

Narayana Mudaliar and anr. Vs. Nagappa Mudaliar and anr.

Narayana Mudaliar and anr. Vs. Nagappa Mudaliar and anr.

SooperKanoon Citation : sooperkanoon.com/804821

Court : Chennai

Decided On : Sep-25-1925

Reported in : AIR1926Mad245

Appellant : Narayana Mudaliar and anr.

Respondent : Nagappa Mudaliar and anr.

Judgement :

1. We agree with the construction put upon the Will by the lower Court and find that the plaintiff was appointed co-trustee with Anjalai Achi, the widow of the testator, and that after Anjalai Achi's death, the plaintiff was entitled to the possession of the charity properties as trustee. It is, however, contended for the appellants that the plaintiff's right to recover 'the trust properties is barred by limitation on the ground that his is a suit to recover a non-hereditary office to which the trust properties are appurtenant and reliance is placed on the decision in *Kidambi Ragava Chariar v. Tirumalai Asari Nallur Ragavachariar* [1903] 26 Mad. 113, which purports to follow *Jagan Nath Das v. Birhhadra Das* 6 M.H.C.R. 301, and *Tammirazu Ramazogi v. Pantina Narasiah* [1892] 19 Cal. 775. In this case it was held that when a suit was brought for an office, namely, the office of Dharmakartha of a temple to which certain immovable property was attached, the article applicable was Article 120 and not Article 144 on the ground that the right to the land was only secondary to and dependent on the right to the office. In the present case the facts seem to be distinguishable. The argument is that the trusteeship is an office within the meaning of this ruling; but assuming that there is

such an office as 'trustee' in the present case, the possession of the land is certainly not secondary to the possession of the office ; for if the land is not in the possession of the office-holder there is no other duty or responsibility attached to the office which he could perform, and to give possession of the office of trustee without giving possession of the land, of which he is trustee, would be entirely nugatory, for there would be nothing that the trustee could do without the possession of the land. Apart from this, it is very doubtful whether the office in the present case is not hereditary. The testator appointed his wife trustee and the plaintiff as joint trustee and directed that the succession thereafter should be hereditary. The office, therefore, appears to be an hereditary office subject to a temporary incumbency by a person not in the direct line of succession. If it is an hereditary office, the period of limitation would be 12 years and not six as contended for by the appellants. The allegation that the office was held adversely by plaintiff was never put forward in the lower Court, but it appears that the plaintiff's title to possession arose on the death of Anjali Achi in 1911 and this suit was not brought till 1920. Thus it would appear that more than 6 years had elapsed since his right to possession accrued. In order to defeat plaintiff's right it must be proved that somebody held possession of the office adversely to him for 6 years. The only evidence we have is that the charity has been conducted and that for a time the first defendant was in possession and that for a time Defendants 7 and 8 were in possession but there is no definite evidence that any one person has held adversely for a period of 6 years. In the absence of evidence to this effect which it was incumbent on the appellants to produce, we are not able to say that the plaintiff's title is barred by adverse possession, even if the period of limitation is governed by Article 120.

2. The appeal is accordingly dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com