

PETITIONER:
PERIA NACHI MUTHU GOUNDER AND ORS.

Vs.

RESPONDENT:
RAJA THEVAR (DEAD) AND ORS.

DATE OF JUDGMENT 08/02/1985

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
KHALID, V. (J)

CITATION:
1985 AIR 821 1985 SCR (2) 809
1985 SCC (2) 290 1985 SCALE (1) 402

ACT:

Limitation Act 1908. Art. 134 B-Creation of trust of properties endowed to a deity by executing a Deed of Settlement-Revocation thereof by a registered Deed of Cancellation by Settlor-Trust properties mortgaged and subsequently sold-Wrongful alienation of trust properties either partly or wholly by a Trustee does not amount to a deemed resignation by the Trustee-Suit by heirs of the Settlor for recovery of alienated properties-Limitation to commence from the date of the death of the settlor-Held suit within limitation.

HEADNOTE:

Muthammal, the absolute owner of the suit properties, executed a Deed of Settlement dated May 17, 1925 (Ex. A-3) whereby she endowed the suit properties to a temple of her family deity. She constituted herself as the first trustee for her life and after that, her husband and mother were to be the trustees and after their demise, the respondents' heirs were to be the trustees. Five years later i.e. On January 28, 1930, she purported to cancel and revoke the trust (settlement), by getting the Deed of Cancellation registered. Thereafter, certain mortgages were executed by her in respect of the properties and later on the properties were sold by her to the father of appellants Nos. 1 and 2. She died on October 1, 1960. The respondents-plaintiffs, claiming to be the trustees of the endowment, filed a suit on August 29, 1962 for possession of the properties challenging the alienations that were made in favour of the appellants' father.

The appellants contested the suit and raised the plea of adverse possession and the suit being barred under Article 144 of the Act. The trial court held that the Deed of Settlement itself was not a genuine deed, but even if it were, the suit was barred under Article 144.

In the appeal by respondents-plaintiff, the Appellate Court held that Deed of Settlement was valid and genuine and in fact it effected a legal endowment in favour of the deity, the original settlor having divested herself of the ownership completely and consequently the Deed of Cancellation was ineffective in law. The suit was regarded as one falling under Art. 134B of the Act and the suit

having been filed within 12 years from the death of the settlor was held to be within time and the respondents-Plaintiffs' suit was decreed.

In the second appeal filed by the appellants, the High Court confirmed the first Appellate Court's decree.

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on appeal to this Court, the appellants, relying on the decision in *Srinivas v. Ramaswami*, [1966] 3 S.C R- 120, contended that there was a resignation on the part of the settlor as a Trustee and such resignation, if not overt and express, must be deemed to have taken place by reason of the fact that she herself had executed and registered the Deed of Cancellation (Ex.B-1) on January 21, 1930 and thereafter she had alienated the proper ties in favour of the appellants' father and she even left the village for quite a few years and since the suit was filed in the year 1962, long after the expiry of 12 years from such deemed resignation, it was barred.

The respondents-plaintiffs, however, contended that there was no plea of limitation specifically raised on the basis that there was any deemed resignation on the part of the settlor and as the parties did not lead any evidence focussing their attention on this aspect of the matter and if there be some evidence vaguely or generally led by the parties on this aspect the same should be ignored. alternatively, it was contended that even other wise by the mere execution of a Deed of Cancellation and indulgence in alienations of properties by the settlor in favour of the appellants' father no deemed resignation should be implied for a wrongful Cancellation Deed, and a wrongful alienation cannot affect her character as a trustee of the properties under the Deed of Settlement which was complete and under which she had divested herself of the ownership of the properties irretrievably. The starting point of limitation for the suit must be held to be the date on which the settler died.

Dismissing the appeal,

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HELD: 1. Limitation in the instant case, will have to be regarded as having commenced on the date of the death of the settlor and the respondents-plaintiffs' suit would be within time. [814E]

2. Where a trustee wrongfully alienates some trust property and even if the entire trust property is alienated, he does not cease to be a trustee. By wrongfully executing a Deed of Cancellation the settlor cannot effectively revoke the settlement and if such settlor happens to be the trustee he shall continue to be the trustee of the settlement. [813 a-F]

In the instant case, there is a clear finding recorded by the first Appellate Court, and the High Court that the Deed of Settlement dated May 17, 1925 was valid and complete in all respects where under the settlor had divested herself of the properties which she had endowed to the temple, and both the Cancellation Deed as well as the alienations were ineffective and wrongful and, therefore, it could not be said that by indulging in these acts she had resigned her position as a trustee of the endowment. [813 F-G]

(3) The fact that the settlor had left the village for a few years is neither here nor there. The facts regarding performing of Puja of the deity in the temple by some other persons and contribution towards the expenses of the temple by some devotees are really equivocal and would not be conclusive of the matter on the point of the settlor having resigned inasmuch as the temple which was a village temple

was already in existence,
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to which only properties had been endowed and the temple was a public A religious institution to which the endowment had been made and as such the fact that certain expenses of the temple were contributed by devotees or members of the public would hardly be indicative of the fact that the settlor had resigned from the position as a trustee qua the endowed property. Similar, would be the position with regard to the fact that some persons were performing the Puja which would not be unnatural in the case of a public religious institution. [813H; 814A-C]

There could conceivably be a deemed resignation or a deemed removal but for inferring the same some additional facts would be required to be proved. The facts on which reliance had been placed by the appellants by themselves are insufficient to warrant the inference that there was a deemed resignation [814C-D]

Srinivas v. Ramaswami, [1966] 3 S.C.R. 120, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1517 of 1971.

From the Judgment and Order dated 8-2-71 of the High Court of Judicature at Madras in S. A. No. 887/66.

K. Ram Kumar and Mrs. J. Ramachandran for the Appellants.

R. S. Ramamurthi and M. K. D. Namboodri for the Respondents.

The Judgment of the Court was delivered by

TULZAPURKAR, J. The only question that arises for consideration in this Appeal is whether the Respondents-Plaintiffs' suit was barred by Limitation under Art. 134-B of the Limitation Act.

One Muthammal, who was the absolute owner of the suit properties executed a deed of settlement dated 17th May 1925 (Ea. A3) whereby she endowed the suit properties to a temple in the village, the deity therein being her family deity. She constituted herself as the first Trustee for her life and after that her husband and mother were to be the trustees and after their demise, respondent's heirs were to be the trustees. Five years later, i. e. On 21st January 1930, she purported to cancel and revoke the trust (settlement), by getting the Deed of Cancellation registered. Thereafter certain mortgages were executed by her in respect of the properties and later on the properties were sold by her to the father of the appellants Nos. 1 and 2. She died on 7th October 1960. The plaintiffs claiming

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to be the trustees of the endowment, filed a suit on 22-8-1962, claiming possession of the properties challenging the alienations that were made in favour of the appellants' father. The appellants raised a plea of adverse possession and the suit being barred under Art 144 of the Limitation Act. On merits the Trial Court came to the CONCLUSION that the deed of settlement itself was not a genuine deed, but even if it were, the suit which had been filed on 22nd August 1962 was barred under Act 144. When the matter was taken in appeal, the Appellate Court took the view that the deed of settlement was valid and genuine and in fact it effected a legal endowment in favour of the deity, the original settlor having divested herself of the ownership

completely. In other words, the deed of cancellation was in effective in law. The suit was regarded as one falling under Art. 134 of the Limitation Act and since the suit had been filed thin 12 years from the death of the settlor, Muthammal, it was held to be within time, and the plaintiffs' suit was decreed. The appellants appealed to the High Court and in Second Appeal, the High Court confirmed the first Appellate Courts decree. That is how the appellants have come up in appeal to this Court.

Though initially the parties were at variance on the question as to whether it was Art. 144 or Art. 134 of the Limitation Act, 1908 that was applicable to the suit, in the High Court at the stage of the second appeal it was common ground that the suit was governed by Art. 134 B. Before us also counsel for both the parties agreed that the suit would be governed by Art. 134 but a question raised was as to when did the period of 12 years under that Art. commence ? Whether it commenced from the date of the death of the settlor or her deemed resignation as a trustee ?

Counsel for the appellants conceded before us that if the period for the suit is regarded as commencing from the death of Muthammal which occurred on 7-10-1960 the suit would obviously be within time but he contended that there was a resignation on the part of Muthammal as a Trustee and such resignation, if not overt and express must be deemed to have taken place by reason of the fact that she herself had executed and registered the Deed of Cancellation (Ex. B-1) on 21-1-1930 and thereafter she had alienated the properties in favour of the appellants' father and she even left the village for quite a few years. And since the suit which was filed in the year 1962 was filed long after the expiry of 12 years from such deemed resignation it was barred. In this behalf counsel relied upon a
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decision of this Court in Srinivas v. Ramaswami, (1) where a view A has been taken that deemed resignation or deemed removal of the prior manager could be the commencement or the starting point of limitation. On the other hand counsel for the respondents-plaintiffs urged that there was no plea of limitation specifically raised on the basis that there was any deemed resignation on the part of Muthammal and, therefore, parties did not lead any evidence focusing heir attention on this aspect of the matter and even if there be some evidence vaguely or generally led by the parties on this aspect the same should be ignored, for in the absence of a plea being raised in that behalf such evidence has to be ignored and would be of no avail. Alternatively counsel for the respondents plaintiffs contended that even otherwise by the mere execution of a Deed of Cancellation C and indulgence in alienations of properties by Muthammal in favour of the appellants' father no deemed resignation should be implied for a wrongful cancellation deed and a wrongful alienation cannot affect her character as a trustee of the properties under the Deed of Settlement which was complete and under which she had divested herself of the ownership of the properties irretrievably; therefore the starting point of limitation for the suit must be held to be the date on which Muthammal died.

It can not be disputed that where a trustee wrongfully alienates some trust property, and for that matter even if the entire trust property is alienated he does not cease to be a trustee. On parity of reasoning it stands to reason that by wrongfully executing a Deed of Cancellation the settlor cannot effectively revoke the settlement and if such settlor happens to be the trustee he shall continue to be

the trustee of the settlement. In the instant case there is a clear finding recorded by the first appellate court and the High Court that a Deed of Settlement dated 17th May 1925 was valid and complete in all respects whereunder Muthammal had divested herself of the properties which she had endowed to the temple and both the cancellation Deed as well as the alienations were ineffective and wrongful and therefore, it could not be said that by indulging in these acts she had resigned her position as a trustee of the endowment, One more aspect was relied upon by the counsel for the appellants that Muthammal had left the village for quite a few years and that there was evidence to show that the Puja of the deity in the temple was done by some other person and even some devotees had contributed to the expenses of the temple. The fact that the Muthammal had left the village for few years is neither here nor there. And

(1) [19661 3 S.C.R. 120.

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the other two aspects, in our view, are really equivocal and would not be conclusive of the matter on the point of Muthammal having resigned in as much as the temple which was a village temple was already in existence to which only properties had been endowed by Muthammal and the temple was a public religious institution to which the endowment had been made by Muthammal and as such the fact that certain expenses of the temple were contributed by devotees or members of the public would hardly be indicative of the fact that Muthammal had resigned from the position as a trustee qua the . endowed property in question Similar would be the position with regard to the fact that some persons were performing the Puja which would not be unnatural in the case of a public religious institution. It is true, as has been observed by this Court in Srinivas as case (supra) that there could conceivably be a deemed resignation or a deemed removal but for that purpose some additional facts would be required to be proved. In our view the aforesaid facts on which reliance has been placed by counsel for the appellants by themselves are insufficient to warrant the inference that there was deemed resignation on her part.

Having regard to the above discussion we are clearly of the view that in the instant case limitation will have to be regarded as having commenced on the date of the death of Muthammal and the respondents-plaintiffs suit would be within time.

As a last attempt counsel for the appellants made a faint request that if the materials were insufficient an opportunity should be given to the appellants to lead evidence on that aspect of the matter and the matter should be remanded back to the Trial Court. We do not think that at this distance of time we could consider this request favourably especially when there was no specific plea raised by the appellants in the written statement based on this aspect of the matter. In the result we confirm the decisions of the first appellate court and the High Court. The appeal is dismissed. No costs.

A. P. J.

Appeal dismissed.

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