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Present : Dalton and Driberg JJ.

MOHAMMED *et al.* v. ABDUL HADEEN.

319—*D. C. Galle, 24,691.*

Charitable trust—Action for declaration of title to trust property—Ordinance No. 9 of 1917, s. 111 (1) (c).

A claim for declaration of title to property of a charitable trust cannot be barred by prescription.

A PPEAL from a judgment of the District Judge of Galle. The facts appear from the judgment of Dalton J.

Keuneman, for defendant, appellant.

B. F. de Silva, for plaintiffs, respondent.

January 16, 1929. DALTON J.—

The plaintiffs instituted this action as trustees under a deed executed by one Pooachi Umma in favour of her husband Deen Mohamed Abdul Karim. They asked for a declaration of title to the premises at 146, Fishmarket street, Galle, and were successful in the lower Court.

In his answer defendant resisted their claim alleging that he had been in possession of the premises as owner and had obtained a good prescriptive title thereto. When the issues came to be framed he somewhat altered his position and was allowed to raise further defences, without however any amendment of his answer, which, so far as is necessary for this appeal, are dealt with below.

He appeals against the decision of the trial Judge on several grounds. The finding that the plaintiffs were trustees under the deed was not seriously contested in argument, and it is a finding, in my opinion, which cannot be upset, having regard to the terms of the trust deed. It was urged, however, that they could not succeed in their action as they had not obtained the consent in writing of the Attorney-General. It seems clear to me, however, that this action is not one which falls within the purview of section 101 of the Trusts Ordinance relied upon by Mr. Keuneman. In that event no consent is required.

It was then urged that the action is prescribed under the provisions of section 11 of the Prescription Ordinance, 1871. Abdul Karim died in 1914, and it is admitted that since that date up to the institution of this action in 1927 defendant had been in possession of the trust property, and has apparently been administering the trust. There is some doubt as to when the fifth plaintiff came of age, but even if the trial Judge's finding that she was only 23 years of age at the time of his judgment in September, 1928, be not supported by evidence on the record, it seems to me an answer is supplied to this ground of appeal in the provisions of section 111 of the Trusts Ordinance. Sub-section (1) (c) of that section provides that in the case of any claim in the interests of any charitable trust for the assertion of title to the trust property, the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance, 1871. It is admitted that this is a charitable trust and it is a claim for declaration of title to the trust property. Counsel has not satisfied me that, at any rate in the circumstances here, the claim by the plaintiffs as trustees is not in the interests of the trusts. It is true that in one sense the action is in the interest of the trustees, although it imposes burdens on them, but I am unable to see how it is not also in the interests of the trust. It is certainly not in the interests of the trusts that a persons who is not a trustee at all should be allowed to come in and administer the property and trust funds. The action is therefore not prescribed by any provision of the Prescription Ordinance, 1871.

It was lastly urged that defendant had acquired title to the property subject to the terms of the trust by ten years possession. Section 3 of the Prescription Ordinance sets the term of prescription for land or immovable property at ten years. But that possession must be free of any acknowledgment whence a right existing in

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another person than the possessor can be inferred. This possibly explains why in his answer defendant claimed possession "*ut dominus*." If he admits, as he now does, that the property is trust property and he held it as such, has section 3, having regard to its express terms on the matter of possession, any application? That question it is not necessary to answer here, for even if it has, it seems to me that section 111 (c) of the Trusts Ordinance provides that the claim shall not be barred by its provisions. The provisions of this section would appear to go beyond the provisions of English law.

Lastly, no case arises here for making use of the machinery provided by section 106 of the Trusts Ordinance in the case of religious trusts, whereby any arrangement *de facto* in force may be approved of and continued.

The judgment of the lower Court must, therefore, be upheld and the appeal be dismissed with costs.

DRIEBERG J.—

I agree with the judgment of my brother Dalton.

The appellant cannot claim to have acquired by prescription the right to administer the trusts created by the deed No. 4,692, P 1.

The law regarding prescription in the case of charitable trusts is fully set out in the judgment of the House of Lords in the case of *The Attorney-General v. Magdalen College*.¹ It will be seen how wide is the freedom from limitation of actions which claims arising out of charitable trusts in Ceylon enjoy as compared with similar trusts in England.

If the respondents' claim is one in the interests of the trust for the recovery of the trust property or for the assertion of title to it, the action cannot be barred by any of the provisions of Ordinance No. 22 of 1871—Section 111 (c) of the Trusts Ordinance, No. 9 of 1917.

This is an express trust with a clear provision for succession to the first trustee. The respondents are his rightful successors and are entitled to administer the trust. A claim that the trust property should be in the possession of the rightful trustees and administered by them and not by a trespasser must ordinarily be regarded as one made in the interests of the trust.

Though the appellant claims to have had adverse possession for ten years prior to this action, which was brought on June 28, 1927, the respondents cannot be said to have abandoned their claim.

Appeal dismissed.

¹ 18 *Berr.* 223 ; 6 *H. L. Cases* 189.