



S.A.No.1291 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2022

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

S.A.No.1291 of 2000

1. Nithyananda Rediar
2. Natarajan
3. Muthurajan

... Appellants

Vs.

1. Chinmayanda rediar (Died)
 2. Swayamprakasam rediar
 3. Shanmuga Sundaram
 4. Chandra sekaran
- (R4 brought on record as legal heirs of the deceased
1st respondent, viz., Chinmayananda rediar,
vide order of Court dated 10.02.2021 made in
CMP Nos.9192, 9196 & 9202 of 2019 in
S.A.No.1291 of 2000(TKRJ)

...Respondents

Second Appeal filed under Section 100 Code of Civil Procedure against the Judgment and Decree passed in A.S.No.30 of 1997 on the file of learned Principal District Judge, Cuddalore dated 06.07.1998 confirming the Judgment and Decree in O.S.No.60 of 1990 dated 20.08.1996 on the file of Subordinate Court, Chidambaram.



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For Appellants : Mr.J.Antony Jesus

Amicus Curiae : Mr.T.S.Baskaran

J U D G M E N T

The present Second Appeal is filed against the Judgment and decree passed by the Appellate Court in A.S.No.30 of 1998 dated 06.07.1998 by the learned District Judge, Cuddalore confirming the Judgment and Decree passed by the learned Subordinate Judge, Chidambaram in O.S.No.60 of 1996 dated 20.08.1996.

2. The parties herein are referred as the same status before the trial court. The appellants are otherwise called as defendants and the respondents are otherwise called as plaintiffs.

3. The case of the plaintiffs, in brief, are as follows:-

The plaintiffs 1 and 2 and the father of the 3rd plaintiff are brothers. The 3rd plaintiff's father, namely, Sadananda Reddiar died on 09.02.1980. Viswanatha Reddiar, who is the father of the plaintiffs 1 and 2 had a brother, namely, Muthukumarasamy Reddiar, whose son is the 1st defendant and the defendants 2 and 3 are the sons of the 1st defendant.



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Muthukumarasamy died on 23.07.1968. Viswanatha Reddiar and Muthukumarasamy Reddiar are the sons of Subbarama Reddiar. Subbarama Reddiar died long ago. Viswanathan Reddiar and Muthukumarasamy Reddiar entered into a partition on 11.04.1927. Accordingly, the properties comprised in Schedule C to the said partition deed were permitted to be trust properties which will be administered by 'Turn Management'. After the death of Viswanathan Reddiar, his three sons, viz., Sadananda Reddiar and the plaintiffs 1 and 2 on the one hand and Muthukumarasamy through his junior paternal uncle on the other hand entered a registered arrangement on 30.04.1951 regarding the management of Trust and here, again, the Management was agreed and fixed to be observed by rotation. Muthukumarasamy died on 23.07.1968 and the 1st defendant is his only son. As per the deed dated 30.04.1951, the 1st plaintiff should have been taken up the management of Trust from 15.04.1990 to 14.04.1992. But they are not allowed, even after the repeated demands. Therefore, the plaintiffs have filed a suit for declaration that the plaintiffs are entitled to a trust management of the suit properties during their period commencing from 15.04.1990 in the manner and method in future, as per the deed of arrangement dated 30.04.1951 and for recovery



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of possession of the suit properties and for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and management of the suit trust properties during the turn of management.

4. The case of the defendants in brief are as follows:-

As per the arrangement deed dated 30.04.1951, the 1st plaintiff is not entitled to manage the trust from 15.04.1990 to 14.04.1992 and from 15.04.1976 onwards, it was vested with the 1st defendant continuously. The 3rd plaintiff's brother was not added as party and the defendants 2 and 3 are not necessary parties to the suit. The suit properties and the other properties are trust properties belonging to Arulmigu Chockalingeswarar Swamy temple. The 1st plaintiff, the 1st defendant, one Sadananda Reddiar and Suryaprakash Reddiar have jointly applied for the hereditary trusteeship under Section 63(b) of the Deputy Commissioner, H.R. & C.E., Trichy in or about in the year 1978. The 1st plaintiff did not want the management of the Trust. Therefore, the 1st defendant and Sadanandan and Suryaprakasam have filed a separate petition by impleading the 1st plaintiff as defendant. That petition could not be prosecuted due to the death of Sadanandan and as the 1st plaintiff relinquished his claim to the trusteeship. Therefore, the



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1st plaintiff has no right to file this suit. Even in the auction conducted by the 1st defendant and the H.R & C.E. Department, the first plaintiff himself has participated in it and he has not exercised his right for trusteeship, at any point of time, after the year 1968. The 3rd plaintiff is a Village Administrative Officer and is a Government employee. Therefore, he is not entitled to hold the office of trusteeship. The 2nd plaintiff never exercised his right at any point of time and has relinquished his right by his own conduct. There is no cause of action to file the suit, thereby sought to dismiss the suit.

5. The trial court framed the following issues for consideration:-

“ 1. Whether the 1st plaintiff had abandoned the trusteeship and the 2nd plaintiff relinquished his trusteeship as alleged in the written statement?

2. Whether the suit is bad for misjoinder and non-joinder of parties?

3. Whether the suit is barred by limitation?

4. To what relief?

5. Whether the suit as framed is maintainable?

6. Whether the suit properties are in possession of tenants?

7. Whether the properties covered are under the control of H.R.& C.E?”



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6. On behalf of the plaintiffs, 1st plaintiff was examined as P.W.1 and Exs.A.1 to A.7 were marked. On behalf of the defendants, 1st defendant was examined as D.W.1 and Exs.B.1 to B.8 were marked.

7. The trial court after hearing both the parties given a finding stating that the 1st plaintiff has neither abandoned nor the 2nd defendant had relinquished his right in the year 1968 in respect of the suit properties under the management of a trust. Further, the trial court held that the suit is not liable to be dismissed for mis-joinder or non-joinder of parties and on the ground of limitation. In the result, the suit was decreed in favour of the plaintiffs for declaration that the plaintiffs are entitled to a 'Turn Management' of trust properties, in future, as reflected in the schedule of management annexed to the plaint and in accordance with the Deed of Arrangement dated 30.04.1951 of the trust properties and also granted permanent injunction, as prayed for.

8. Aggrieved over the Judgment and Decree passed by the trial court on 20.08.1996, in O.S.No.60 of 1990, defendants have preferred an appeal



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in A.S.No.30 of 1997. After hearing both the parties, the 1st Appellate Court found that there is no error in the Judgment and decree passed by the trial court and it has come to the conclusion that the suit was filed within the period of limitation, which aspect was dealt with by the trial court at Paragraph No.45 of the Judgment, therefore, the Appellate Court concurred the Judgment of the trial court. That apart, it has also accepted the views of the trial court with regard to the claim of the defendants in respect of the relinquishment. The trial court held that the plaintiffs have not at all relinquished their rights and on the said aspect also, the appellate court accepted and dismissed the appeal filed by the defendants. Challenging the said judgment and decree, the appellants / defendants filed the present Second Appeal. This Court, admitted the Second Appeal on 29.08.2000 on the following Substantial Questions of Law:-

“1. Whether the courts below is right in holding that the suit is not barred by limitation especially when there is no evidence on the side of the respondent plaintiff exercising the right to trusteeship after 1968?

2. Whether the courts below is right in not considering the extinguishment of right to trusteeship by reason of Sec.27 of the Limitation Act?”



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9. The learned counsel appearing for the appellants / defendants

would submit that the defendants are in the management of the trust properties. Though the Ex.A.2 trust deed shows the 'Turn Management' from the year 1968 to till date of filing the suit, the plaintiffs have not given the 'Turn Management' and therefore, they were relinquished rights to claim the turn management. In fact, the plaintiffs 2 and 3 and the 1st defendant claim to have given a petition to the Deputy Commissioner, HR & CE, further, in terms of Article 107 of the Relief Act, the plaintiffs have supposed to file a suit to claim the possession of hereditary trust office from the date when the defendants take possession of the office adversely to the plaintiffs. For the first time, the plaintiffs have filed a suit in the year 1990, whereas, they have relinquished their rights since the year 1968, there is no evidence with regard to the claim for the Management of the Trust by rotation since 1968. Moreover, the Trust Management Deed was also marked as Ex.B.1, as per that deed also, the plaintiffs have not made any claim over the said properties, therefore, both on the issue of abandonment and on relinquishment of right of the plaintiffs to claim the hereditary trusteeship on basis of the turn management, in terms of Ex.A.1 and Ex.B.1 by the plaintiffs and also on the basis of limitation, over a period of 12 years



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in terms of Article 107, the plaintiffs had not put up any claim, therefore, the suit is also barred by limitation. All these aspects have not been considered by both the trial court as well as the appellate court in a proper perspective. Hence, he would submit that the judgment of both the trial court as well as the appellate court is liable to be set aside on the basis of perversity. Hence he prayed to set aside the Judgment of the Trial court as well as the Appellate court.

10. On the other hand, though the notice was served on the respondents / plaintiffs, none appeared, since the issue is to be decided on the aspect of substantial questions of law, this Court appointed Mr.T.S.Baskaran, as Amicus Curiae, to represent on behalf of the respondents to answer on the issue of Substantial Questions of Law.

11. Mr.T.S.Baskaran, learned Amicus curiae on behalf of the respondents would submit that the appellants has contended that the suit is not maintainable on the two aspects, one is, on the basis of relinquishment of rights by the plaintiffs themselves, since there was no claim made by the plaintiffs from the year 1968 till the date of filing the suit in the year 1990



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and the other one is, on the aspect of limitation.

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12. As far as the 1st issue, viz., abandonment and relinquishment is concerned, the learned Amicus Curiae on behalf of the respondents would submit that though the appellants' counsel took this point, subsequently, he has stated that he is pressing on the aspect of limitation, however, the learned counsel would submit that in the present case, the question of relinquishment or abandonment does not arise, the turn management will come only after a period of ten years, as per the Ex.B.1 - Trust Management Turn Release Deed and Ex.A.1, Trust Management agreement, the turn of the plaintiffs would come only in the year 1978, since in the year, 1978, the defendants failed to handover the turn management of the trust to and in favour of the plaintiffs, the plaintiffs have made a representation to the Deputy Commissioner, HR & CE by virtue of Exs.A.3, A.4 and A.5 and by virtue of the said letters, the HR&CE also directed the appellants to handover the turn management to the plaintiffs. However, they have refused to handover the said turn management, therefore, the appeal also filed to the Commissioner of HR & CE and it was pending and ultimately, it was disposed of in the year 1984, till then, the stay was granted and O.A. No.

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134/1978 was preferred only by the plaintiffs and the defendants / appellants were also party to the proceedings and the suit was filed in the year 1990 well within the limitation period. Therefore, he would contend that question of abandonment or relinquishment by the plaintiffs from the trusteeship or from the management of the trust does not arise.

13. As far as the limitation is concerned, the learned Amicus Curiae on behalf of the respondents would submit that Article 107 would show that in the case of hereditary trustee, to possess the hereditary office, within 12 years time, anybody who lost the possession should file the suit. Therefore, in the year 1968, turn has come to the defendants and thereafter, the plaintiffs' turn has to come only in the year 1978 but since the defendants failed to handover the management to the plaintiffs, which prompted the plaintiffs to approach the Deputy Commissioner of HR &CE, who in turn passed order dated 15.05.1978 (Ex.A.4) directing the defendants to deliver charge of the management to the plaintiffs, which later was stayed till the year 1984 at the instance of the defendants and thereafter, the plaintiffs turn has to come only after 10 years, therefore, in the year 1990 the suit was filed which is well within the limitation period as the cause of action was



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recurring in nature. If the defendants fail to handover the administrative of the trust as per 'Turn Management' to the plaintiffs, the plaintiffs are entitled to file a suit. In the present case, this is what has happened and it is filed within a period of limitation. Therefore, to assert the right of the plaintiffs and to acquire their rights, since the turn came in the year 1978 they have also filed a representation to the HR & CE and HR&CE also passed an order to handover the trusteeship, inspite of the same, the defendants failed to handover the trust, however, on the other hand, preferred an appeal before the appellate authority and the appeal was dismissed and till the year 1984, the stay granted was continued.

14. Even assuming if the plaintiffs had chosen a wrong forum, it is clear that the plaintiffs claim only right of 'Trust Management' on the basis of Trust Managment Turn Release Deed, evidently for the period ranging from 15.04.1978 to 14.04.1980 and the next turn has arisen only from 15.04.1980, then again the fresh cause of action will arise after a period of 10 years, it would be continued cause of action, therefore, he would contend that the suit was filed well within a period of limitation. All these aspects are well appreciated on facts by the trial court and well considered judgment



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need not be interfered with, hence, prayed to dismiss the appeal with costs.

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15. Heard the learned counsel for the appellants and the learned Amicus Curiae for the respondents and perused the documents placed on record.

16. Admittedly, there are two issues to be decided in this subject, one is, to find out whether the plaintiffs relinquished or abandoned their rights over the trusteeship and another one is, with regard to the limitation. Both the trial court as well as the appellate court came to the conclusion that the plaintiffs have not abandoned or relinquished the rights of the trusteeship with regard to the turn management and also the suit is not barred by limitation.

17. At this juncture, it would be appropriate to extract Article 107 of the Limitation Act, 1963, which reads as under:

<i>Description of suit</i>	<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
<i>107. For possession of a hereditary office.</i>	<i>Twelve years</i>	<i>When the defendant takes</i>



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Description of suit	Period of Limitation	Time from which period begins to run
<i>Explanation.—A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.</i>		<i>possession of the office adversely to the plaintiff.</i>

The Article 107 of the Limitation Act deals with the purpose of question of hereditary office, 12 years limitation is provided from the date when the defendants takes possession of the office, adversely to the plaintiffs. A mere reading of the above would reveal that in the case of denial of the hereditaryship of a particular person, the affected person has to file a suit within a period of 12 years.

18. In the present case, in every 10 years, a new cause of action would arise, when the plaintiff Turn Management starts to commence in terms of Exs.A.2 and B.1. As per the said trust deed for every 10 years, the plaintiffs turn would come and this is what was observed by both the trial court as well as the first appellate court on the facts. When such being the case, though the contention was put forth by the defendants that from the year 1968, the plaintiffs were not in possession of the turn management,



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but when the DW1 was examined, at page 8 of his evidence, he would say that up to the year 1976 all the parties to the suit were in respect of management of their time limits. Therefore, the 1st defendant himself has admitted that there was respective management of the parties to the suit up to the year 1976 and accordingly, the 1st defendant managed from the year 1976-1978, therefore, there cannot be any abandonment of management by the respondents / plaintiffs in the year 1968, as pleaded in the written statement by the appellants / defendants.

19. All the above said aspects were dealt with in proper perspective both by the trial Court as well as the first appellate Court and rendered categorical findings that the plaintiffs have neither abandoned nor relinquished their right over the trusteeship. In fact, after the turn management of the defendants came to end in the year 1978, immediately, the plaintiffs insisted the defendants to hand over the trusteeship, but the defendants had refused the same. Hence, the plaintiffs filed a petition under Section 63(b) of HR & CE Act before the Deputy Commissioner and by order, dated 15.05.1978, the Deputy Commissioner directed the



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defendants to hand over the charge of the trusteeship to the plaintiffs, but the same was also not complied with by the defendants and later, they preferred appeal and obtained the stay against the plaintiffs, which was in force till 1984 and thereafter, finding no other alternative the plaintiffs have filed the suit in the year 1990, which is well within the limitation period. As per Article 107 of the Limitation Act, the period of limitation is 12 years as the time from which period begins to run when the defendant takes possession of the office adversely to the plaintiff. In the present case, admittedly, the defendants took possession of the trusteeship adversely to the plaintiff even after completion of their turn in the year 1978 and though the plaintiffs got the order from the Deputy Commissioner, HR & CE which directed the defendants to hand over the charge of the trusteeship, but the defendants preferred appeal and obtained stay of the said order and it was in operation till 1984 and the same was dismissed finally upholding the right of the plaintiffs from management. Thereafter, in the year 1990, for the next turn, the plaintiffs filed the suit and as rightly held by the Courts below that the cause of action is concurrence in nature and as such, the limitation is 12 years, the suit was filed well within the period of limitation. Therefore, all along from the year 1978, the plaintiffs have been agitating and fighting for



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getting the trusteeship, which clearly established that the plaintiffs have neither relinquished nor abandoned their right over the trusteeship. Both the Courts below have rightly held that the suit is not barred by limitation. Accordingly, the first substantial question of law is answered in favour of the respondents and against the appellants herein.

20. As regards the second substantial question of law is concerned, it is contended on behalf of the appellants that the Courts below have not considered the aspect of extinguishment of right to trusteeship by reason of Section 27 of the Limitation Act. It is relevant to extract Section 27 of the Limitation Act, which reads as under:

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished”.

21. On a perusal of the above, it is clear that when a person is obliged to institute a suit for possession of any property then by operation of Section 27 at the determination of the period thereby limited his right to such



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property shall be extinguished. The word 'suit for possession' referred to in the above provision, is a suit in respect of which the period of limitation is prescribed by the schedule to the Limitation Act, which is three years. As already discussed and held above, the plaintiffs have neither relinquished nor abandoned their right over the trusteeship. All along the plaintiffs have been claiming trusteeship to be handed over by the defendants after the turn management of the defendants came to an end. But the defendants refused to hand over the trusteeship. Further, the plaintiffs can very well invoke Article 107 of the Limitation Act which prescribed the period of limitation as 12 years to file the suit from the date on which, the defendants takes possession of the office adversely to the plaintiffs, which, the plaintiffs have rightly invoked and filed the suit and when once the Courts below have rendered categorical findings that the suit is not barred by limitation, the prayer for recovery of property also covered in the suit filed by the plaintiffs and therefore, the right of the plaintiffs to file the suit for possession of the property has not been extinguished by virtue of Section 27 of the Limitation Act. Therefore, even though the Courts below have not dealt with this aspect, the same would not have any impact over their concurrent findings, which required no interference. Hence, the second substantial question of



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law is also answered accordingly.

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22. The services rendered by learned Amicus Curiae, Mr.T.S.Baskaran, is appreciated and placed on record.

In the light of the above discussions, the Judgments and Decrees of the Court below are hereby confirmed. Accordingly, the present Second Appeal fails and it is dismissed. The parties shall bear their own costs throughout.

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Index : Yes/No

Internet : Yes/No

Speaking /Non-Speaking Judgment

ssd

KRISHNAN RAMASAMY, J.,

ssd



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