M. V. Ramasubbiar and Others

Vs

Manicka Narasimachari and Others

Civil Appeal No. 1584 of 1969

(P. N. Shinghal, P. S. Kailasam JJ)

30.01.1979

JUDGMENT

SHINGHAL, J. –

1. This appeal by a certificate of the Madras High Court is directed against its judgment and decree dated February 20, 1969.

2. One Manicka Sankaranarayana Iyer, father of defendants 1 and 3 and grandfather of plaintiffs 1 to 5 and defendants 2, 4 and 5 and father-in-law of plaintiff 6 constituted an Annadanam Trust and he and his sons executed a registered deed of settlement of that purpose on June 3, 1908. By that document Sankaranarayana Iyer become the first trustee for life, and it was provided that after him the seniormost member would be the trustee by turns. Sankaranarayana died and defendant 1 became the managing trustee of the trust. There was a suit for partition of the family properties including house No. 48-A, and it was settled by a compromise under which a preliminary decree dated September 12, 1956 was drawn up for the sale of the properties amongst the members of the family. Defendant 1 purchased the suit property for Rs. 21,500 for the aforesaid trust on April 19, 1959. A final decree was drawn up on November 29, 1959 in which house No. 48-A was shown as the property of the trust. Defendant 1 however sold that property soon after, to his son defendant 2 on July 14, 1960, for Rs. 25,000 under sale deed Ex. B-13. Chithambaram Chettiar (PW 2), who was tenant of that property from 1949 onwards, came to know of the intended sale and sent a registered notice to defendant 1 on July 21, 1960, offering to purchase it for Rs. 35,000. Defendant 1 however went ahead with the sale of the property to his son and registered the sale deed on July 22, 1960. The plaintiffs thereupon filed the present suit on September 15, 1960, challenging that sale and asking for its restoration to the trust. The defendants resisted the claim in the suit on the ground that the sale price was fair and adequate and that the sale had to be made because of the disputes which had arisen between the second defendant as the owner of the owner of the adjacent house and the trust in regard to the easementary rights of drainage, light and air, etc. The suit was decreed by the Subordinate Judge of Madurai on September 10, 1962. The High Court of Madras however allowed the appeal against that judgment and decree and dismissed the suit with costs of both the courts holding that Rs. 25,000 was "quite adequate and fair" price for the suit property and that defendant 1 acted with "perfect bona fides and no ulterior motive can be attributed to him". That is why the plaintiffs have come up in appeal to this Court.

3. It is not in dispute before us that the Indian Trusts Act, 1882, hereinafter referred to as the Act, applied to the trust in question and that it was necessary for the plaintiffs to prove that defendant 1 did not exercise his discretionary power of selling the suit property "reasonably and in good faith" and that he indirectly purchased it for himself, in the name of his son (defendant 2), which the

meaning of Sections 49 and 52 of the Act.

4. There is some controversy on the question whether defendant 1 made an outright purchase of the suit property for and on behalf of the trust for Rs. 21,500 on April 19, 1959, or whether he intended to purchase it for himself and then decided to pass it on the trust, for defendants have led their evidence to show that the property was allowed to be sold for Rs. 21,500, which was less that its market value, as it was meant for use by the trust and that defendant 1 was not acting honestly when he palmed off the property of the property to his son soon after by the aforesaid sale deed Ex. B-13 dated July 14, 1960. The fact however remains that defendant 1 was the trustee of the property, and it was his duty to be faithful to the trust and to execute it with reasonable diligence in the manner an ordinary prudent man of business would conduct his own affairs. He could not therefore occasion any loss to the trust and it was his duty to sell the property, if at all that was necessary, to best advantage. It has in fact been well-recognised as an inflexible rule that a person in a fiduciary position like a trustee is not entitled to make a profit for himself or a member of his family. It can also not be gainsaid he is not allowed to put himself in any such position in which a conflict may arise between his duty and personal interest, and so the control of the trustee's discretionary in Section 51 that the trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust, and the equally important prohibition in Section 52 that the trustee may not, directly or indirectly, buy the trust property on his own account or as an agent for a third person, cast a heavy responsibility upon him in the matter of discharge of his duties as the trustee. It does not require much argument to proceed to the inevitable further conclusion that the rule prescribed by the aforesaid sections of the Act cannot be evaded by making a sale in the name of the trustee's partner or son, for that would, in fact and sub-stance, indirectly benefit the trustee. Where therefore a trustee makes the sale of a property belonging to the trust, without any compelling reason, in favour of his son, without obtaining the permission of the court concerned, it is the duty of the court, in which the sale is challenged, to examine whether the trustee has acted reasonably and in good faith or whether he has committed a breach of the trust by benefiting himself from the transaction in an indirect manner. The sale in question has therefore to be viewed with suspicion and the High Court committed an error of law in ignoring this important aspect of the law although it had a direct bearing on the controversy before it.

5. The High Court in fact proceeded to examine the case on the assumption that the plaintiffs had instituted the suit no so much out of a genuine desire to redress any wrong done to the trust, as out of "ulterior motives and ill will against the first and second defendants". This shows that instead of examining the case according to the criterion mentioned above, the High Court based its decision on an extraneous consideration and blamed the plaintiffs for raising the suit on accounts of "personal grouse" and "personal spite". We have not been referred to any evidence which could justify the High Court's view that there was any such grouse or spite. But even if it were assumed for the sake of argument that the plaintiffs had any such motive for raising the suit, the fact remains that their action was eminently one for the advantage of the trust which had been created by their ancestor and in which they had a sub-stantial and a direct interest.

6. Some important facts stand out from the evidence on the record which are directly in point. The suit property belonged to the family which had created the trust. It was purchased by defendant 1, in his capacity as the trustee of the Annadanam Trust for Rs. 21,500 on April 19, 1959, at a family sale. It appears from the statement of defendant 2 that the property was capable of, or could fetch a rent of about Rs. 190 per mensem, amounting to Rs. 2280 per annum. It has also been admitted that the sum of Rs. 25,000 was not utilised by the trustee (defendant 1) for purchasing any other better property, but was invested in fixed deposit with a bank at 3 1/2 per cent interest per annum. That

could yield an income of only Rs. 875 per annum. The trust therefore lost heavily in the bargain. What is worse, defendant 1 has not been able to explain how the sale could be said to be beneficial to the trust and how he could possibly contend that he acted as a man of ordinary prudence in slashing down the income of the trust by making the sale.

7. The further fact that stands out from the evidence on the record is that when Chithambaram Chettiar (PW 2), who was a tenant in the suit property from 1949 onwards, learnt about the intended sale, he sent a notice to defendants 1 and 3 offering to purchase it for Rs. 35,000. That notice was issued on July 21, 1960. The receipt of the notice has been admitted by defendant 1 in his statement in the trial Court, and he has further admitted that Chithambaram Chettiar offered to purchase the property for Rs. 35,000 and that he sold it to his son for Rs. 25,000 without even informing him that he had received the sale deed of the property in favour of his son, the second defendant, on July 22, 1960. It is therefore quite clear that he did not care to act in accordance with the law in the discharge of his fiduciary relationship with the trust and executed the sale deed in his son's favour in disregard of his statutory duty, for no man of ordinary prudence would possibly have sold his property for Rs. 25,000 when he had an offer of Rs. 35,000. That offer could not be said to be form a man of no substance because Chithambaram Chettiar (PW 2) who made it, was known to the defendants and he has stated that he was a man of means and was worth rupees four lakhs. It may be that the son-in-law of plaintiff 2 was employed in his shop, but that could not detract from the basic fact that a much higher after had been by a man of substance.

8. Instead of examining the appeal with due regard to the above mentioned evidence, the High Court was obsessed by a consideration of the evidence which had been led for the purpose of showing that while defendant 1 had purchased the property for himself on April 19, 1959, for Rs. 21,500, he gave up that advantage in favour of the trust. The evidence on the point is not unequivocal, for it may well be that defendant 1 did not want to obtain a sale deed in his own name for other reasons, but even it were assumed that he made a gesture of goodwill in favour of the trust on April 19, 1959, he could not possibly absolve himself from what he did in selling it off, after it had become the property of the trust, to his own son a few a few months thereafter for Rs. 25,000 when he had a genuine offer of Rs. 35,000.

9. Another consideration which prevailed with the High Court in setting aside the finding of fact of the trial Court was that, according to it, the evidence on the record showed that some difficulties had cropped up after the property had been purchased as his son, defendant 2, began to "give trouble" and that he resolved that trouble on the advice of his family lawyer Shri V. Rajagopala Iyengar (DW 3) by selling the property to his son. This view was obviously incorrect, for even it were assumed that there was some difficulty in respect of some common rights of easement, that could well have been a lever in the hands of the trustee to make a bargain for Rs. 35,000 or more with his son who was equally interested in those easementary rights. A man of prudence would not have sold his property for a considerably lesser amount than that offered to him by another person and agreed to sell it just because a co-sharer in the easementary rights was causing trouble and was offering a far lesser price.

10. We have gone through the statement of V. Rajagopala Iyengar (DW 3) on whose advice defendant 1 claims to have sold the property for Rs. 25,000. He has admitted in his statement that he had not even seen the suit property, and he knew nothing about the so-called trouble in regard to the easementary rights between defendant 1 and his son. On the other hand, we find that he was indebted to the family of defendants 1 and 2 and he did not even care to ascertain what rent the suit property was fetching when he advised its sale for Rs. 25,000 to the son of defendant 1. The High

Court therefore did not even read the evidence correctly while placing reliance on his testimony.

11. For the reasons mentioned above, we have no doubt that the High Court did not examine the controversy in its proper legal perspective and with due regard to the salient facts which had been established by the evidence on the record and it was not therefore justified in setting aside the finding of the trial Court.

12. The appeal is allowed. The impugned judgment and decree of the High Court are set aside and the decree of the trial Court is restored with costs throughout.

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