ANDHRA PRADESH HIGH COURT

Kolaparti Venkatareddi

Vs.

Kolaparti Peda Venkatachalam

Second Appeal No. 363 of 1960, against decree of Addl. Sub. J., Kakinada, in Appeal Suit No. 91 of 1959

(Gopal Rao Ekbote, J.)

19.08.1963

JUDGMENT

Gopal Rao Ekbote, J.

1. This second appeal is preferred by the plaintiff whose suit has been dismissed both the Courts below. The plaintiff laid the suit for a declaration that the document dated 29th May, 1942, is void and inoperative as against the plaintiff. It was alleged that the plaintiff and his brother, the defendant, were divided some 20 years back. Under the said partition barber service inam lands belonging to the family were divided equally between them. The land described in the Schedule attached to the plaint fell to the share of the plaintiff. Apart from the barber service inam the plaintiff was appointed by the Government as a vettiyan. The defendant has no concern whatsoever with the office of the vettiyan or its emoluments. Taking undue advantage of the young age of the plaintiff the defendant got a document executed in his favor on 29-5-1942 under which the plaintiff was made to deliver the defendant a share of the emoluments of the vettiyan service. The suit land was taken as security for she payment of the said share. As the document is not supported by any consideration and so void, being opposed to public policy and forbidden by law, it is not binding on the plaintiff. The plaintiff, therefore, sought that the document should be cancelled.

2. The defense raised was that although the partition had taken place about 20 years before but it was inequitable. Disputes continued and some elders intervened and brought about an arrangement which was incorporated in the document dated 29-5-1942. It was a valid family arrangement which was binding on the parties. No part of emoluments of vettiyan service was shared under the document. It was contended by the defendant that the suit is time-barred.

3. Upon these pleadings the trial Court framed appropriate issues and after recording the evidence of the parties dismissed the suit. The trial Court found that the document dated 29-5-1942 was valid family settlement and as such binding, on the parties and that the transaction was not contrary to any law or public policy. It also found that the suit was barred by the statute of limitation.

4. Dissatisfied with this judgment and decree the plaintiff went in appeal before the additional Subordinate Judge, Kakinada. The learned Subordinate Judge disallowed the appeal concurring with the opinion of the District Munsiff.

5. In this second appeal the same two questions were raised before me. It was argued by Mr. K.B. Krishna Murthy the learned Counsel for the appellant that the transaction embodied in the document dated 29-5-1942 is contrary to law and public policy and as such void and is not binding on the plaintiff. He also contended that the suit is not barred by limitation.

6. Now it is not disputed that any traffic or bargain relating to public offices is opposed to public policy upon the obvious principle that any agreement relating to such traffic or bargain is calculated to prejudice the interest of the public by obstructing or interfering with the selection to an office of the most competent person. It is not disputed by the parties concerned that the vettiyan is an office within the meaning of Section 3 of the Madras Hereditary Offices Act, hereinafter called the Act. Under Section 3(1)(v) vettis are considered as village officers. The village barber also is an officer under Section 3(4)(iii) of the Act. It is true that whereas the barber service is a hereditary office, the office of a vetti is by an appointment by the Collector. The succession to the office of a village barber is governed by law or custom under Section 12 of the Act. It is not, I think in doubt that surrender or relinquishment or partition of the interest of a barber service them by some of the office-holders in favour of the rest is not an alienation within the meaning of Section 5 of the Act. Not being a transfer therefore it is not prohibited under Section 5 of the Act as it does not prohibit the other service-holders from enjoying the emoluments nor it interferes in any way with the performance of the duties attached to the office. On the same analogy a family settlement in which barber service inam lands are by agreement among the members of the family allowed to be held by one of the members on an undertaking to perform the service instead of their being divided into a number of fractions, cannot be said to violate any law.

7. An office is a position which has some duties attached to it. A public office is a position which has a public duty attached to it. It does not matter whether the person holding the office receives any fee or salary for the performance of such duty or whether he receives a salary or fee from the Government. The test is that the duty must be a public duty, in the strict sense of the term. It is not enough that the due discharge of the duties of the office is meant for the public benefit in a subsidiary sense. The essential characteristic therefore of a public office is that it cannot be divided. As stated above, the village barber service being a hereditary office and governed by the law of succession and custom existing, the question of the validity of its partition or any family arrangement in regard to it does not arise. The position in regard to the vettiyan service however is entirely different. That being a public office to which certain specific duties are attached, these duties can be enforced by law. A remuneration is given to the office-holders for the performance of these duties. The appointment to such office is not made in view of the law of succession or custom, but the appointment entirely rests with the Collector. The essential characteristic of such a public office therefore is that it cannot be divided. The prohibition of a transfer of a public office, or its partition or prohibition of a transfer of the salary or the remuneration of a public office, is based on the grounds of public policy, the policy being that a person chosen to a public office for qualities personal to himself should not be allowed to substitute another person in his place. It is perhaps useful to refer in this connection to a passage which occurs in Halsbury's Laws of England, Hailsham Edition Vol. IV Para 869, page 471 :

> "869. There are some choses in action which have never been assignable, and broadly speaking, it may be said that the ground of their non-as signability is denoted by that comprehensive expression 'public policy'.

Thus public policy forbids that effect should be given to assignments of pensions and salaries of public officers payable to them for the purpose of maintaining the dignity of their office or to assure a due discharge of its duties." In *Corporation of Liverpool v. Wright*[1], Wood, V.C., observed :

> "No body can deal with the fees of a person who holds an office of this description, because the law presumes, with reference to an office of trust, that he requires the payment which the law has assigned to him for the purpose of upholding the dignity and performing properly the duties of that office, and therefore it will not allow him to part with any portion of those fees either to appointer or to anybody else ..... Any attempt to assign any portion of the fees of his office is illegal on the ground of public policy and held therefore, to be void."

In the same effect are the following cases :-

(a) *Greenfell v. Dean and Canons of Windsor,*[2]
(b) *Karuppiah v. Pommchami*[3],
(c) *Venkataramanayya v. J.M. Lobo*[4],
(d) *Saminatha Aiyar v. Mulhuswami Pillai, 17 Mad LJ 252.*

8. The term public policy however does not admit of any definition and it cannot easily be explained. It is a variable quantity, which must vary and does vary, with the habits, capacities and opportunities of the public. There are however certain clauses of contracts which have been dealt with by the Courts as opposed to public policy. It is not disputed that the expression public policy is a very uncertain one and it should not be carelessly extended to any case for what is the policy of the public at one time may not be a sound public policy at another time. The expression 'public policy' therefore was rightly called by Burrough, J., as a very unruly horse and once when you get a stride of it you never know where it will carry you." Although therefore the term 'public policy' is not capable of a precise definition it can be broadly stated that it is equivalent to the 'policy of the law'. It is applicable to the spirit as well as the letter. Whatever tends to injustice of operation, restraint of liberty, commerce and natural or legal right; whatever tends to the obstruction of justice or to the violation of a statute and whatever is against the good morals - when made the object of a contract is
against a public policy and therefore void and not susceptible of enforcement. In

[1](1859) 28 LJ Ch 868 at p. 871
[2](1840) 48 ER 1292 at p. 1294
[3] AIR 1933 Mad 768
[4] AIR 1953 Mad506
[5] AIR 1959 SC 781 at p. 795,

Gherulal Parakh v. Mahadeodas[5], their Lordships of the Supreme Court observed :-

"..... the primary duty of a Court of law is to enforce a promise which the parties have made and to uphold the sanctity of contracts which form the basis of society, but in certain cases, the Court may relieve them of their duty on a rule founded on what is called the public policy; ..... but the doctrine is extended not only to harmful cases but also to harmful tendencies; this doctrine of public policy is only a branch of common law, and, just like any other branch of common law, it is governed by precedents; the principles have been crystallized under different heads and though it is permissible for Courts to expound and apply them to different situations, it should only be invoked in clear and incontestable cases of harm to the public; though the heads are not closed and though theoretically it may be permissible to, evolve a new head under exceptional circumstances of a changing world, it is advisable in the interest of stability of society not to make any attempt to discover new heads in these days".

9. It is not in my opinion necessary to enumerate the different heads of agreement which have been recognized by judicial precedents as being against public policy. It is enough if I say that agreements tending to injure the public service are always considered to be opposed to public policy. It therefore follows that any agreement which is in conflict with the public good or public policy in that respect is illegal and void. This very policy is reflected in Section 5 of the Act which makes the emoluments attached by the State to certain offices inalienable and not liable to attachment. Similarly Section 6(f) of the Transfer of Property Act enacts that a public office cannot be transferred, nor can the salary of a public Officer, whether before or after it has become payable. The inescapable conclusion of the aforesaid discussion is that if the agreement in question in any way is violative of the public policy as stated above, or any provision of law viz., Section 5 or the Act, or Section 6(f) of the Transfer of Property Act, the agreement cannot be enforced by a Court of law.

10. What I have therefore to see is whether the agreement in question violates in any manner any provision of law, or is against the public policy. It is conceded by Mr. K.B. Krishna Murthy that as far as the partition of the village barber service inam lands is concerned, it cannot be said that it is opposed to any law or public policy. He does not therefore wish to attack the agreement in respect to any arrangement made as far as the barber service inam is concerned. It is however his contention that the agreement in effect allows sharing in the emoluments which the plaintiff receives for his vettiyan service. I do not however agree with Mr. K.B. Krishna Murthy that the agreement in any manner divides the remuneration which the plaintiff gets for discharging the duties as vettiyan. It has been stated in the agreement, Ex. A-1 dated 29-05-1942, as follows :-

"We have already divided into two equal shares amongst ourselves the barber service inam belonging to our family in Pulimeru village and have been living divided. The individual No. 1 alone is rendering the service relating to this service inam. Therefore the service for salary in Pulimeru village was given to Venkatareddi individual No. 2 and he is rendering the service out of us and is receiving Rs. 7-8-0 per month as wages." It is obvious that although the barber service inam lands were divided and half-share was given to the plaintiff who admittedly is in possession and enjoyment of the same, nevertheless it is the defendant who alone is rendering the barber service to the village,

and the plaintiff is not doing any service in that regard. The dispute therefore naturally arose as to why the plaintiff should be allowed to enjoy the half-share in the barber service inam lands without doing any service apart from the remuneration which he gets by way of vetti service. It is expressly stated in the document that "for this reason the Individual No. 1 raised disputes through mediators that the 2nd individual is obtaining more income than the individual No. 1 and therefore individual No. 1 is incurring loss and demanded the individual No. 2 to give some compensation to individual No. 1". It is only in this background that the parties agreed to a certain arrangement with the help of the mediators. Now the arrangement in the words of the document is as follows :-

"An individual No. 1 Venkatachalam and his representatives are rendering the service relating to the barber service inam in Pulimeru village without any concern of individual No. 2 Venkatareddy, for that purpose individual No. 2 should deliver 160 kunchams of paddy per year to Individual No. 1 every year, obtain proper receipts, and if the paddy was not given by Makara Sankramanam every year Individual No. 1 will be entitled to recover the price of the said paddy according to the prevailing rate on any date which the first individual would select according to his wish and pleasure with interest at Rs. 0-8-0 per cent per month from the due date from the property given as security mentioned below in paragraph 5."

It is thus clear that 160 kunchams of paddy were agreed to be given because the defendant alone was rendering the service relating to the barber service inam, and the plaintiff was enjoying half the share without doing any service. There was no question of sharing in the remuneration which the plaintiff gets by way of vetti service. It is true that the contention of the defendant, when he raised the dispute was that the plaintiff apart from the barber service inam lands is enjoying the remuneration of vetti service. But that does not mean that the defendant ever wanted to share or that the agreement was to share the remuneration of the vetti service. It is also true that the document states that if at any time the Govt. resumed the service inam in respect of which the defendant is rendering service on the ground that no service need be done in Pulimeru village, the plaintiff would continue and give only 100 kunchams of paddy to individual No. 1 and that if for any reason the Government abolish the salaried service now being rendered by the plaintiff, the plaintiff need not give the compensation of 160 kunchams of paddy per year to the defendant. These are contingencies which may or may not arise. So far they have not arisen. These two terms of the document also do not indicate in any manner that the agreement was to partition the vetti office or to share the remuneration of the vettiyan service. These terms only indicate that in case the monetary condition of the plaintiff is affected by any action of the Government to that extent the liability would get proportionately reduced. I fail to see how any one of the said terms could persuade me to the conclusion that the transaction is to partition the remuneration of the vettiyan service. That being the true construction which can be put on the document in question, no question of assignment or partition of any office of vetti or its remuneration arises in this case. I have already stated that if the document was to have assigned the office or its remuneration in any manner, it would have not only violated Section 5 of the Act and Section 6(f) of the Transfer of Property Act, but it would have certainly violated the public policy. That is, however, not the position here. I am therefore satisfied that the transaction entered into between the parties is not illegal or void.

11. Earlier in C. R. P. No. 609/54, Satyanarayana Raju, J., held that the agreement in question is a valid family settlement. With respect I agree with that conclusion. Nothing has been shown as to why it does not constitute a family arrangement. Although the brothers were divided, it is not in dispute that the barber service continued to be rendered by the defendant. There was therefore a reasonable basis for dispute. Any settlement therefore to resolve this *bona fide* dispute would certainly constitute a valid family settlement. I therefore concur with the opinion of the Court below that the transaction in question is a valid family settlement, and therefore, it cannot be set aside.

12. The second point which I am called upon to consider is whether the suit to cancel the document is barred by limitation. It is not disputed that the suit to cancel the document under Article 91 of the Indian Limitation Act must be filed within three years when the facts entitling the plaintiff to have it cancelled became known to him. As admittedly the suit to cancel the document has been filed beyond three years, it is clearly time-barred. As I have found that the document is not void, no consideration on that footing arises when I am considering the question of limitation. I therefore agree with the Courts below that the plaintiff's suit is also time-barred.

13. Consequently this second appeal is dismissed with costs. No leave.
Appeal dismissed.