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Court : Chennai

Decided On : Dec-11-1912

Reported in : 18Ind.Cas.77; (1913)24MLJ75

Judge : Ralph Benson and ;Sundara Aiyar, JJ.

Appellant : Raja Ram

Respondent : Ram Boy and ors.

Judgement :

1. The plaintiffs instituted the suit out of which this second appeal arose for ejecting the defendants from certain lands belonging to the Kama Boi Chatram at Villupuram in the South Arcot District. The facts found by the lower Courts are as follows: The founder of the Chatram Kama Boi had two brothers, Lal Singh and Banu Singh. Lalu had six sons, Thula Ram, Subba Ram, Tikka Ram, Thotha Ram and two others. Tikka Ram was adopted to Banu Singh, his uncle. The two brothers, Lalu Ram and Banu, apparently succeeded to the trusteeship after the founder's death. Thula Sam and Tikka Ram (the latter apparently as the representative of Banu Singh) managed the Chatram affairs till the death of Tikka Ram. Tikka Ram left a minor son (the 2nd plaintiff) surviving him. During his minority, the Chatram was managed by Thula Ram till he died. In 1902 his adopted son, Balaji, executed an agreement, Exhibit A, in favour of the plaintiffs. By this agreement the plaintiffs were to be in possession and enjoyment of half the Chatram's properties including the lands in suit and Balaji was to be in possession

of the remaining half. The defendants originally came into possession of the plaintiff lands as tenants under Balaji in 1899. The plaintiffs gave them notice to quit in 1905, but instead of quitting they entered into a fresh contract of tenancy with Balaji who had evidently made up his mind not to stand by his agreement, Exhibit A.

2. The defendant's contention that Tikka Ram's right to the trusteeship was barred by limitation long before the date of Exhibit A has been negated by the lower Courts. A decree was passed in the plaintiffs' favour upholding their right to put an end to the defendants' tenancy.

3. The contentions urged in second appeal have to be dealt with; first, that Exhibit A dividing the trust properties between Balaji and the 2nd plaintiff was illegal and void and the plaintiffs acquired no title under it and that the 2nd plaintiff, being only one of the two present trustees of the Chatram, he could not put an end to the defendants' tenancy or maintain a suit for ejectment; and secondly that the defendants have a permanent right of tenancy in the lands and are not liable to be ejected. The argument with regard to the first contention is that joint trustees are not entitled to divide either the trust office or the trust properties between themselves so as to entitle them to hold exclusive possession of portions of the trust property. It is true, no doubt, that, whatever be the number of trustees, the office must be regarded as 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. See *Ramanadhan Chetty V. Murugappa Chetty* 13 M.L.J. 341. Trustees are not entitled to divide their obligations and responsibilities to the beneficiaries. At the same time, it could not be denied that the author of a trust who appoints several trustees might provide that each trustee in rotation should be the acting trustee for a period. See *Attorney-General v. Holland* 47 R.R. 476. Similar arrangement with regard to the management amongst the trustees themselves is very common in this country without any direction to that effect by the author of the trust. As pointed out in the case already cited, there is no reason for supposing that it is not competent to co-trustees to make such arrangement. See *Perry on Trusts*, paragraph 417. The number of hereditary trustees is liable to increase indefinitely in this country and they may belong to different branches of

the family. It is usual for the members, when a division of the family properties takes place, to make arrangements of different kinds for the management of the office of trustee vested in the family. There is no reason for not recognizing such arrangements as legally valid except in so far as it is necessary to do so to protect the interests of the beneficiaries. The condemnation of such arrangement is likely to lead to great confusion in the management of the trust. The practice has in fact been actually adopted by Courts in making decrees for partition, directions being given for the management of the trust properties in turns by the various persons entitled to the office. Is there anything detrimental to the interests of the trust in an arrangement that each of two trustees should be entitled to be in enjoyment of different portions of the trust property of the trust subject to accounting for the income for the purposes of the trust? The obligation to discharge the duties of the trust would, of course, remain jointly in both while each of them contributes the income of the properties in his possession to the trust funds. We see no principle preventing a registered society possessed of property from having a number of trustees in each of whom different portions of the property of the society are vested for purposes of management. There is no reason why the same principle should not be applied so as to enable the managers of a charity to vest portions of the trust property in more than one amongst themselves for purposes of managements and dealings with outsiders who could in no way be affected by such arrangement. We find that in this case, so early as 1861, the property had in fact been held in severalty by Thula Ram and Tikka Ram, the land in one village being held by the former and the land in the other village belonging to the trust by the latter. The agreement evidenced by Exhibit A in 1902 was in accordance with the arrangement that had come into vogue at least more than 40 years before that time. We are not prepared to hold that the agreement Exhibit A was legally invalid in the circumstances. See *Nilakandhen Nambudirapad v. Padmanabha Ravi Varma* 22 I.A. 128. Under it the plaintiffs became the persons entitled to hold possession of the properties sought to be recovered and to put an end to the defendant's tenancy if it was legally terminable.

4. The contention that the defendants were entitled to hold the lands perpetually is also unfounded. The question has to be decided on the construction of Exhibit D as it is not shown that the defendants have any right to hold the land except in

accordance with its terms. The executant of that document agrees to cultivate the land and to pay teerva money to the lessor every year. In case of failure to pay rent, the executant is bound to deliver up possession, a provision not ordinarily found where a lessee is entitled to hold perpetually. Two circumstances are relied on in support of the contention of a perpetual right. The first is, that the document is styled a teerva lease deed which, it is argued, shows that the lessor was entitled to the teerva only and not to possession of the land. This is clearly not the meaning of the expression. The document provides for payment of rent in money; it is called teerva money in the document. This is the only significance of the expression teerva lease deed. The second circumstance is that no period is fixed during which the lessee should be entitled to remain in possession of the land. But undoubtedly the result of this omission must be to show that the tenant was entitled only to hold as a lessee from year to year and not to confer on him a perpetual right. It is most improbable that the document would not expressly state that the tenant should be entitled to hold for ever if that was the intention of the parties. On the construction of the document it must be held that the defendants have no permanent right.

5. The learned Vakil for the appellant has raised another point, namely, that the lands being inam granted to a Chatram the presumption is that the grantees became entitled only to the melvaram and could not, therefore, have the right to eject the tenant in occupation. This contention was not raised in either of the lower Courts and as the question is one of fact, we cannot entertain it in second appeal. Besides, if the defendants came into possession only under Exhibit D and did not purchase the right of any person previously in occupation of the land, they could not resist the plaintiffs' claim to eject them.

6. In the result, we dismiss the second appeal with costs.