred by the manager of a religious endowment on the basis that it belongs to him and not to the religious endowment the transfer is void ab initio, with the result that the possession of the transferee is adverse to the religious endowment from the very beginning and the succeeding manager's right to challenge the said transfer would be lost if his predecessor who made the transfer lives for more than 12 years after effecting the transfer.

19. In the words of Sir John Edge, who spoke for the Privy Council in Nainapillai Marakayar v. Ramanathan Chettiar 52 Ind App 83 at p. 97: (AIR 1924 PC 65 at p. 72).

"in the case of a Shebati a grant by him in violation of his duty of an interest in endowed lands which he has no authority as Shebait to make may possibly under some circumstances be good as against himself by way of estoppel, but is not binding upon his successors."

It is not easy to see why the successors right to challenge an unauthorised alienation made by his predecessor should be affected adversely if the alienation is made by his predecessor of the basis that the property belonged to him and not to the religious endowment.

20. However, we do not think it necessary to decide this point in the present case, because, in our opinion, the plain words of Art. 134-B do not permit such a plea to be raised. Column 1 of Art. 134-B provides for suits brought, inter alia, by the manager of a Hindu religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration. The period prescribed for such suit is 12 years, and the time from which the period begins to run is the death, resignation or removal of the transferor. Confining ourselves to the first column of Art. 134-B at this stage, the question which we have to decide is: does this article permit any distinction to be made between transfers effected by a previous manager on the basis that the property transferred belongs to the religious endowment, and those made by him on the basis that the said property is his own private property? If the property is transferred by the manager on the basis that it belongs to the endowment, Art. 134- B clearly applies; but does it make any difference to the application of Art. 134-B if the transfer is made on the other basis that the property belongs not to the endowment, but to the manger himself? In either case, the successor who challenges the alienation, will have to prove that the property in fact belongs to the religious endowment. Once that is proved, is it necessary for him also to show that the transfer was made on the basis that the property belonged to

the religious endowment? In our opinion, such limitation cannot be read in the words used by the said article Article 134-B applies to all case where it is shown that the immovable property was comprised in the endowment, and that it has been transferred by a previous manager for a valuable consideration. The successor has to prove three facts : (1) that the property belongs to the religious endowment; (2) that it was transferred by a previous manager, and (3) that the transfer was for a valuable consideration. The character of the representations made by the previous manager in regard to his relation with the property which is the subject-matter of transfer, is irrelevant for the purpose of Art. 134-B. All transfers made would fall within Art. 134-B if the three essential facts are proved by the successor of the transferor manager of the Hindu religious endowment. Therefore, we do not think that Mr. Tatachari is justified in contending that the transfers with which we are concerned in the present appeal fall outside the purview of Art. 134-B inasmuch as they are effected by the alienors on the representations that the properties transferred belonged to them as their separate properties. On the findings recorded by the High Court, it is clear that the properties belonged to the temple; that they have been transferred by persons who must be deemed to be the previous managers of the temple; and that they have been transferred for valuable consideration. The present suit has been brought against respondents 1 to 3 who are appointed trustees of the temple by respondent No. 4; and so, all the ingredients prescribed by the first column of Art. 134-B are satisfied. That is why we must reject the ingenious argument urged before us by Mr. Tatachari that Art. 134-B does not apply to the present case.

21. We may, in this connection, refer to the decision of the Privy Council in Sudarsan Das v. Ram Kirpal Das, 77 Ind App 42 at pp. 49-50 : (AIR 1950 PC 44 at pp. 46-47). In that case, the question which arose for the decision of the Privy Council was whether Art. 134-B applied to a case where debottar property had been sold in an execution sale, and the Privy Council held that it did not. "To apply Art. 134-B to an execution sale", observed Lord Radcliffe. "involves a reading of that article which would construe the words "transferred by a previous manager for a valuable consideration" as covering an execution sale under Court process, and the word "transferor" as extending to the judgment-debtor whose land is sold. It is not only that the words themselves do not properly bear that meaning. Apart from that, what is in all essentials the same question was considered on several occasions by Courts in India before Articles 134-A and 134-B had been added to Article 134. That Article contains that analogous phrase "transferred by the trustee or mortgagee for a valuable consideration" and there was a uniform current of decisions to the effect that these words were incapable of applying to an execution sale" What was said by the Privy Council about the impropriety of including an execution sale within the meaning of Art. 134-B can with equal justification, be said about introducing words of limitation in the said article which alone can exclude transfers made by the previous manager of the Hindu religious endowment on the basis that the property transferred belonged to him. Therefore, we must deal with the present appeal on the basis that Art. 134-B applies to the facts of the present case.

22. Mr. Tatachari then contends that even on the application of Art. 134-B the decision of the High Court is erroneous, because on the facts proved in this case, the High Court should have drawn the legal inference that the transferor had been removed more than 12 years before the suit was filed. He contends that the question as to whether on facts proved in the present case, an inference can be drawn that the previous manager or trustee had been removed, is a mixed question of fact and law and the High Court was in error in reversing the decisions of the Courts below by holding that the

title of temple had not been lost by adverse possession before the suit was filed. For deciding this question, it is necessary to refer to some material facts.

23. The transferor is Pachaikandaswamiar. The appellants' case before the trial Court was that Pachaikandaswamiar had resigned his position about 27 years ago, and that even if Art. 134-B applied, limitation should be held to have commenced from the date when the alien or either resigned his office or was removed from it. In dealing with this aspect of the matter, the learned trial Judge has examined the oral evidence led on behalf of the parties. He assumed that Pachaikandaswamiar and his son were alive at the date of the suit. Even so, he found that they had left the village and had taken no part whatever in the management of the worship of the temple. In fact almost all the properties belonging to the temple had in course of time, been alienated and the alienors were no longer interested either in the temple or in staying in the village itself. Raju Iyer, who was examined as a witness by the appellants, stated that he and Amirthalinga Iyer had been performing the worship of the temple for the past 27 years and he added that the alienor and his son had left the village more than 25 years ago and but for very casual visits to the village, they had never taken any interest in the temple or in the management of its affairs. In fact, Ranga Raju Reddiar, whom the respondents examined, admitted in reply to the questions put by the Court that since 25 years or so neither Pachaikandaswamiar nor Chinnaswami Iyer had performed any pooja in the temple. He substantially corroborated the statement of Raju Iyer that Raju Iyer and Amirthalinga Iyer had been performing the worship of the temple. Another witness, Chandrasekara Iyer by name, whom the respondents examined, also admitted that Pachaikanda had sold away all his properties and had left the village. Besides, when respondents 1 to 3 were appointed as trustees of the temple a notice was issued by the office of Assistant Commissioner for Hindu Religious Endowments, Tiruchirappalli, on the 19th June 1948, in which it was specifically averred that there were no legally constituted trustees for Shri. Pachaikantha Udayavar Temple, Eragudi, and it was mismanaged, and so, it was proposed to appoint legally constituted trustees for the said temple. This notice was served on witness Raju Iyer and Amrithalinga Iyer, Chinnasamy Iyer, and Rangaraja Reddiar who were performing the worship and acting as de facto managers of the temple. It is remarkable that this notice describes Amirthalinga Iyer and Chinnasamy Iyer as de facto trustees of the temple.

24. It is on these facts that the learned trial Judge held that the alienor must be deemed to have resigned his office or left it. The lower appellate Court does not appear to have considered or made any specific or clear finding on this aspect of the matter. It, however, held that the transferor and his family had been claiming beneficial interest in the properties all along and that they were not holding the same as managers of the trust. That is why he confirmed the finding of the trial Judge on the question of adverse possession, though on a somewhat different ground.

25. The High Court relied on the fact that the alienor is still alive, and so, it thought that the plea of adverse possession could not be sustained. Unfortunately, the question as to whether the facts proved in this case did not show that the alienor had been removed from office by other persons who were in management of the temple de facto, has not been discussed by the High Court. In our opinion, all the facts which have been brought on the record in relation to this aspect of the matter,

clearly show not only that the alienor disposed of all the property and left the village, but also that for the last 25 years or so, the management has been taken over by other persons who are acting as de facto managers of the temple. This evidence appears to us to show that the alienors had been removed from management of the temple, and other persons have taken up the position as de facto managers; and this position has lasted for more than 25 years. If that be so, there is no escape from the conclusion that more than 12 years have elapsed since the date of the removal of the previous manager who transferred the properties in question; and so, if a suit were brought by respondents 1 to 3 on the date when they were appointed trustees by respondent No. 4, it would be barred under Art. 134-B. On that view of the matter, we must hold that the trial Judge and the lower appellate Court were right in decreeing the appellants suit in its entirety. We must accordingly set aside the decree passed by the High Court in regard to the transfers covered by Exts. A-3, A-6 and A-12, and restore that of the lower appellate Court. In the circumstances of this case we direct that parties should bear their own costs.

Appeal allowed.