

# ANDHRA PRADESH HIGH COURT

Gutha Hariharabrahmam

Vs.

Doddappaneni Janikiramaiah

Second Appeal No. 701 of 1950

A.S. No.96 of 1949

(Subba Rao, C.J.)

15.09.1954

## JUDGMENT

### **Subba Rao, C.J.**

1. This Second Appeal arises out of O.S. No.305 of 1947 on the file of the Court of the District Munsif of Eluru, a suit filed by the plaintiff in O.S. No.24 of 1944 for rendition of accounts in respect of the management of the temples of Sri Janardhanaswami and Sri Malleswaraswami of Chattaparru. The plaintiff is the present Managing Trustee of the said temples. The suit was filed for rendition of accounts in respect of the management of the temples by the Ex-Trustee Gutta Pichayya, Gutta Subramanyam and Gutta Venkatasubamma, the 9th defendant. Defendants 1 to 3 are the sons of Gutta Pichayya. Defendants 2 to 7 are the sons of Gutta Sitaramabrahman. The 8th defendant is Sitaramabrahman's brother. It was alleged in the plaint that Gutta Pichayya and the 9th defendant as guardian of Sitaramabrahmam managed the said temples as trustees from 1901, that the 9th defendant acted as a trustee till Sitaramabrahmam attained majority, that Pichayya and Sitaramabrahmam after he attained majority acted as trustees till the year 1938, that during the period of their management the trustees collected large sums of money, from the debtors of the temples and from the temple properties and misappropriated the same, that the trustees were guilty of acts of misfeasance, malfeasance, and non-feasance and that, therefore, they were liable to render accounts to the temples for the period of their management and to pay the amount due to the temples with interest.

2. The defendants, inter alia, pleaded that they were not guilty of any misappropriation, that the suit was barred by limitation, and that Section 73, Madras Hindu Religious Endowments Act, was a bar to the maintainability of the suit.

3. The learned District Munsif held that the suit was barred by limitation against the 9th defendant, but was well within time against the other defendants. He also found that Section 73 was not a bar to the maintainability of the suit. In the result, he gave a preliminary decree for accounts with a direction that the Commissioner shall take an account of the management of the

temples and the properties by Pichayya and Sitaramabrahmam from 1901 to 1938. On appeal, the learned Subordinate Judge took the same view on the two questions raised and dismissed the appeal. Hence the Second Appeal.

4. The first question that arises in the Second Appeal is whether the suit against the legal representatives of the Ex-Trustees, Gutta Pichayya and Sitaramabrahmam, was barred by limitation. The relevant provisions of the Limitation Act relied upon at the bar may be extracted:

"Section 3: Subject to the provisions contained in Sections 4 to 25 (inclusive) every suit instituted, appeal preferred and application made after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence."

"Section 10: Notwithstanding anything hereinbefore contained, no suit against a person in whom property has been vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property, or proceeds, shall be barred by any length of time.

For the purpose of this section, any property comprised in a Hindu, Muhammadan or Buddhist 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." (Inserted by Act 1 of 1929).

Article 98 :

To make good out of the general estate of a deceased trustee the loss occasioned by a Three breach of trust. years.

The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.

5. The question is whether Section 10 or Article 98 of the Limitation Act would govern a suit filed by the present trustee of a temple against the Ex-trustee of a temple or his legal representatives for accounts on the ground of misappropriation, malfeasance or non-feasance. It was conceded that if Section 10 applies, Article 98 cannot be invoked. But it was argued that Section 10 applies to what are called tracing actions, whereas Article 98 governs a suit for an account against an Ex-Trustee to recover the loss from his general estate. The distinction is borne out by the decision of a Division Bench of the Nagpur High Court, but it is not accepted by the Division Bench of the Madras High Court. In - *'Mt. Sahaudra Bai v. Shri Deo Radha Ballabhji Mandir'*<sup>1</sup>, the facts are: One Jagannadh Prasad constructed the plaintiff temple and, on 20-11-1911, executed a deed of gift in favour of the temple and, at the same time, constituted a body of trustees, he himself being one of them. Among the properties gifted was a sum of Rs. 2,000/-. Soon after the gift, he loaned this money to the 3rd and 4th defendants. The plaintiffs' case was that the loan was without the sanction of the trustees and that it constituted a breach of trust. Jagannadh Prasad died on 15-1-1927. The 1st defendant, as his legal representative, was in possession of the entire estate. The present trustees filed the suit for recovery of the amounts. The question

<sup>1</sup> AIR 1938 Nag 30

was whether the suit was governed by Section 10 or Article 98 of the Limitation Act. Bose, J.,

who delivered the judgment on behalf of the Bench, made the following observations at pp.32 and 33:

"The next question we have to determine is whether the suit is within limitation. The cause of action against the 1st defendant is, as we have said, in respect of a breach of trust committed by her father. She herself was not a trustee and she had not committed any wrong act; also the defalcated money is not in her possession; nor is there anything else in her hands which can be said to represent it. Therefore, the suit against her is clearly one to make good the loss occasioned by Jagannath's breach of trust out of his general estate. To such a suit, Article 98 of the Limitation Act would, in our opinion, apply." Dealing with Section 10, the learned Judge stated: "It is in our opinion essential that the actual property, or something into which it has been converted, should be in the hands of the person sued.....Since the money in question has not been converted, into any portion of Jagannath's estate or in any way mixed up with his own money, it cannot be said to have been in his hands during his lifetime or in those of his legal representatives after his death."

It is, therefore, clear from the abovesaid decision that Section 10 can only apply to a suit for the purpose of following property defalcated and it is essential for its application that the said property should be in some form or another in the hands of the defendant and that Article 98 would govern a case where the amount or property, which is not in the hands of the trustee or his legal representatives and not mixed up with his estate, is sought to be recovered from out of the general estate. It may also be pointed out that, on the facts of that case, the amount was lent out to a third party and therefore in no sense of the term the said amount became part of the general estate of the trustee. In - '*S.C.V. Devasthanam v. Chidambaram*<sup>2</sup>', a Division Bench of the Madras High Court, consisting of Wadsworth and Horwill, JJ., put a different interpretation of Section 10. At page 695, Horwill, J., who delivered the judgment observed:

"Another objection to the applicability of Section 10 suggested by the learned advocate for the respondent is that Section 10 relates only to tracing actions. We do not, however, think that the application of Section 10 can be so limited. Section 10 can be used for following property in the hands of a trustee or for an account of such property so that the section seems to apply to a case like the present where the trustee or the legal representative is asked to account for money that was in his hands as trustee."

There a Receiver appointed in a suit between two branches of trustees filed a suit against the legal representative of a deceased trustee to account for the money that was in the hands of his father. I would prefer to follow the Madras view as it is in accord with the wide terms of Section 10. If the property had become vested in trust for a specific purpose-whether it is so vested in this case or not I shall consider at a later stage-Sec.10 applies to three categories or reliefs against a trustee or his legal

<sup>2</sup> AIR 1943 Mad 691

representatives, (i) for the purpose of following in his hands the trust property, (ii) for the purpose of following in his hands the proceeds of the trust property and (iii) for an account of such

property or proceeds. The three purposes must be read disjunctively and, if so read, the three reliefs will be independent of each other. If the relief for accounts is ancillary to the main relief of tracing the property in the hands of the defendant, the conjunction "and" would have been used instead of "or". It can only mean that, if the property cannot be traced to the hands of the trustee, he can be asked to account for it. A relief for an account necessarily implies that the amount found due would be recoverable from the trustee. This is also not without any legal basis. What is the justification for the distinction between a case where the trustee or the legal representative who succeeded to his estate is in possession of misappropriated trust property and a case where he parted with it in favour of a third party? In either case he has the benefit of the property. If, in the former case, he is bound to restore it, whatever the length of time that elapsed, there is no reason why, in the latter case, he should escape his liability and benefit by his misappropriation. Nor can it make any difference if the property is taken by the legal representatives or assigns without consideration and misappropriated by them. I would, therefore, accept the Madras view.

6. Then it may be asked for what classes of cases the provisions of Article 98 would apply. The fact that the said provisions may become unnecessary cannot be a ground for limiting the wide scope of the clear provisions of Section 10, for Section 3 of the Limitation Act makes the other provisions of the Act subject to Sections 4 to 25 of the Act. Further Article 98 does not become nugatory. It will govern suits for the recovery of the loss occasioned by a breach of trust in the cases of trusts other than those provided for under Section 10. In the present case, even if the stricter view accepted by the Nagpur High Court is followed, the defendants would not be in a better position. Admittedly the legal representatives are in possession of the general estate of their fathers- the Ex-trustees. The basis of the suit claim against them is that their father misappropriated the amounts, and, if so, the amount misappropriated must have formed part of the general estate of the trustees. As the amounts are misappropriated and mixed up with the trustees' other properties, the suit also may be treated as one for tracing the trust property in the hands of the legal representatives of the Ex-trustees.

7. There is another obstacle in the way of the application of Section 10. The necessary condition for its application is that the property should be vested in the trustee for a specific purpose. Section 10 was amended by Act 1 of 1929, whereby the following paragraph was inserted:

"For the purpose of this section any property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment shall be deemed to the property vested in trust for a specified purpose, and the manager of such property shall be deemed to be the trustee thereof." '

This amendment was occasioned by the decision of the Judicial Committee in - *Vidya Varuthi Thirtha Swamigal v. Baluswami Ayyar*<sup>3</sup>, wherein their Lordships held that

<sup>3</sup> AIR 1922 PC 123

properties of religious institutions in India are not vested in the hands of the institution, but belong to the idols and that, therefore, the heads of these institutions could not be trustees. In view of that decision, Section 10 became inapplicable to suits filed against the trustees of temples and other religious institutions. To overcome this difficulty the said provision was inserted in the section and, by reason of the said provision any property comprised in a Hindu Religious endowment shall be deemed to be property vested in trust for a specific purpose. If so, the

necessary condition for the application of Section 10 is satisfied by the fiction introduced. It would not be necessary in each case to establish by independent evidence that the property has become vested in trust for any specific purpose. Apart from that, Wadsworth and Horwill, JJ., in the decision already quoted, held that the conducting of pujas and ceremonies and the upkeep of the temple are sufficiently specific to satisfy the requirements of Section 10, Limitation Act.

8. It is then contended that Section 10 will not apply to that part of the claim barred before 1939. It is a settled principle of law that once a debt has been barred by time, it cannot be revived by any subsequent change in the law of limitation, but it has not been shown how any part of the claim had become barred even before 1939. I would, therefore, hold that Section 10 would govern the present suit and the plaintiff would be legally entitled to ask for an account of the management of the temples from 1901 to 1938 when Pichayya was removed from the office and when Sitaramabrahmam died.

9. The next question is whether, in a case of back accounting a Court has discretion to limit the period of accounting and whether this is a fit case to exercise that discretion in favour of the defendants. Sir Thomas Flumer Master of the Rolls said in - '*Attorney General v. Exeter Mayor etc. of*', as follows:

"It has, I think, been properly stated on both sides that there is no fixed limit of time in directing an account against a trustee of a charity.....It does not, however, follow that the relief will be given after a great length of time, it being the constant course of Courts of Equity to discourage stale demands; even in cases of fraud, in which, if recent, there would have been no doubt, lapse of time has induced the Courts to refuse their interference. In cases of charities, this principle has often been acted on. When there has been a long period, during which a party has, under an innocent mistake, misapplied a fund, from the laches and neglect of others, that is, from no one of the public setting him right, and when the accounts have in consequence become entangled, the Court, under its general discretion, considering the enormous expense of the enquiries, the great hardships of calling upon representatives to refund what families have spent, acting on the notion of its being their property, has been in the habit, while giving the relief, of fixing a period to the account."

10. These observations were followed by a Division Bench of the Madras High Court consisting of Wallis, C.J., and Seshagiri Iyer, J., in - '*Sanyasayya v. Murthamma*'<sup>5</sup>,

<sup>4</sup>(1822) 37 ER 918

<sup>5</sup> AIR 1919 Mad 943

The suit was filed for an account for the year 1884 and the first defendant was asked to account for the management of his father and grand-father. The learned Judges, having regard to the aforesaid observations fixed the period of accounting for a period of 12 years. In the instance case, the account is asked for a period of 37 years. The entire property owned by the temples is Ac 9-39 Cents. The accounts were filed in the connected suit. Though there are some gaps, the entire period of management was covered by the accounts. Though the accounts were not kept in a systematic manner, that is expected of a trustee, it cannot be said that no account of the dealings with the trust property was maintained. From 1901 to 1915, and from 1925 to 1935, the

management of the properties of the temples is disclosed in the personal account of the trustees. From 8-3-1915 to 23-8-1925 the dealings with the properties of the temples are disclosed in the accounts of Kollipara Venkatarathnam and Co. From 1935 separate accounts were maintained for the management of the temple properties. All the relevant account books were filed in the other suit. Further, the villagers and the Committee of villagers took an account of the management of the trustees in 1918, 1930, 1935 and 1938 and approved of the same. In 1935 the accounts were audited at the instance of the Madras Hindu Religious Endowments Board. Since 1935, on the suggestion made by the auditor separate accounts were kept for the temples. In the case of village temples before the Hindu Religious Endowments Act was passed, it was not an uncommon thing for the trustees to mix up the temple accounts with their private accounts. Sometimes they spent amounts in excess of the temple income from their own personal funds. Particularly when their action was justified by the village headman as in the present case, it is neither fair to the legal representatives of the Ex-trustees nor necessary in the interests of the public to re-open a stale claim. It does not prima facie appear that there is any serious misappropriation of temple funds in this case. In the circumstances, the interests of justice would be satisfied if accounts are directed to be taken for a period of six years prior to 1938.

11. The decree of the lower Appellate Court is accordingly modified. The parties will bear their own costs in the appeal. No leave.  
Decree modified.