Sundara Bhattar Vs. Munusami Mudali and ors.

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Court : Chennai

Decided On : Sep-09-1928

Reported in : AIR1929Mad751

Appellant : Sundara Bhattar

Respondent : Munusami Mudali and ors.

Judgement :

Madhavan Nair, J.

1. These two second appeals arise out of O.S. No. 25 of 1919 and O.S. No. 246 of 1921 on the file of the District Muasif of Conjeeveram which were tried together and raise the question whether alienation of the murai (turn), of one Ekambara Bhattar in the Sthanika office in Sri Ekambaranatha Swami Temple in favour of a female, i.e., the grandmother of the plaintiff in O.S. No. 246 of 1921 is valid.

2. The facts are briefly these : The plaintiff in O.S. No. 25 of 1919 alleged that Ekambara Bhattar usufructuarily mortgaged his murai to one Subba Gurukkal in 1863 for Rs. 400, that Subba Gurukkal sub-mortgaged it to the ancestors of defendants 1 to 3; that he as the nearest gnati of Ekambara Bhattar, redeemed the mortgage in 1917 by paying Rs. 400 to the mother of defendant 1; that she put him in possession of the property; that, as the mortgage deed was not returned to him, defendant 4, guardian of defendants 1 to 3, taking advantage of it, leased the murai to defendant 5 as if the mortgage was still subsisting and, that defendant 5 is now trying to disturb his possession. He therefore asked for a declaration that he had redeemed the usufructuary mortgage and for an injunction to restrain the defendants from interfering with his enjoyment of the murai. The defendants amongst other pleas, raised the contention that Ekambara Bhattar executed a stridhanam deed in 1864 in favour of one Parvati conveying the suit-murai and other properties to her; that, on her death, her daughter Kamakshi inherited it and on Kamakshi's death, her daughters including Manonmani Ammal inherited the murai and that 'Manonmani Ammal, as the only surviving daughter, is entitled to it exclusively now and that the plaintiff has therefore no right to it. This Manonmani Ammal is the plaintiff in O.S. No. 246 of 1921 and the contesting defendant in that suit- is Sundara Bhattar, the plaintiff in O.S. No. 25 of 1919. On the main question she raised the same contention as those put forward by the defendants in O.S. No. 25 of 1919. She stated that Ekambara Bhattar had a brother Kumaraswami Bhattar who predeceased him; that he had no issue at all; that Kumaraswami Bhattar had a daughter called Parvati, that Ekambara Bhattar and the widow of Kumaraswami Bhattar gave the suit-murai and other properties as absolute stridhanam to Parvati and that after Parvati's death she, as the sole surviving daughter of Kamakshi, the daughter of Parvati, is entitled to the suit-murai and not defendant 1, i.e., the plaintiff in O.S. No. 25 of 1919. She also stated

that her stridhanam right is valid under the Hindu law as well as according to the custom obtaining in the suit temple.

3. It is conceded that, if Manonmani's right to hold the suit-murai cannot be upheld, then the plaintiff in O.S. No. 25 of 1919 is entitled to the relief that he has asked for in his plaint. The right of Manonmani Ammal to hold the suit-murai was raised in issue 9 in O.S. No 25 of 1919 and in a more amplified form in issue 6 and the additional issues 14, 15 and 16 in her own suit, which are as follows:

Issue 6. Whether a gift of the stanika micas in favour of a female is not valid?

Issue 14. Whether the gift of the plaint-mentioned stanikam miras, which is a religious office, is valid?

Issue 15. Whether there is a custom in the community to which the parties belong justifying alienations of the hereditary offices in the plaint temple?

Issue 16. Whether such a custom is valid?

4. On these main issues the lower Courts found in favour of the contentions raised by Manonmani Ammal. In the result it was held that the plaintiff in O.S. No. 25 of 1919 had no right to redeem the mortgage but that Manonmani had. The plaintiff in O.S. No. 25 of 1919, that is defendant 1 in O.S. No. 246 of 1921, is the appellant in both these second appeals.

5. In discussing issues 13 to 16 in para. 37 of his judgment the learned District Munsif makes the observation at the close of the paragraph:

that the pleader of defendants 1 and 2 treated these issues 14 to 16 as issues to be considered as part of issue 6 which related to the capacity of a female to hold the office and not as independent issues.

6. Relying on this observation the learned advocate for the respondent argues that the broad question regarding the existence of a custom justifying alienations of hereditary office in general, that is, to all persons irrespective of their sex, was not considered in this case but what was considered was only the narrow issue whether there is a custom justifying alienation in favour of females and whethar such a custom is valid. It may be that the arguments proceeded on this basis, but I must point out that in the same paragraph where this observation, occurs the evidence regarding alienations in favour of people other than females is also referred to and I do not sea anywhere in the judgment a consideration of the evidence referring only to alienation in favour of females. Probably the Court was asked to deal with the case on the narrow ground, because the respondents wanted to bring their case within the principle of the ruling in Annayya Tantri v. Ammakka Hengsu [1918] 41 Mad. 886 which if applicable, to the facts of this case, would show, that an alienation of a religious office in favour of a female is invalid in law. However that may be. I am prepared to deal with these second appeals on the ground suggested by the respondents, i.e., on the issues as seem to have been modified in the course of the case; these being (1) whether the custom alleged to prevail in the suit temple of alienating the religious office of Sthanika murai in favour of females has been established by the evidence and (2) if so, whether such a custom is or is not valid in law. I shall, however, consider the other evidence also bearing on the question of

alienation, so that there-may be no room for misunderstanding, the grounds on which my judgment is based.

7. It has been held by the Privy Council: see Rajah Varma Valia v. Ravi Varma-Kunhi Kutti [1876] 1 Mad. 235, that in the absence of a well proved and established custom which is not bad in law' that transfers of religious trusts are void. Applying this principle our High Court has held in a number of cases Rama Varma v. Raman Nayar [1882] 5 Mad. 89, Kannan v. Nilakandan [1884] 7 Mad. 337, Narayana v. Ranga [1892] 15 Mad. 183,. Subbarayudu v. Kottayya [1892] 15 Mad. 389, Gnana Sambanada Pandara Sannadhi v. Velu. Pandaram [1900] 23 Mad. 271; Lakshmanaswami Naidu. v. Rangamma [1903] 26 Mad. 31, Rajambattar v. Singarammal : (1919)36MLJ355 and Venkata Rao v. Papayya [1926] 24 M.L.W. 674, that the alienation of a religious trust or office either to a member of the founder's family or to a stranger is utterly invalid, it has not been quite settled whether the alienation by the office holder in favour of a sole immediate heir would be void or not : see Narayana v. Banga. But the validity and the enforcement of a custom authorizing the alienation of religious offices did not arise for consideration in any of these cases. In Sundarambal Ammal v. Y. Gurukkal [1915] 38 Mad. 850 and Karraga v. Deveppa [1915] 26 Ind.Cas. 442, the opinion has been expressed that the custom sanctioning alienation of religious offices would not be upheld; but in the former case it was not necessary for its disposal to decide this point, and in the latter, the question has not been considered in all its aspects. In Suppa Bhattar v. Suppa Sakkayya [1915] 29 M.L.J. 558, Srinivasa Iyengar, J., expressed the view that the weight of authority seems to be against the contention that:

an alienation of a religious office is absolutely void and a custom of alienability should not be recognized by Courts, as such a custom is against public policy.

though it was unnecessary to discuss the question in that case. In Mancharan v. Pranshankar [1881] 6 Bom. 298, the alienation of a priestly office to a member of the founder's family standing in the line of succession was held to be valid; and in Mahamaya Devi v. Haridas Hawar [1915] 42 Cal. 455, it was held that a custom recognizing the validity of a transfer to those alone who by birth or marriage are entitled to hold the office was reasonable. Having regard to the decisions of our Court, which, in my view, do not disallow the setting up of a plea of valid custom, we have to decide whether the custom alleged to prevail in the suit temple of alienating religious office of sthanika murai in favour of females has been established by the evidence in the case and if so whether such a custom is or is not bad in law.

8. The duties of the sthanikas consist in doing puja, abishekam, and alankaram, to the utsavar and all the minor deities in the temple. The only evidence in support of a custom justifying alienation in favour of females pointed out by the respondents consists of Exs. F and G. Ex. K is a will by which one Minakshi Ammal bequeathed the sthanika miras rights which she was enjoying to her dayadi Subramania Nayakar. In the document she indicates that she enjoyed the right by inheritance. Ex. G is a will by one Valiammal, in which she bequeathed her puja miras right to her son's daughter Saraswati. In the deed she says that she acquired the right by inheritance, from her husband. From these two instances I am asked to infer the existence of a custom justifying then alienation of sthanika murai in favour of females. In the first place these two documents do not support the case of unrestricted alienation in favour of females, the existence of which the respondents must show in order to succeed and secondly even if they do, the instances, in my opinion, are not enough to

constitute a valid custom with all its legal attributes. Both the documents show that the testators obtained the rights which they bequeathed by inheritance and not by alienation and they transmitted those rights to those who would be entitled to possess them after their death. In the case before us, Parvati, who obtained the sthanika murai in question under the stridhanam document, was not entitled to enjoy those rights except by virtue of the stridhanam document; and so, the instances quoted, which deal with the acquisition of rights by inheritance cannot apply to this case which is one of alienation to a female who is not otherwise entitled to hold the office. If this distinction is kept in mind it will be obvious that these two instances cannot help the respondents and also that the case in Annayya v. Ammakka, much relied on by the respondents is inapplicable to the present case. In that case the hereditary office of archaka and the emoluments appertaining to it were claimed by a widow as a matter of right in succession to her husband and the Full Bench dissenting from Sadasiva Aiyar, J. held:

that a Hindu female is not competent by reason of her sex to succeed to the office of archaka in a temple and to the emoluments attached thereto.

9. Having regard to the previous decisions of this Court, I do not think this case can be considered to be an authority in support of the position that unrestricted alienations of religious offices in favour of females are valid. Even if Exs. F and G can be considered to be instances in support of the plaintiff's case, I do not think it is proper to infer the existence of a custom from these instances. In Puncha v. Bindeswari [1917] Ind.Cas. 960, it was held that a custom permitting alienation of shares in the right to receive offerings made to a temple is not established by six instances of undisputed transfers. In this case, we have instances of only two alienations and the moment the alienation was made to a female not otherwise entitled to hold the alienated office the right of alienation was disputed.

10. The other instances of alienation referred to in the lower Court's judgment are not alienations in favour of females. Those are: (1) the mortgage of Ekambara Gurukkal in favour of Subba Gurukkal in 1863; (2) Subba Gurukkal's sub-mortgage to Thathu Naicker in 1865 and (3) the sub-mortgage by Subba Gurukkal in favour of Thathu Naicker. These instances of alienations by two individuals, though the earliest took place 60 years ago, either by themselves or taken along with Exs. F and G cannot, in my opinion, support the custom of alienability of the religious office rights in this case. I must point out that the evidence relating to the custom in this case, though it is very scanty, has not been considered satisfactorily by the lower Courts. As the question whether the evidence establishes an alleged custom is one of mixed fact and law : see Kumarappa Reddi v. Manavala. Goundan [1918] 41 Mad. 374, I have examined the evidence myself to arrive at a correct conclusion.

11. On the finding that the alleged custom has not been established the question whether the alleged custom if established is valid in law does not arise for consideration.

12. In the result I must set aside the decrees of the lower Courts, decree the plaintiff's suit O.S. 25 of 1919 and dismiss the plaintiff's suit in O.S. No. 246 of 1921 with costs throughout in both the suits.