

ilango Minor and anr. Vs. T.S. Gopalakrishnan and ors.

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Court : Chennai

Decided On : Jan-20-1975

Reported in : (1976)1MLJ188

Appellant : ilango Minor and anr.

Respondent : T.S. Gopalakrishnan and ors.

Advocate for Pet/Ap. : Mr. Sivamani

Judgement :

T. Ramaprasada Rao, J.

1. The plaintiffs in O.S. No. 100 of 1968 on the file of the Subordinate Judge's Court, Tirunelveli are the appellants. The plaintiffs are the minor sons of the third defendant herein represented by their father and next friend. The third defendant is the daughter of the second defendant. Quite a considerable time before, one Subbaroya Chettiar endowed certain properties and created a trust called 'Subbaroya Chettiar Annathana Chatram' the purposes of which are not in dispute before us. The huqdarship or trusteeship of the above Chatram admittedly vested ever since its inception in two families commonly referred to as the Vadakku Chavadi family and the Therku Chavadi family. At or about the time when the inam settlement was effected it is claimed that one Gurunamam Chettiar on the side of the Vadakku Chavadi and Pattabiraman Chettiar on the side of the Therku Chavadi were the two trustees representing the two branches who were in charge

of the Annathana Chatram. After the death of Gurunamam Chettiar on the side of the Vadakku Chavadi family, he was succeeded by Venkatasubbaroya Chettiar and thereafter by Krishnaswamy Chettiar and then by Sethuramalingam Chettiar, the father of the first defendant. After the death of Sethuramalingam Chettiar on 16th December, 1964, the first defendant is in charge of the Chatram representing the Vadakku Chavadi family. On the side of the Therku Chavadi family, as originally stated, Pattabiraman Chettiar Was originally associated with Gurunamam Chettiar as the trustee. After his death, his second son Narasimhan Chettiar held the office and after him one Lakshmanan Chettiar took over on the side of the Therku Chavadi family. Lakshmanan Chettiar died on 11th December, 1937. Prior to his death and after being assured that he would not have a male child, he executed Exhibit A-11 dated 10th November, 1932 whereby he surrendered his right to hold the office of trusteeship of the Subbaroya Chettiar Annathana Chatram at Kurukkuthurai, Karuppanthurai village, Tirunelveli taluk. Certain revealing facts are noticeable in Exhibit A-11. Lakshmanan Chettiar while executing the deed of surrender, as it is called, stated in uncanny terms that it was never the practice for a female member on either side of the two families to hold office of trusteeship and that was the manner and mode in which the office of trusteeship was held ever since it was dedicated by Subbaroya Chettiar and as there were no male heirs who could take over the administration and hold office as co-trustees with the member representing the Vadakku Chavadi family, Lakshmanan Chettiar executed the deed of surrender whereby he surrendered his right to hold office for ever in favour of the then co-trustee Sethuramalingam Chettiar who was representing the Vadakku Chavadi line. The plaintiff's claim however is that the said Lakshmanan Chettiar had no right to effectuate such a surrender and give up the right to hold office of trustee-ship on the Therku Chavadi line and thus ignoring the said surrender deed, Exhibit A-11, the plaintiffs would contend that Lakshmanan Chettiar could not give up the right of trusteeship which belongs to the Therku Chavadi family and therefore as heirs of Lakshmanan Chettiar, to wit, as the daughter's sons, they would be entitled to hold office of trusteeship jointly along with the first defendant representing the Vadakku Chavadi line and that in order to accelerate the right of the plaintiffs to seek for and hold such office of trusteeship, the second defendant (their mother) had surrendered

her right in favour of her daughter the third defendant and the third defendant in turn had surrendered her rights to these plaintiffs on 24th December, 1966 and that the plaintiff's are therefore entitled to be the joint huqdars of the Ananthana Chatram along with the first defendant who by then became the sole trustee in consequence of the deed of surrender, Exhibit A-11, dated 10th November, 1932 and as heir of Sethuramalingam Chettiar. The plaintiffs therefore came to Court for a declaration that they are entitled to be joint huqdars with the first defendant in relation to the trust called Subbaroya Chettiar Annathana Chatram and prayed for consequential reliefs.

2. The first defendant in his written statement pleaded that the plaintiffs have no right at all to lay the present action and that the suit claim is barred by time. Relying upon the deed of surrender or settlement, Exhibit A-11 dated 10th November, 1932, the first defendant would claim that the Therku Chavadi branch relinquished their right to hold office of trusteeship and that it was done in the best interests of the management of the trust and as such a situation was inescapable since no female member could ever be in management of the trust in accordance with the usage and custom prevailing in the matter of the governance of the charity. The first defendant specifically pleaded that in any event his father Sethuramalingam Chettiar and thereafter himself were exclusively, continuously and publicly, to the knowledge of the second and third defendants and the plaintiffs, were advesely in possession of the office and therefore the present claim of the plaintiffs is barred by limitation. No doubt the second and third defendants sail along with the plaintiffs and would admit their claim.

3. On the above pleadings, the following issues were framed:

1. Whether the relationship of the persons mentioned in the plaint is true and correct?
2. Whether the 2nd defendant acted as joint trustee with 1st defendant's father Sethuramalingam Chettiar at any time?
3. Whether the surrender by defendants 2 and 3 to plaintiffs alleged in the plaint is true and valid?

4. Whether the plaintiffs have any present cause of action for filing this suit?
5. Whether the suit is barred by time?
6. Whether the suit trust has been always managed by the rule of primogeniture by usage and custom as contended by the first defendant?
7. To what reliefs, are the plaintiffs entitled?

4. The learned trial Judge held that the suit trust was not managed by the rule of primogeniture either by usage and custom as contended by the first defendant but on issues 2 to 4 he was of the view that the second defendant did not act as joint trustee with Sethuramalingam Chettiar at any time and that the surrender said to have been made of the rights of defendants 2 and 3 in favour of the plaintiffs as alleged in the plaint is not true and that the plaintiffs had no present cause of action to file the suit. On the issue, whether the suit is barred by time he held that it was so-and against the plaintiffs. In the result the suit was dismissed. It is as against this the plaintiffs have filed the present appeal.

5. The main contention raised by Mr. Sivamani, learned Counsel for the appellants is that on an overall appreciation of the evidence let in by the plaintiffs it would not be difficult to say that even the females were entitled to the office of trusteeship and thus viewed, the surrender or relinquishment of the office on the ground that no female member of either of the families could ever hold the office of trusteeship and that in consequence Lakshmanan Chettiar's surrendering the rights of the Therku Chavadi family in favour of the Vedakku Chavadi family is an instrument which cannot create lights and cannot simultaneously also dives rights. It is also said that Lakshmanan Chettiar had no right to surrender in future such huq or right which might crop up in the family of the Therku Chavadi and therefore it is contended that defendants 2 and 3 as the daughter and grand-daughter of Lakshmanan Chettiar still retained their light to hold office either for themselves or to their nominees and that they having surrendered their rights in favour of the plaintiffs, though minors, the plaintiffs' action is sustainable and within the compass of propriety. The second contention is that the plaintiffs in the alternative were claiming the right to hold office in their own independent right and not

necessarily through the channel of succession as members of the Therku Chavadi. family and that therefore the suit is not barred by limitation.

6. In cases of private trusts, the modes by which trustees are ordained to hold their office as such is generally set out in the recitals of the relative trust deed itself. In the absence of any such deed in writing Courts often rely upon the circumstantial evidence and the other acceptable material placed before them to find the rule by which the trustee holds such office in relation to private trusts. But a dichotomy is always made between right to the office of trusteeship by succession or heir-ship to the last holder in juxtaposition to a right to hold it de hors such right to succeed to that office. In the latter case the claimant seeks for such office independently of the rule of succession or heirship. In the case of succession to office by the ordinary rules of heirship or as per the delineation made in the document of trust itself, if the predecessor-in-interest who was in office lost his right to the same by the force of law of limitation, then his successor-in-interest who claims through him cannot have a better right and thus the successor-in-interest would in turn be disabled in law to claim and hold the office. If, however, the claimant rests his claim to an office of trusteeship on an independent basis without reference to the rule of succession but as per the recitals in the deed or as per the custom or usage, then he has to establish it and if successful can be inducted into the office notwithstanding the fact that the prior office-holder lost his right by adverse possession of the same by the joint or competing trustee. These two propositions are by now well settled as is seen from *Jagathambal Anni v. Periathambi* : (1936)70MLJ441 , where the learned Judges said that whatever the difference may have been as to the time when the possession becomes adverse, there has latterly been no doubt whatever that once adverse possession starts, it operates not merely against the then trustee, but against his successors as well and this can only be on the footing that each succeeding trustee claims under his predecessor. Expatiating this passage, *Palaniswamy, J. In K. Ramalingam Chettiar v. Ranganathan Chettiar* : (1973)1MLJ288 , observed for the Bench as follows:

Adverse possession against one to the office of trusteeship would not operate against another if the other person does not claim through the person whose right

is lost by limitation. If the succeeding trustee claims title independently of the person whose right is lost by limitation, the aforesaid principle is not applicable.

7. Bearing these essential principles of law in mind, we shall now consider the contentions of the learned Counsel for the appellants. It is said that there is no exclusion of female members of either of the families from holding office of trusteeship of this Annathana Chatram. Reliance is placed upon Exhibit A-4 dated 2nd August, 1881 which was an order made by the Deputy Collector, Tirunelveli, who, under circumstances not clearly known, recognised the daughter of Pattabhirama Chettiar as one of the co-trustees to be in management of the Chatram. The recital, however is, 'It is very doubtful whether the expression appearing in Exhibit A-4 would refer to Certainly it would include but it would not necessarily mean that it was only the female member which was in the contemplation of the Deputy Collector when he made the order under Exhibit A-4. But this circumstance which has not got the weight which would be required for acceptance by us is outweighed by a later document Exhibit A-11 which is a registered instrument executed by Lakshmanan Chettiar in favour of Sethuramalingam Chettiar on 10th November, 1932. We have already summarised, the essentials of this instrument in our preface. Lakshmanan Chettiar was conscious of the fact that ever since the properties were dedicated for the purpose of charity by Subbaroya Chettiar it was never in the contemplation of parties that a female from either side of the families namely the Vadakku Chavadi or the Therku Chavadi, should ever be inducted as a joint trustee to manage the affairs of the chatram. A conscious recital to this effect by a member of the Therku. Chavadi family as early as 1932 cannot be lightly ignored. This speaks of the usage and custom by which the trusteeship the Chatram was being regulated. At any rate we are of the view that Exhibit A-11 being an ancient document within the meaning of the provisions of the Evidence Act and having regard to the subsequent conduct of the second and the third defendants after such relinquishment of office by Lakshmanan Chettiar the contention of Mr. Sivamani that female members of either of the families could also hold office as trustees appears to be untenable. We have already referred to the fact that there is no instrument which has been placed before us which governs the governance of the trust. We are therefore left with the appreciation of the surrounding circumstances

and the relative facts and materials brought on record to reasonably infer as to what ought to be the mode and manner of succession to the office of trusteeship to this Chatram. On a perusal of Exhibit A-11 it does not appear to us that there was any design or motive on the part of Lakshmanan Chettiar when he caused such a relinquishment to be made of the office of trusteeship from the family of Therku Chavadi to and in favour of a representative of the Vadakku Chavadi family. Such being the real purport of Exhibit A-11, we cannot lightly discountenance the contention of the learned Counsel for the respondents that ever since the dedication of the properties for purposes of the charity in question by Subbaroya Chettiar it was always intended that the male members from either of the families should constitute the Board of Management to be in charge of the administration of the trust. We are therefore unable to agree with the first contention that even female members are entitled to hold office.

8. The next ancillary question which arises is whether the theory of surrender said to have been made by the second and the third defendant in favour of the plaintiffs could be true. Here again there is a bundle of controversy. Whilst in the pleadings the plaintiffs would rest their case on an oral surrender said to have been made by the second and the third defendants in or about 25th December, 1966, in the course of the trial they would rely upon Exhibit A-1 dated 9th October, 1969, which is a registered release deed executed by defendants 2 and 3 in favour of the plaintiffs but long after the institution of the suit. Rightly therefore, the Court below rejected Exhibit A-1 as being post litem and found that there was no case of oral surrender made out with reference to acceptable evidence. We agree with the said finding and hold that there was no such surrender of the so-called right of defendants 2 and 3 in favour of the plaintiffs.

9. The other question is whether plaintiffs could project an independent title to the office de hors the rule of succession impliedly mooted out by the first defendant based on Exhibit A-11 and the surrounding circumstances. The appellant's case is that they being the daughters' sons of Lakshmanan Chettiar are in any event to be recognised as male persons entitled to succeed as joint huddars to be in management of the charity in question and that therefore the first defendant has no right to exclude the plaintiffs from such co-ordination. Here again the

appellants' argument is fallacious. We have already held that under Exhibit A-11 there has been a snapping of the huqdarship in the matter of succession to the office of trusteeship by Lakshmanan Chettiar absolutely relinquishing the right to hold such office because of the absence of male heirs to him. After such snapping, the first defendant's predecessor-in-interest Sethuramalingam, Chettiar was solely in management of the trust publicly and to the knowledge of all including Lakshmanan Chettiar and his heirs. It is but reasonable to assume that defendants 2 and 3 as the wife and daughter of Lakshmanan Chettiar knew about such exercise of the right to hold office on the part of the first defendant and his predecessor-in-interest ever since 10th November, 1932. It is common ground that neither the second defendant nor the third defendant at any time prior to the action objected to or interfered with the sole and exclusive management of the trust properties by the first defendant. In those circumstances, the first defendant or his father were adversely in possession of the office to the knowledge of those who should, if possible put forward such a claim to it. The second defendant, not having questioned such a state of affairs for a considerable length of time, is estopped from vesting in herself the so-called right to hold office of trusteeship and to surrender such a right, even if it is true in favour of her grandsons when an inconvenient situation arose for her to do so. It is established law that once a right is lost by the operation of the rule as to limitation, then it cannot be revived unless under certain extraordinary circumstances, since there is an extinction of that right by the operation of law. Once therefore the second defendant and equally the third defendant lost their respective rights, even if they could claim as female members of the Therku Chavadi family, they cannot by a voluntary act of theirs create such rights in themselves and surrender such self imposed rights either orally or in writing as they purported to do under Exhibit A-1. We are therefore of the view that the so-called surrender, whether it is oral or as evidenced by Exhibit A-1, has no legal force at all. This is so because the second defendant has lost her right to hold the office under Article 107 of the Limitation Act which says that a person competing for possession of a hereditary office should file the suit within 12 years from the date when the other person takes possession of the office adversely to him. As stated already by us, for a period of 12 years and more, neither the second defendant nor the third defendant did raise any protest against the

exclusive management of the trust by the first defendant. As a matter of fact under Exhibit A-10 dated 16th January, 1947, a member of the public brought to the notice of the second defendant that it was imperative on her part to resume the management of the trust as she was entitled to a joint right of trusteeship and management of the Annathana Chatram. Even this would not provoke the second defendant or even the third defendant to take such action as was necessary in law to assert their claims which by then were prejudicially being held and exercised by the first defendant. We are therefore satisfied that the suit brought in by the plaintiffs as the daughter's sons of Laksh-manan Chettiar on 22nd July, 1968 is hopelessly barred by limitation. Thus viewed, the plaintiffs had no cause of action at all to initiate the proceedings.

10. All the contentions of the learned Counsel for the appellants therefore fail and the appeal is dismissed. There will be no costs in this appeal.

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