(1912) 09 BOM CK 0011

Bombay High Court

Case No: First Appeal No. 130 of 1911

Rangacharya Appacharya		APPELLANT
	Vs	
Dasacharya Sankalpacharya		RESPONDENT

Date of Decision: Sept. 17, 1912

Acts Referred:

- Bombay Regulation Act, 1827 - Section 1

Citation: (1913) 15 BOMLR 178 : 19 Ind. Cas. 387

Hon'ble Judges: Rao, J; Batchelor, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Batchelor, J.

The plaintiff sued to obtain a declaration of his title to the village of Gangapur as Swami of a certain Math known as the Uttaradhi Math. The learned Subordinate Judge of the First Class was in the plaintiff''s favour upon most of the issues, but upon the issue of limitation was against the plaintiff. He, therefore, dismissed the suit with costs.

2. The only question with which we are concerned in appeal is the question of limitation, though it will be convenient to consider that question under different heads. We may observe that the argument, which has been somewhat more elaborate than usual, has covered a great many points of interest, but we propose to confine our judgment to those points relevant to our decision.

3. The defendants in the suit are the successors-in-title of one Mudu Ramacharya to whom in 1830 or 1831 the village in suit was given by his brother, the then Swami Satya Sankalpa. The evidence shows that in A. D. 1678-79 the village was given in Inam to a Swami named Satyabheenava.

4. The first question which we must decide is, whether this original grantee was a trustee. Mr. Coyaji for the respondent-defendants argues that he was not a trustee, and for that contention has relied upon the decision in Vidyapurna Tirtha v. Swami v. Vidyanidhi Tirtha Swami ILR (1904) Mad. 435. He urges that this decision shows that a Swami of a Math, as opposed to a temple, is not a mere trustee. It appears to us that the question, whether this decision is to be followed by this Court, will be best answered when the point arises, and at that time it will be necessary to reckon with various decisions of our own Court such as Shankar Bharati Swami v. Venhapa Naik ILR (1885) Bom. 425. At present, however, as it seems to us, no such question arises, because in our view the grantee was a trustee, not because he was called a Swami of an institution called a Math, but because the circumstances of this particular grant set it beyond doubt that the capacity in which he took was that of a trustee. This is shown by the terms of the original grant Ex. 63, which is corroborated by the inquiries and reports of 1854 and by the Inam Commission''s proceedings of 1857. These Exhibits show that the village was granted to the original Swami in Inam for the purpose of meeting the expenses of camphor for the idol. It appears that camphor is burnt in a censer which is swung before the idol in the daily ceremony known as the '' Karpur Mangalarti''. We think that this is a clear case of a trust. The legal property was by the Grant vested in the Swami, while the equitable ''estate was in the juridical person, the idol. The case, therefore, fulfils the definition of a trust which was given in Hardoon v. Belilios [1901] A.C. 118 by Lord Lindley, where he said, that to establish the relation of trustee and cestni que trust all that is necessary is to prove that the legal title was in the plaintiff and the equitable title in the defendant. That definition appears to us to be in harmony with the definition embodied in the Indian Trusts Act. We have no doubt, therefore, that the original grantee took as a trustee; and if that is so, his successors held by the same title.

5. In these circumstances the question arises whether the defendants could acquire and did acquire a title by prescription. The evidence shows that they went into possession in 1836. We say 1830, for the deed of January 1831 refers to an "oral gift which has already been made. But for the purposes of the case it is not material whether the defendants'' possession began in 1830 or in 1831. Between 1830 and 1840 the defendants were paying a small sum equivalent to Rs. 20 per annum as Judi on the land; but after 1840 this payment was stopped. It has been urged that the payment of this Rs. 20 between in 1830 and 1840 indicates that the original transfer could not be regarded as a gift at least until 1840. We are unable, however, to accept that position. The document Ex. 28 of the 5th of January 1831 proves that the gift to the defendants'' predecessor-in-title was an absolute gift with possession. The English word '' absolute'', which appears in the translation, is indeed but a weak substitute for the vernacular word employed in this paper. This vernacular-word is ''Krishnarpana'' a word which amongst Hindus is reserved to denote specifically a gift that is irrevocable and absolute. We think that a mere temporary condition-that a trivial sum of money should be paid as Judi does not deprive the transfer of its

character as a gift. We must hold, therefore, that the defendants went into possession as proprietors as early as 1830.

6. But from the view which we take of the case as a whole it will appear that, in our opinion, the result would be the same even if the defendants'' possession as owners had to be deferred until 1840. In 1830 the law in this Presidency as to prescription was Section 1 of the Bombay Regulation V of 1827 which provides that whenever Immovable property has been held without interruption for a longer period than thirty years by any person as proprietor, such possession should be received as proof of a sufficient right of property. It is clear to us that the character in which the defendants held possession was that of proprietors. The gift, as we have said, was an absolute gift to them and it was they who from time to time paid the usual Nazrana to Government.

7. Since they went into possession then in 1830, that possession would, under the Regulation, have ripened into title by the year 1860, if in the meanwhile nothing had happened to prevent it. What then is it that is suggested as having happened to prevent the title accruing under the Regulation? According to plaintiff it is the intervention of Act XIV of 1859, Section 2 of which provides that no suit against a trustee in his lifetime, and no suits against his representatives for the purpose of following in their hands the specific property which is the subject of the trust, shall be barred by any length of time. It appears to us, however, that it is not open to the appellant to invoke this section of the Act of 1859 for the purpose in hand, and that for two reasons. In the first place the coming into force of the Act of 1859 was deferred by the operation of Act XI of 1861. This Act consists of two sections, of which the first relates to suits and the second to proceedings in execution. The first section which directly concerns us at present enacts that all suits then pending, or which should be instituted before the 1st day of January 1862, should be tried and determined as if Act XIV of 1859 had not been passed. It appears to us, therefore, that for our present purposes the effect of Act XI of 1861 was to suspend the coming into force of Act XIV of 1859 until the 1st of January 1862 ; in other words until after the 1st of January 1862, it was not open to the plaintiff or to any person to challenge the defendants'' possession in reliance on Section 2 of Act XIV of 1859. But prior to the 1st of January 1862, the defendants'' possession had grown into title since it began in 1830 and had only thirty years to run. That is the first ground upon which, it seems to us that, Act XIV of 1859 does not assist the present appellant.

8. Another reason why, in our opinion, that Act is of no avail to him is, that we do not regard it as having affected Section i of Bombay Regulation V of 1827. It appears to us both on the words of the enactments and on authority that this section of the Bombay Regulation is an enactment of positive prescription and, as such, is not affected by Act XIV of 1859, which is a Statute of limitation. In support of this view we may refer to two cases decided in this Court by Sir Michael Westropp, namely, Sitaram Vasudev v. Khanderav Balkrishna ILR (1876) Bom. 286 and Rambhat

Agnihotri v. The Collector of Puna ILR (1877) Bom. 592. In the former case the appeal was allowed and the appellant''s argument which prevailed was stated by Mr. Mahadev Chimnaji Apte in these words: "The prescriptive title given by Section 1 of the Regulation could not be taken away either by Act XIV of 1859 or Act IX of 1871, in the absence of any provision, either express or implied, to that effect. But neither of the Acts contains any such provision". In his judgment, conceding this argument, Sir Michael Westropp refers to the Privy Council''s decision in Maharana Fatesangji v. Desai Kallianraya (1873) 10 Bom. H. C. to the effect that Section 1 of Regulation V of 1827 is " an enactment which, inasmuch as it relates only to the acquisition of a title by positive prescription, seems to be unaffected by Act XIV of 1859, and to stand unrepealed in the Presidency of Bombay". We remark in parenthesis that the Regulation stood unrepealed till it was repealed by the Limitation Act of 1871. The Act of 1859 did not purport in any manner to repeal or supersede the Regulation.

9. To revert to Sir Michael Westropp''s judgment, the learned Chief Justice says in a later passage that the defendant in that case had acquired a prescriptive title by his uninterrupted possession as proprietor for more than thirty years previously to the passing or coming into force of Act IX of 1871. And towards the end of his judgment where Surtees v. Ellison (1829) 9 B. & C. 750 was considered, the Chief Justice goes on to say, that in the opinion of the Bench " a title acquired under an enactment of positive prescription, such as Regulation V of 1827 before it was repealed, is a transaction past and closed. "

10. As we have noted, the Regulation of 1827 was not repealed till 1871, and it is clear that if that date is to be accepted as the ultimate date up to which the defendants'' possession should be reckoned, they have far more than the statutory period in their favour. In Rambhat Agnihotri''s case ILR (1877) Bom. 592 similar language was held by the Chief Justice, who points out that the law of prescription in this Presidency remained as it was established by the Regulation of 1827, until that Regulation was expressly repealed by Section 2 of Act IX of 1871.

11. These authorities seem to us to decide the point now in controversy. Mr. Jayakar seeks to avoid their authority on the ground that this particular case is a case of an alienation from a trustee, and he argues that at least so far as the case of trustees is concerned, the Regulation of 1827 must be held to be repealed by Section 2 of the Act of 1859. The rule of interpretation, is of course that where, as here, the later Act does not purport or affect to supersede an earlier Act, the Court will endeavour '' to read the two enactments together and to avoid conflict if possible. It appears to us that conflict in this case is easily avoided.

12. On the authorities which we have quoted, the reason why Section 1 of the Bombay Regulation is not affected by the Act of 1859 is, because that section of the Regulation deals with positive prescription, while the Act of 1859 deals only with the limitation of suits. But if that is a good principle of distinction, it applies, we think,

just as much to the case of trustees as to the case of any other persons. Section 2 of the Act of 1859 which deals with trusts is as much a section devoted to the limitation of suits as any other section in the Act: and if the other sections are held for the reasons stated not to involve any interference with the prescriptive rights conferred by the Regulation, Section 2 of the Act is equally incapable of causing any such interference.

13. On these grounds, we think that the decision of the lower Court is right, and we dismiss the appeal with costs. One set of costs.