

Peria Nachi Muthu Gounder and Others

Vs

Raju Thevar (Dead) and Others

Civil Appeal No. 1517 of 1971

(V. D. Tulzapurkar, V. Khalid JJ)

08.02.1985.

JUDGMENT

1. The only question that arises for consideration in this appeal is whether the respondents-plaintiffs' suit was barred by limitation under Article 134-B of the Limitation Act.

2. One Muthammal, who was the absolute owner of the suit properties executed a deed of settlement dated May 17, 1925 (Ex. A-3) whereby she endowed the suit properties to a temple in the village, the deity therein being her family deity. She constituted herself as the first trustee for her life and after that, her husband and mother were to be the trustees and after their demise, respondent's heirs were to be the trustees. Five years later, i.e., on January 21, 1930, she purported to cancel and revoke the trust (settlement), by getting the deed of cancellation registered. Thereafter certain mortgages were executed by her in respect of the properties and later on the properties were sold by her to the father of the appellants 1 and 2. She died on October 7, 1960. The plaintiffs, claiming to be the trustees of the endowment, filed a suit on August 22, 1962, claiming possession of the properties challenging the alienations that were made in favour of the appellants' father. The appellants raised a plea of adverse possession and the suit being barred under Article 144 of the Limitation Act. On merits the trial court came to the conclusion that the deed of settlement itself was not a genuine deed, but even if it were, the suit which had been filed on August 22, 1962 was barred under Article 144. When the matter was taken in appeal, the appellate court took the view that the deed of settlement was valid and genuine and in fact it effected a legal endowment in favour of the deity, the original settlor having divested herself of the ownership completely. In other words, the deed of cancellation was ineffective in law. The suit was regarded as one falling under Article 134-B of the Limitation Act and since the suit had been filed within 12 years from the death of the settlor, Muthammal, it was held to be within time, and the plaintiffs' suit was decreed. The appellants appealed to the High Court and in second appeal, the High Court confirmed the first appellate court's decree. That is how the appellants have come up in appeal to this Court.

3. Though initially the parties were at variance on the question as to whether it was Article 144 or Article 134-B of the Limitation Act, 1908 that was applicable to the suit, in the High Court at the stage of the second appeal it was common ground that the suit was governed by Article 134-B. Before us also counsel for both the parties agreed that the suit would be governed by Article 134-B but a question raised was as to when did the period of 12 years under that article commence ? Whether it commenced from the date of the death of the settlor or her deemed resignation as a trustee ?

4. Counsel for the appellants conceded before us that if the period for the suit is regarded as commencing from the death of Muthammal which occurred on October 7, 1960 the suit would

obviously be within time but he contended that there was a resignation on the part of Muthammal as a trustee and such resignation, if not overt and express, must be deemed to have taken place by reason of the fact that she herself had executed and registered the deed of cancellation (Ex. B-1) on January 21, 1930 and thereafter she had alienated the properties in favour of the appellants' father and she even left the village for quite a few years. And since the suit which was filed in the year 1962 was filed long after the expiry of 12 years from such deemed resignation it was barred. In this behalf counsel relied upon a decision of this Court in *Srinivas v. Ramaswami* ((1966) 3 SCR 120 : AIR 1966 SC 859 : (1967) 1 SCJ 645), where a view has been taken that deemed resignation or deemed removal of the prior manager could be the commencement or the starting point of limitation. On the other hand counsel for the respondents-plaintiffs urged that there was no plea of limitation specifically raised on the basis that there was any deemed resignation on the part of Muthammal and, therefore, parties did not lead any evidence focusing their attention on this aspect of the matter and even if there be some evidence vaguely or generally led by the parties on this aspect the same should be ignored, for in the absence of a plea being raised in that behalf such evidence has to be ignored and would be of no avail. Alternatively counsel for the respondent-plaintiffs contended that even otherwise by the mere execution of a deed of cancellation and indulgence in alienations of properties by Muthammal in favour of the appellants' father no deemed resignation should be implied for a wrongful cancellation deed and a wrongful alienation cannot affect her character as a trustee of the properties under the deed of settlement which was complete and under which she had divested herself of the ownership of the properties irretrievably; therefore the starting point of limitation for the suit must be held to be the date on which Muthammal died.

5. It cannot be disputed that where a trustee wrongfully alienates some trust property, and for that matter even if the entire trust property is alienated he does not cease to be a trustee. On parity or reasoning it stands to reason that by wrongfully executing a deed of cancellation the settlor cannot effectively revoke the settlement and if such settlor happens to be the trustee he shall continue to be the trustee of the settlement. In the instant case there is a clear finding recorded by the first appellate court and the High Court that a deed of settlement dated May 17, 1925 was valid and complete in all respects whereunder Muthammal had divested herself of the properties which she had endowed to the temple and both the cancellation deed as well as the alienation were ineffective and wrongful and therefore, it could not be said that by indulging in these acts she had resigned her position as a trustee of the endowment. One more aspect was relied upon by the counsel for the appellants that Muthammal had left the village for quite a few years and that there was evidence to show that the Puja of the deity in the temple was done by some other person and even some devotees had contributed to the expenses of the temple. The fact that Muthammal had left the village for few years is neither here nor there. And the other two aspects, in our view, are really equivocal and would not be conclusive of the matter on the point of Muthammal having resigned inasmuch as the temple which was village temple was already in existence to which only properties had been endowed by Muthammal and the temple was a public religious institution to which the endowment had been made by Muthammal and as such the fact that certain expenses of the temple were contributed by devotees or members of the public would hardly be indicative of the fact that Muthammal had resigned from the position as a trustee qua the endowed property in question. Similar would be the position with regard to the fact that some persons were performing the Puja which would not be unnatural in the case of a public religious institution. It is true, as has been observed by this Court in *Srinivas* case ((1966) 3 SCR 120 : AIR 1966 SC 859 : (1967) 1 SCJ 645) that there could conceivably be a deemed resignation or a deemed removal but for that purpose some additional facts would be required to be proved. In our view the aforesaid facts on which reliance had been placed by counsel for the appellants by themselves are insufficient to warrant the

inference that there was a deemed resignation on her part.

6. Having regard to the above discussion we are clearly of the view that in the instant case limitation will have to be regarded as having commenced on the date of the death of Muthammal and the respondents-plaintiffs' suit would be within time.

7. As a last attempt counsel for the appellants made a faint request that if the materials were insufficient an opportunity should be given to the appellants to lead evidence on that aspect of the matter and the matter should be remanded back to the trial court. We do not think that at this distance of time we could consider this request favourably especially when there was no specific plea raised by the appellants in the written statement based on this aspect of the matter.

8. In the result we confirm the decisions of the first appellate court and the High Court. The appeal is dismissed. No costs.

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