A. Chockalingam Chettiar Vs State of Tamil Nadu by The District Collector, Thanjavur at Court Road, Thanjavur Town and Munsifi

Court: Madras High Court

Date of Decision: Nov. 17, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 174
Hindu Succession Act, 1956 â€" Section 29

Citation: (2009) 2 LW 58

Hon'ble Judges: A.C. Arumugaperumal Adityan, J

Bench: Single Bench

Advocate: V. Chandrasekar, for the Appellant; M. Balasubranmanian, for the Respondent

Final Decision: Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.
This appeal has been directed against the decree and judgment in O.S. No. 114 of 1990 on the file of

the Court of Subordinate Judge, Thanjavur. The short facts in the plaint necessary for deciding this appeal are as follows:-

One Subramania Swamigal @ Nondi Samiyar as was popularly known, was a very old and crippled Samiyar without any relatives whatever. He

was living in Thoppil Pillaiyar Roil in South Rampart, Thanjavur. The public at large have great confidence, regard and faith on him. In return the

public used to contribute cash and donations to the said Swamiyar, who was an orphan without any relatives whatsoever. During his life time, he

saved considerable amount and other valuables, contributed by his devotees and Bakthas as kanikkai for the jabam and prasadam given by the

Swamigal. The said Nondi Swamigal @ Subramanian Samigal died in-testate without legal heirs on 23.5.1988 in the said temple premises. On

receipt of information from the public the Tanjavur West Police registered a case in Cr. No. 843 of 1988 u/s 174 of Cr.P.C. The temple was

sealed by the Sub-Collector, Thanjavur, and after postmortem the body of the said Samigal was entrusted to one of his devotees viz.,

Thangamuthu. Thereafter, the Sub-Collector took an inventory of all the belongings of the deceased Swamigal as per Rules and Regulations in

force. During inventory a promissory note for Rs. 1,70,000/- was found in the temple premises along with other cash, vessels, jewels etc., The said

promissory note was executed on 5.8.1985 by the defendant in favour of the said deceased Subramania Samigal for the said amount borrowed by

him for his family expenses. The said promissory note was written and executed by the defendant himself and attested by one N.Krishnamurthy

Gurukkal and one A.Meenakshisundaram. The defendant has made part payments of Rs. 12,600/- and Rs. 16,800/- respectively on 5.5.1986

and 5.5.1987 and the deceased Swamigal himself made endorsements of receipt of the said amounts from the defendant on the said dates on the

back of the said promissory note. The Sub-Collector, Thanjavur then took possession of all the valuables, cash including the suit promissory note

and other belongings of the deceased Swamigal, who died intestate without any legal heirs whatever to succeed to his estate Escheated to the

Government of Tamil Nadu as per S.29 of Hindu Succession Act, 1956, Therefore, the Government of Tamil Nadu became the successor in

interest and lawful owner of all the assets of the deceased Swamigal above named including the suit promissory note, The District Collector is now

in charge of all the properties left by the Swamigal including the said promissory note. The Tahsildar, Thanjavur sent a registered notice on

2.8.1988 to the defendant through his Office Assistant Mr.S.Kaliaperumal galling upon the defendant to pay the balance of the suit promissory

note amount and discharge the promissory note''s debt. As the defendant was not available in his house at Regunathapuram on the said date, the

same could not be served on him. But the defendant himself on coming to learn the visit by the said S.Kaliaperuaml, an Assistant from Taluk

Office, Thanjavur, voluntarily came to the Taluk Office on the very next day on 3.8.1988 and received the said demand notice in person. He also

acknowledged the receipt of the said notice in writing on the office copy of the notice in Taluk Office, Thanjavur. The defendant who received the

said demand notice has not cared to pay the suit debt. But he sent a reply dated 12.8.1988 disputing the right of the government to realise the suit

promissory note debt. Inter alia he has admitted his liability under the promissory note. The contents of the reply are not true and tenable. As there

is no Will the properties of the deceased including the promissory note debt Escheated to the Government of Tamil Nadu which is entitled to

realise the debt. In fact the defendant himself enclosed a xerox copy of the letter dated 22.5.1988 written by the Swamigal in his own hand

directing the defendant to pay the suit promissory note debt for renovating the temple in question It also contains his other Wishes. The said letter

was found in the temple during the inventory and the same is filed along with the plaint. Hence, the suit. The Suit is not barred by limitation.

2. The defendant in his written statement would contend that the suit is not maintainable. One Thangamuthu, who was the ardent devotee of the

deceased Swamigal, was entrusted to take charge of his Guru''s estate and administer them. In the plaintiff''s officers were convinced about the

claim of said Thangamuthu and that is why they handed over the body to him for disposal. As such it is not a case of a person dying intestate or

without anybody to administer the property. It is true that the defendant executed a promissory note in favour of Subramania Swamigal on

5.8.1985. Swamigal is well known to the defendant and in fact the Samigal had given financial accommodation to several of his close friends and

ardent devotees. He was always in the habit of insisting upon the promisors executing promissory notes for twice the amounts actually borrowed.

This was with a view to secure in the interest of 24% per annum always stipulated by Swamigal. The de-ceased Swamigal insisted upon the

promissory note stipulating only 12% per annum but mentioning the principal amount twice the one actually lent. Thus the defendant had borrowed

only Rs. 85,000/-. The defendant had made arrangement to repay the amount with interest. However, the defendant could not meet Swamigal, on

22.5.1988, Swamigal had sent letter to meet him. The defendant was not in the village. Subsequently, the defendant learnt that Swamigal passed

away on 23.5.1988. Up to 5.8.1988, the defendant had paid interest to the said promissory note. The annual interest on Rs. 85,000/-at 24% per

annum comes to Rs. 20,400/-. The deceased Swamigal however advised the defendant to pay interest at a flat rate of Rs. 1,400/- per month,

which the defendant did. The State of Tamil Nadu is not legally entitled to file the suit. The properties of Swamigal cannot be automatically

Escheated to the Government without any enquiry. The plaintiff has not conducted any enquiry and this defendant understands that there were

several claimants claiming to have succeeded to the estate of Swamigal. The procedure adopted by the plaintiff to claim that the properties have

been Escheated to it is illegal. The allegation as if the properties had been escheated to the Government u/s 29 of the Hindu Succession Act is

preposterous. The Government of Tamil Nadu is not the successor in interest and lawful owner of the proper-ties of the deceased Swamigal. The

Government is only a temporary custodian. Admittedly no proceedings for escheat in law have been taken in conformity with the relevant

provisions and regulations governing the escheat. The defendant understands that no such proceedings for Escheat have till today been initiated by

the Government. As such the Government of Tamil Nadu can by no stretch of imagination call itself to be the successor in interest of the deceased

Swamigal. The Government of Tamil Nadu have no legal title over the suit promissory note. The defendant understands that one Thangamuthu

Manniyar has given a petition to the District Collector, Thanjavur claiming that he is entitled to administer the properties of the deceased Swamigal.

The defendant understands that no action has been taken on the said petition. The plaintiff has no legal status to claim recovery of the amount

alleged to be due under the promissory note. Hence, the suit is liable to be dismissed.

3.0n the above pleading the learned trial Judge had framed seven issues for trial. On the side of the plaintiff, P.W.1 to P.W.5 were examined and

Ex.A.1 to Ex.A.25 were marked. On the side of the defendant, D.W;1 and D.W.2 were examined and Ex.B.1 was marked. After considering the

oral and documentary evidence, the learned trial Judge has decreed the suit for Rs. 2,22,739/- with proportionate costs. Aggrieved by the findings

of the learned trial Judge this appeal has been preferred by the defendant.

4. The point for determination in this appeal is whether the suit filed by the plaintiff without completion of Escheat proceedings as per Clause 7 of

Section 16 of Regulation III of 1802, is valid?

5.POINT:-The learned counsel for the appellant/defendant focussing the attention of this Court to a legally enforceable plea that the suit filed by the

plaintiff is premature since the plaintiff will have cause of action to file the suit only if it is decided by a competent Court/Subordinate Judge or in the

absence of a Subordinate Judge by the District Judge that there is no legal heirs alive in any part of the world for the deceased Nondi Swamigal @

Subramania Swamigal, the promissor under the impugned promissory note - Ex.P.12. Dated 5.8.1985 executed by the defendant in the absence

of an order passed under Clause 7 of Section 16 of the Regulation III of 1802 under Escheat proceedings. According to the learned counsel for

the appellant, even though under Ex.A.12 he had borrowed a sum of Rs. 1,70,000/-, as per Ex.A.13 & Ex.A.14 - endorsements, he had repaid a

portion of the said debt. But the plaintiff has filed the suit under a misconception that the suit is to be filed within three years from the last payment

under Ex.A.13 dated 5.5.1986 forgetting for a moment that the Government has a limitation period of 30 years for filing the suit for realisation of

the amount due under Ex.A.12-promissory note. The learned counsel for the appellant would also brought to the notice of this Court that Escheat

proceedings are still pending as per the admission made by P.W.1 in the cross-examination. According to P.W.1, a proposal under Na.Ka. No.

27394/88 for escheat proceedings was forwarded to the Government by the Revenue Divisional Officer, But still an order is awaited from the

Government for initiating the said Escheat proceedings and that P.W.1 has categorically admitted in his evidence in cross-examination that the

property belonging to Nondi Swamigal @ Subramania Swamigal was not Escheat yet and that a separate file is being maintained in the Taluk

Office, Thanjavur. Reliance is based on Board"s Standing Order No. 197 by the learned counsel for the appellant in support of his contention that

the suit without an order in the Escheat proceedings is not maintainable. Board"s Standing Order No. 197 reads as follows:-

Section 1 -Escheats of Personal Property

Personal property of heirless intestates (i) In the mufassal, the Additional District Magistrate, or where the value of the property does not exceed

Rs. 50, the sub-divisional magistrate (executive), should take charge of all unclaimed personal property left by Hindus, Muhammadans and others

who have died intestate and without heirs. If the property is worth Rs. 50 or less, the sub-divisional Magistrate (executive) should cause it to be

sold at once and the sale proceeds credited to Government. Sales should be in rupees and naye paise. In other cases the Additional District

Magistrate should report the matter to the Subordinate Judge, or if there is no subordinate judge in the district, to the District Judge who will issue

orders under clause 7 of Section 16 of Regulation HI of 1802. If claims to the property are subsequently advanced before the subordinate judge

or the District Judge, the Additional District Magistrate should arrange for the case being watched and the interests of Government represented in

the Court if there is reason to believe that the claims are unfounded. If the Additional District Magistrate has reason to believe that personal

property left by heirless intestates has been taken possession of by persons who have no valid claim to it, he should institute a suit for its recovery

as contemplated by clause 4 of Section 16 of Regulation III of 1802.

The learned counsel for the appellant relying on State of Bihar Vs. Radha Krishna Singh and Others, , would contend that for initiating any

proceedings in respect of the property left by Nondi Swamigal @ Subramania Swamigal, who admittedly died intestate without any legal heirs

there must be an order in the escheat proceedings passed in favour of the Government as per Clause 7 of Section 16 of Regulation III of 1802 by

the competent Judge viz., Subordinate Judge in the District if there is no Subordinate Judge by the District Judge. The short facts of the above said

ratio relied on by the learned counsel for the appellant are that:

The said appeals before the Honourable Apex Court were preferred against the judgment of the Special Bench of the Patna High Court by which

the High Court decreed title suit No. 5/61 after reversing the Judgment of the trial Court. After the death of one Maharaja Harendra Kishore

Singh, who died issueless on the 26th of March 1893, a serious dispute arose about the impartible estate left by him. The Maharaja claimed to be

a direct descendant of Raja Hirday Narain Singh who was the admitted owner of the properties. Several persons came forward with rival claims of

being the heirs to the properties left by the Maharaja which consisted of immovable and moveable properties, such as lands, houses, jewellery, etc.

As a result of the hot contest by each of the claimants, one suit was filed at Varanasi being T.S. No. 3/55. That suit was filed by one Rani Bux

Singh who claimed to be the barest reversioner of the late Maharaja. Thus suit, however, appears to have died its natural death during the

preliminary stages and was ultimately withdrawn on April 9, 1956, leaving only three claimants ill the field.

Another suit was filed on 16th August 1955 in the Court of Sub-Judge, Patna which was registered as T.S. No. 44 of 1955. The claimant in this

suit was one Suresh Nandan Singh of Sheohar who had put in his claim before the Board of Revenue which had taken over the management of the

entire properties after the death of the widows of the Maharaja.

The third suit being T.S. No. 25/56 was filed by two sets of plaintiffs who had entered into some agreement inter se. That suit was filed in the

Court of Sub-Judge, Patna on April 11, 1958. In that suit, the main claim was put forward by Raja Jugal Kishore Singh who claimed to have

succeeded to the gadd; of the Bettiah Raja in the capacity of putri ka putra of Raja Dhrub and on the extinction of the line of Raja Dalip Singh by

reason of the death of Maharaja Harendra Kishore Singh, the right devolved on the plaintiff, Ambika Prasad Singh.

The fourth suit was filed on March 12,1959 in the Court of Sub-Judge, Chhapra which was later transferred to the Court of Sub-Judge, Patna and

renumbered as T.S. No. 5 of 1961. In this suit also, there were two sets of plaintiffs -one consisting of plaintiffs who had entered into a

champertous agreement with the other set of plaintiffs. In this suit, the principal plaintiffs, Shri Radha Krishna Singh, one of the sons of Bhagwati

Prasad Singh, claimed to have succeeded to the estate of the late Maharaja as his nearest reversioner.

The contest was between the plaintiff Radha Krishna Singh and the State of Bihar, supported by the State of Uttar Pradesh.

But it is to be noted that the lis was not initiated by the State of Bihar or the State of Uttra Pradesh. The relevant observation in the said dictum

relevant for deciding this appeal at para 272 at page 741 is as follows:-

We entirely agree with the opinion expressed by the learned Judge on this question. However, we would like to leave this question open without

deciding it one way or the other because for the purpose of deciding the appeal it is not necessary to go into the question of Escheat which may

have to be determined when the State of Bihar and Uttar Pradesh come forward to claim escheat in a properly constituted action. The plea taken

by both the States on the question of Escheat is therefore left undecided.

So it is clear from the above said observation that question of Escheat is to be decided only in a case like on hand. The appellant/defendant had

raised valid contention before the trial Court that without an order of Escheat in their favour the suit filed by the Government is not maintainable.

Even though the witness P.W.1 on the side of the plaintiff - Government has deposed Escheat proceedings have been initiated, he would fairly

admit that no final order has been passed in the said Escheat proceedings. An order in Escheat proceedings is to be passed as per the clause 7 of

Section 16 of Regulation III of 1802. Without an order of Escheat in favour of the Government, I am of the view that the suit filed by the plaintiff is

not maintainable because there is no cause of action for the Government to file the suit pending Escheat proceedings. Point is answered

accordingly. In fine, the appeal is allowed and the judgment of the learned trial Judge in O.S. No. 114 of 1990 on the file of the Court of

Subordinate Judge, Thanjavur, is hereby set aside, but the Government can file a suit on the same cause of action after the Escheat proceedings are

over under clause 7 of Section 16 of Regulation III of 1802. It is made clear that this Judgment will not form as resjudicata for the subsequent suit

to be filed by the Government within the period of limitation. No costs. Connected Miscellaneous Petition is closed.