Ramanathan Chetti Vs. Murugappa Chetti

Ramanathan Chetti Vs. Murugappa Chetti

SooperKanoon Citation : sooperkanoon.com/775675

Court : Chennai

Decided On : Aug-12-1903

Reported in : (1903)13MLJ341

Appellant : Ramanathan Chetti

Respondent : Murugappa Chetti

Judgement :

1. This is an appeal against the decree of the Subordinate Judge of Madura (East) in a suit which was brought by the respondent to enforce his trun of management of the plaint temple and its endowments, for a period of 3 years commencing from the 15th July 1899.

2. It is admitted that the plaint temple (with its endowments) is a public religious institution that the trusteeship thereof is hereditary in the family of the parties to the suit, but that the family has no beneficial interest in the property or income of the temple. Mayandi Chetti, the grandfather of the respondent and the great-grandfather of the appellant, was the last sole trustee, and on his death, the office devolved by inheritance on his male descendants by his two wives. Four of them were his grandsons or great-grandsons through his first wife, and the other four grandsons or great-grandsons through the second (see paragraph 7 of the judgment of the Subordinate Judge). Under the notion apparently, that Mayandi's property devolved in equal undivided moieties (1 Strange's Hindu Law p. 205) upon the respective descendants by his two wives, the management of the temple

was until about 1881-82, conducted by these in rotation, each for one year.

3. We agree with the Subordinate Judge that the management was taken alternately by one member of each branch and not--as falsely asserted by the appellant,--by the members of the senior branch consecutively for four years and then by the members of the junior branch likewise for four years. We also agree with the Subordinate Judge that since 1881-82 (in which year the management was in the hands of a member of the junior branch) the respondent has been managing the temple not only during the years of his own turn, but also during the years of the turns of the members of the junior branch. We are, however, unable to agree with the Subordinate Judge that the appellant, at the end in July 1899 of the year of his turn transferred possession of the villages to the respondent, that the respondent was thereafter dispossessed and that he is on that ground entitled to the decree sought for.

4. The respondent's claim is clearly stated in paragraphs 3 and 4 of the plaint. In paragraph 3 it is stated that it has been arranged that during every term of 8 years of management, the management was to be by the four members of the senior branch the respondent having his turns in the 2nd, 4th, 5th, 6th and 8th years the appellant in the 3rd year and the other two members in the 1st and 7th years respectively. The appellant has thus had full opportunity to disprove this arrangement or establish why the same is not binding upon him or should be discontinued. In paragraph 4 of the plaint it is further stated that the four members of the junior branch (whose turns of management would come in the 2nd, 4th, 6th and 8th years) transferred their turns to the respondent, and 'that he has been enjoying the same for about 19 years without any objection and with full right.'

5. The appellants pleader, in support of the appeal, chiefly urges (1) that the evidence adduced in proof of the transfer is legally inadmissible, inasmuch as the alleged transfer was by an unstamped instrument (which is said to have been lost) (ii) that such transfer, even if proved, is invalid in law, (iii) that the right of the members of the junior branch, as co-trustees, has not been extinguished by the law of limitation, and (iv) that even if their right had been extinguished, the respondent could not as against the appellant acquire a right, under the law of

limitation, to the additional number of turns of management claimed by him.

6. If the respondent's title in the suit rested merely on the transfer made to him by the four members of the junior branch (who were co-trustees with him and the other members of the senior branch), it must be admitted that in the absence of the alleged instrument of transfer--which was admittedly unstamped and unregistered,---other evidence in proof of such transfer is inadmissible. It therefore becomes unnecessary to consider and decide whether such relinquishment, if proved, can be relied upon by the respondent as the basis of his title, having regard to the ruling of the Privy Council in Raja Vumah v. Ravi Vurmah I.L.R. 1 M. 235 and the decisions of this Court in Kuppa v. Durasami I.L.R. 6 M. 76 , Narayana v. Ranga I.L.R. 15 M. 183 Alagappa Mudaliar v. Sivarama Sundara Mudaliar I.L.R. 19 M. 211 and Annasami Pillai v. Ramakrishna Mudaliar I.L.R. 24 M. 230.

7. On the question of limitation, we are clearly of opinion that the right of the members of the junior branch, as co-trustees, has been extinguished, whether the appropriate article applicable to the case be Article 127 or 142 or, as contended by the appellant's pleader Article 124. The evidence establishes beyond all doubt that the members of the junior branch had since May 1882, discontinued possession of the immoveable properties belonging to the temple, as also performance of the duties usually appertaining to the office of trustee (of the temple) and that the members of the senior branch have been in turns successively in possession of the properties of the temple and preformed the duties of the office of trustees to the exclusion of and adversely to the members of the junior branch. Two of the members of the junior branch--who as witnesses now support the appellant admit that an abortive attempt was made 'about 8 years ago' (about 1892) to regain possession of the office, and in fact falsely depose that they did regain possession for a short period of 3 months. Bearing in mind that the discontinuance of possession on the part of the members of the junior branch was in consequence of their having relinquished their rights in favour of the respondent (as is now clearly admitted by one of the members of the junior branch as the plaintiff's 1st witness, and by the appellant himself in two former depositions of his, Exhibits QQ and RR), it is clear beyond all doubt that there has been an ouster of the members of

the junior branch for about 19 years prior to the suit.

8. The learned pleader for the appellant argues that inasmuch as the respondent has not himself been in continuous possession for 12 years, and the possession of the appellant and of the other two members of the senior branch during the above period of 19 years, was not adverse to the members of the junior branch, the rights of the latter could not be barred under Article 124. This argument proceeds on a misapprehension that when trust property is managed in rotation by co-trustees, the possession of the office by each, during his turn, is exclusive of or adverse to the other co-trustees. Though each of the co-trustees may, during his turn in the rotation, be regarded in a sense as the 'acting' or executive trustee for the year or period (Cf. Attorney-General v. Holland 47 R.R. 476 yet he holds the office and discharges the duties thereof on behalf of all the co-trustees and not on behalf of himself alone. In fact, as a general rule, even during the turn of each co-trustee, all the co-trustees are entitled, and in fact, are bound, to act jointly in matters other than the ordinary routine duties. The supposed relinquishment, by the junior branch) in favour of the respondent whether the same be valid or not in law Was one that was made to the knowledge of the appellant (see Exhibits QQ and RR) and the other members of the senior branch and was so acted upon since 1882, the respondent taking the turns of management of the junior branch also. Each of the members of the senior branch must, under these circumstances be taken in law to have held and discharged the duties of the office, on behalf of himself and the other members of the senior branch, to the exclusion of the junior branch. In this view, the office of trustee and the properties of the temple have been, for more than 12 years, held and possessed by the members of the senior branch, as a whole body, adversely to the members of the junior branch, as a body, and the rights of the latter have been by the operation of Section 28 of the Limitation Act, extinguished (Alagirisami Naicker v. Sundareswara Ayyar I.L.R. 21 M. 278 not in favour of the respondent individually but in favour of the members of the senior branch, as a body. The appellant , therefore, cannot plead, in bar of the respondent's claim that the junior branch or rather, one of its members, and not the respondent, is entitled to succeed him in the turn of management.

9. The only question that remains to be considered is whether the respondent can enforce, as against the appellant, his turns of management according to the rotation which has been in force since 1882. Having regard to the nature of the right of management by rotation by each of several co-trustees (as explained above), such right cannot, as between themselves, be acquired merely by the operation of the law of Limitation (see dictum of the High Court of Bombay, quoted on appeal, with approval by the Privy Council in Vinayak v. Gopal I.L.R. 27 B. 353.

10. But in our opinion, the respondent is clearly entitled to the relief sought for upon the basis of his title as disclosed in paragraph 3 of his plaint, and we cannot accede to the contention of the appellant, that according to the true construction of the plaint, the respondent's cause of auction is based only on the relinquishment made in his favour by the members of the junior branch and the validity thereof and that no relief should be given to him in this suit on the footing of the scheme of management set forth in paragraph 3 of the plaint. We are clearly of opinion that the decree appealed against should be upheld as the appellant has failed to show any valid ground for discontinuance or supersession of that scheme. No court,' in the exercise of its equitable jurisdiction under Section 539, Civil Procedure Code, or otherwise, will be disposed to revise and alter such scheme unless it is satisfied that in the interests of the institution and the more effective management of its affairs such revision is needed.

11. In paragraph 6 of his written statement, the appellant admits that it was originally arranged that each one of the co-trustees should manage the affairs of the temple for one year (in rotation) on his own behalf and as agent of the others, but pleads in paragraph 7 that such arrangement is revocable at the instance of any of the trustees. This plea is clearly unsustainable and no authority has been cited in support of such proposition. A scheme of management which has been framed and acted upon by the trustees, cannot be revoked at the will and pleasure of any of them. It is next urged that the practice which has been in force since 1882, cannot be regarded as a scheme consented to by the four co-trustees of the senior branch. Such practice was certainly a deviation from the original arrangement (admitted by both parties) according to which the management was to be held in turn's, joy all the eight members (in both the branches) and though

there is no proof any express agreement entered into between the four members of the senior branch to alter the original, scheme of management, yet according to the principle clearly enunciated by Section 252 of the Indian Contract Act, such agreement and consent thereto (between the members of the senior branch) must be implied from the uniform course of dealings and practice extending over a period of 19 years.

12. It may be that this revised scheme of management was the result of a bona fide belief, on the part of all the members of both the branches, that the members of the junior branch had validly relinquished their rights in favour of the respondent and that he should therefore take their turns. Even if such relinquishment be not valid in law to vest by its own force in the respondent their turns of management, that can be no ground for holding that a scheme of management which has been in force since such relinquishment can be revoked at the will and pleasure of any of the trustees. It may be added, that in no case has it ever been held that, where the office of trustee is hereditary in a family and one of the members, for no valuable consideration, renounces his right in favour of one or some of his co-trustees, with the knowledge and consent of the others, such relinquishment is illegal or invalid.

13. The contention that it is not competent for co-trustees to settle a scheme of management by each of the co-trustees in rotation in cases, at any rate, in which no emoluments are attached to the hereditary office of trustee cannot be upheld. In the case of hereditary offices in this country, the number of co-trustees, is in the very nature of things liable to increase and the co-trustees may belong to various branches of the family. The office may or may not have emoluments attached thereto. In the former case the emoluments will be subject to 'partition' in the strict sense of the term like any other family property. But whatever may be the numbers of co-trustees, the office is a joint one and the co-trustees 'all form, as it were, but one collective trustee and therefore must execute the duties of the office in their joint capacity' (Lewin on Trusts 8th Edition 258 Perry on Trusts, paragraph 411) and so long as the duties of the office are thus discharged, and one of them is not the managing member of the undivided family in which the office is hired each of them is entitled and bound to participate equally with the others in the

management of the trust, though it may be that if the subject-matter of the trust had been ordinary partible property (and not trust property) the shares of the co-trustees who form the members of the family would be unequal. When by reason of the family becoming divided, the eldest member ceases to be the managing member of the family, it becomes highly inconvenient and also detrimental to the interests of the religious institution, if one and all the members (as co-trustees) are to participate in the joint discharge of the duties of the office; Further, though the office is in its nature indivisible, yet it being hereditary in the family, the family when it becomes divided regards each member of it as having the same share or degree of interest in the office as in other joint family property which is legally partible. Except in the few cases in which the hereditary office may be descendible only to a single heir, the usage and custom generally is that along with other properties the office also is divided in the sense that the office is agreed to be held and the duties thereof discharged in rotation by each member or branch of the family, the duration of their turns being in proportion to their shares in the family property. Such a scheme of management may proceed either on the footing that the co-trustees are to continue as undivided members to guard the trust-property or on the footing of being divided members as in the case of the rest of the family property. In either case as between; 'themselves their position will be that of co-trustees, though on the death of any of them the devolution of his interest in the office will vary according as the scheme of management has been settled on the one footing or the other. Even in cases in which recourse is had to a suit for the partition of the family property, the courts give effect to the usage and custom above referred to, by providing in the decree for management of religious and charitable institutions by different members or branches of the family in rotation, on the above principle (See Mayne's Hindu Law, 6th edition, paragraphs 439 and 468 ; 2 Morley's Digest 146 ; see also Anundmoyee Chowdh-rain v. Boykantanth Roy 8 W. R. 193 : Ram Soondur Thakoor v. Tarukchander Turkorutiun 19 W. R. 28. Such usage and custom is not restricted as apparently held in Sri Raman Lalji v. Sri Gopal Lalji I.L.R. 19 A. 428 to cases in which there are emoluments attached to the office, but extends as well to cases like the present in which the trustees have no beneficial interest. The usage is as wholesome in the one case as in the other, for the efficient and smooth discharge of the duties of the office which being

hereditary in the family devolves on all the members thereof as co-trustees however numerous they may be.

14. The view taken by the learned Judges of the Allahabad High Court in Sri. Raman Lalji v. Sri Gopal Lalji I.L.R. 19 A. 428 that one of several co-trustees is 'not entitled to ask a court to partition the duties of the trust between himself and his co-trustees so as to give him the exclusive possession and management of the trust property for (say) six months in the year, putting the other trustees entirely aside during his period of management' and that trusteeship is not 'personal property' liable to partition, is one to which not exception can be taken. But, as already pointed out, an arrangement by which the several co-trustees are to discharge their duties in rotation, each for a certain period, is not even during the period of management by each in rotation, a management and possession of the trust property (by such co-trustee) to the exclusion of and adversely to the other co-trustees, It could hardly be denied that the author of a trust who appoints several co-trustees might (as in Attorney-General v. Holland 47 R.R. 476 already referred to) provide that each trustee in rotation should be the acting trustee for a year, and that it would be competent for a court, in the exercise of us equitable jurisdiction to settle a scheme for the management of a public, religious or charitable trust by the various co-trustees in rotation, if such management would be more beneficial to the interests of the trust than the joint and concurrent management thereof by a large number of co-trustees. If so, it is difficult to see on what principle it could be held that it is not competent to the co-trustees themselves to settle a scheme of management by turns (of, Perry on Trusts, paragraph 417) having regard to the considerations above adverted to as to the duration of the turn of each co-trustee, and that such arrangement can be terminated at the will and pleasure of any of the co-trustees, probably the juristic basis for the usage and custom above referred to is not strictly the legal right of partition of ordinary joint family property, but the equitable right to settle a suitable scheme for the efficient and satisfactory management of trusts, the duration of the turns of the several members in rotation being, however, fixed with reference to the law of partition. It is, however, to be borne in mind that the interests of the trust are paramount and the scheme of management only subsidiary and if it be shown to the satisfaction of the court that the existing scheme, however equitable it may

be as to the relative distribution and apportionment of the management as between the co-trustees themselves, is injurious to the interests of the trust, the court has full power to alter the scheme both as to the duration of the turns and otherwise as to it may seem appropriate.

15. The appeal fails and must be dismissed with costs save that the portion of the decree relating to the delivery of the accounts will be modified by omitting the words 'Schedule C' and substituting therefor the words ' of the temple in the possession or under the control of the defendant.'