

Shivalingaiah Vs. Ananda Social and Educational Trust

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SooperKanoon Citation : sooperkanoon.com/382394

Court : Karnataka

Decided On : Mar-28-1985

Reported in : ILR1985KAR1950; 1985(2)KarLJ206

Judge : Murlidher Rao, J.

Acts : [Trusts Act, 1882](#) - Sections 48

Appeal No. : MFA No. 188 of 1985

Appellant : Shivalingaiah

Respondent : Ananda Social and Educational Trust

Advocate for Def. : S.C. Jawali, Adv.

Advocate for Pet/Ap. : S.S. Joshi, Adv.

Disposition : Appeal Allowed

Judgement :

Murlidher Rao, J.

1. The, facts to be narrated in this appeal reveal the sorry state of affairs and the unfortunate events that have been created by the promoters of education who started institution with a laudable object in the name of a great personality of this Country.

2. This appeal is by the defendants in O.S. No. 4130 of 1984, on the file of the 15th Additional City Civil Judge, Bangalore City. The plaintiffs in this suit had, on earlier occasion, filed O. S. Nos. 3028 of 1984 and 3707 of 1984. Those suits are pending. In O.S. No. 3028 of 1984, an interim injunction was granted on 29-8-1984, which is the subject matter of another appeal. There is no interim order in O.S. No. 3707 of 1984. The facts which are necessary to appreciate the points in dispute are as follows:

Defendants 1 to 9 are the appellants in this appeal and the respondents are plaintiffs: the defendants and plaintiffs in the suit along with others, formed a Society which was registered under the Societies Registration Act, with the object of opening an educational institution, orphanage etc., for weaker section of the society including the other classes also. Thereafter, since the Government of Karnataka agreed to allot 25 acres of land, nine persons of the earlier Society formed a Trust called 'Ananda Social and Educational Trust' (hereinafter referred to as the Trust). A Trust Deed was registered on 10-1-1980. The Trust started its functions and thereafter in course of time, opened a Medical College called Dr. Ambedkar Medical College (hereinafter referred to as the Medical College). Dr. N.T. Mohan who was one of the trustees of the Trust has been appointed as a Principal of the Medical College. Things went on smoothly for nearly four years. Thereafter differences arose between the trustees resulting in cob web of litigation. The first of such litigation was in W. P. No. 13,1,02 of 1984 filed by Shivaswamy. The petitioner therein is the second plaintiff in the present suit. His prayer in the said Writ Petition was questioning the appointment of Dr. N. T. Mohan as the Principal of the Medical College. The petitioner sought for an interim relief which was earlier granted. On an application for vacating, the Court made the following observation :

'On the facts placed before me, I am satisfied that he does not have, the required authority. In that view of the matter, it would be unjust to continue the interim order on the technical plea that he as an individual citizen in public interest to prosecute this Writ Petition. No doubt several authorities have been cited before me in regard to this aspect of the case. I cannot accede to some of those authorities though I am bound by them as the facts of this case do not lend themselves in support of

those cases. None of them support that this Court in its discretion should continue the stay when there is apparent lack of authority in the person who has moved this Court in using the names of institutions which do not appear to support his stand, in this Court. For this reason alone, the stay granted earlier is vacated leaving all questions open to be decided either in this Writ Petition or in some other appropriate proceedings, if the Court comes to the conclusion that the Petition is not maintainable.'

The decision in the above Writ Petition was rendered on 23-8-1984. Thereafter O.S. 3028 of 1984 was filed to declare that the original of the alleged supplementary Trust Deed registered on or about 20-6-1984, as invalid and unauthorised. It was also prayed that the 8th defendant in that suit has no right to interfere in any manner whatsoever with the affairs of the first plaintiff-Trust and the third defendant. It was also prayed that the first defendant should not use the name of the institution. This suit was filed by the Trust represented by Dr. N. T. Mohan and three others and the governing council of the Medical College was added as plaintiff-2 and the Medical College was also added as plaintiff. The defendants in this suit were Shivaswamy Writ Petitioner in W,P, No. 13102 of 1984 and other trustees besides some other persons, who were not trustees. At this stage it is necessary to mention that though the first registered deed of trust was executed on 10-1-1980, before the filing of these suits, another trust deed came to be executed on 20-6-1984, which consisted of the 7 of the old trustees and some more trustees who are not parties to the earlier document. It should be mentioned that Dr. N. T. Mohan was not a trustee in the second document. It is the original of the second trust deed that has given rise to the various litigations.

3. Before I deal with the several clauses of the Trust Deed dated 10-1-1980, it is necessary to mention the undisputed facts regarding Dr. N.T, Mohan, Dr. N. T. Mohan was a Professor of Medicine in the services of the Karnataka Government. His services were lent to the Trust for being appointed as Principal of the Medical College. After the creation of the so called Trust on 20-6-1984, his services were withdrawn by the State Government by issue of a notification. It is submitted by the plaintiffs that though his services were withdrawn, the Trust did not relieve him and he continues to be in the services of the Trust. It is also not disputed that by

notification dated 27th February 1985, the State Government has issued an order of suspension as against Dr. N.T. Mohan for his unauthorised absence. The said suspension order is still holding the field. It is not necessary for me to refer to the second so called Trust Deed dated 20th of June 1984, because the arguments were advanced on the understanding that the matter is governed by the first Trust Deed dated 10-1-1980. The Trust Deed states that there are nine members in the Trust. The Trust Deed is signed by all the trustees. Clause 7 of the Trust Deed reads as follows :

'7. The Trustees shall have powers to vary, to extend or to amend from time to time, any of the terms of this deed by an instrument in writing provided that such variation, extension or amendment shall not be inconsistent with the provisions of Income Tax Act and Rules framed thereunder, governing charitable trusts, societies and Associations etc.

Clause 8 permits the trustees to frame or amend rules for the conduct of their own business and proceedings for the management of the Trust and its properties in the good interest of the aims and objects of the Trust. Clause 9 reads thus :

'The Trust shall have a Chairman, a Managing Trustee, and a Treasurer. The Trust shall have its account in a Scheduled Bank or; in a registered co-operative Bank and the account is opened in the name of the Trust to be operated by any two of the three of office bearers viz.) the Chairman, the Managing Trustee and Treasurer. In the absence or non-availability of two office bearers due to foreign tour or death, the remaining office bearer along with any one of the available trustees should sign the cheque or the document in an emergent event.'

Clause 10 prescribes the managing trustee shall maintain the current account, audit accounts, annual accounts of the assets and liabilities of the Trust. Clause 11 reads :

'Dr. N.T. Mohan, Founder President of the Ananda Social and Educational Society shall be the Chairman of the Trust, Shri H.S. Shivaswamy, Founder Secretary of the Ananda Social & Educational Society shall be the Managing Trustee ; and Sri L- Shivalingaiah, founder Member shall be the Treasurer of the Trust.'

Clause 12 deals with the filling up of the vacancies in the event of death, incapacity, resignation of one or more members. Clause 13 provides that number of trustees may be increased by co-operation. Such co-opted member shall be called as Associate Trustee. Clause 14 provides for the frequent meeting of the trust to transact the business. Clause 15 empowers the trustees to borrow money on behalf of the Trust. Clause 16 reiterates the powers of the managing trustee. Clause 17 deals with the winding up of the Trust. Clause 18 deals with the election of office bearers from among the trustees in the event of death or incapacity of the managing trustee.

4. O.S.No. 3707 of 1984 is filed by Shivaswamy and Gopalaiah, praying for a decree declaring defendants 1 to 3 as unfit and were disqualified to continue as trustees of the Trust. These defendants are Kempasiddaiah, Shivalingaiah and Nanjundaswamy. Though there are other defendants in the suit, it is not necessary to mention them since the trust is not made a defendant; Dr.N.T.Mohan is impleaded as defendant-8.

5. I had earlier mentioned that in O.S.No. 3028 of 1984, an interim order is issued. After the presentation of the present suit, an application is filed to grant temporary injunction. It would be necessary to refer to certain prayers made in the present suit, out of which this appeal arises. The suit is filed by Educational Trust represented by its Chairman, Dr.N.T. Mohan and Shiva Swamy (one of the trustees). Defendants 1 to 8 are the trustees as per the trust deed dated 10-1-1980 and some others. In the suit, the plaintiffs have made the following prayers :

'(a) declare the original of the alleged supplementary Trust Deed registered on or about 20-6-1984....as invalid and unauthorised and cannot affect in any manner, the operation of the original Trust Deed of First Plaintiff of January 1980...as amended in November 1980 and also pleaded to declare that the aforesaid alleged supplementary Trust Deed is not a deed in construction of the original Trust Deed of 1980 referred to above, nor connected with it, in any respect whatsoever.

(b) also be pleased to declare that 18th defendant society or any of its officers, authorities, agents etc. has no relation or connection whatsoever, and has no right

to interfere in any manner whatsoever, with the affairs of the first plaintiff-Trust and third Defendant-College.

(c) also be pleased to declare that 17th defendant body of persons, calling themselves as governing body, in relation to first plaintiff trust and third plaintiff college, is not legally constituted by first plaintiff trust and the same is illegal and invalid and has no right of any kind, to interfere with the affairs of the first plaintiff trust or second plaintiff governing council and third plaintiff college-institutions.

(d) For permanent injunction to restrain defendants 1 to 18 by issuing permanent injunction, from making use of the name or acting in the name of first plaintiff trust as trustees of plaintiffs two and three or his persons connected in any manner whatsoever or interfering with or behaving in any manner whatsoever, in the affairs of first plaintiff trust or plaintiff-2 governing council and third plaintiff College.

(e) also be pleased to restrain first defendant individually from making use of the name of, or acting in the name of, the alleged supplementary trust deed of June 1984 referred to above and doing any act whatsoever by using the name of first plaintiff trust in respect thereof, and issue direction to first defendant, even in the nature of mandamus to conduct himself, in strict accordance and compliance with the terms and conditions of the original Trust deed of January 1980 in his possession as trustees, along with plaintiffs 4 to 8 and defendants 2 to 4 the trustees under the original trust deed of 1980.

(f) for mandatory injunction and

(g) for permanent injunction....'

Defendant No. 8 is Mr. C. Chennabasappa, Vice-Principal of Dr. Ambedkar Medical College, and defendant No. 9 is Canara Bank, D' Costa Square Branch.

The prayers in plaint read thus:

'(a) To declare that the defendants 1 to 7 have no right to appoint the 8th defendant as the Principal and also to declare any resolution that has been passed by the defendants 1 to 7 is illegal and unsustainable not binding on the

plaintiff-Trust.

(b) to declare that the defendants 1 to 7 have no right whatsoever to open an account in the plaintiffs name of Ananda Social and Educational Trust and college.

(c) to declare that the second defendant has no right whatsoever to meddle with the plaintiffs affair as a principal as he has not been appointed by the plaintiff-trust.

(d) to declare that the 9th defendant has no right to transfer the amount available in account No. 6614 to any account much less to the accounts of defendants 1 to 8 and to grant such other reliefs as this Hon'ble Court deems fit to grant in the circumstances of the case, in the interest of justice.'

6. In the body of the plaint, certain details are mentioned. Para-2 of the plaint deals with the formation of the Trust and certain details regarding the Scheme of Bangalore University.

Para-3 of the plaint states that the Plaintiff-Trust after starting Medical College regulated the same as per the Trust Deed registered on 10-1-1980. The other details given in the paragraph only show that the plaintiff-trust constituted a governing Council consisting of Dr. N.T, Mohan as the Principal and other Trust members as the members including, the other members who were not Trustees. Some details are furnished regarding the constitution of the governing Council.

Para-4 reiterates that the plaintiff-trust after obtaining all the resources was able to go ahead with the construction of the building. It was made clear in this behalf that Individual Trustee has no voice to deal with any affairs of the Trust. Similarly, it was made clear that the governing Council have not been conferred with any sort of power either of appointment of staff or any person to run the institution.

Para-5 of the plaint narrates as to how Dr. Mohan came to be appointed as the Principal of the College. It is asserted that the plaintiff trust has not transgressed the rules and the conditions contemplated under the trust deed. It is also stated that the plaintiff-trust started the college in order to improve the education of medical science. One significant fact which is mentioned in this paragraph reads thus :

'The defendants, who are members of the governing Council, as referred to supra, are also members of the Trust, are cherishing personal ill will against the Chairman of the plaintiff-Trust. The said members started to create chaos in the Trust and also misguided the affairs of the plaintiff trust by creating ugly situation in the Trust.'

(The term 'Chairman' refers to Dr. N. T. Mohan).

7. The details regarding O. S No. 3028/84 and injunction obtained therein are also mentioned. It is further stated that the Trust opened an account with Canara Bank - 9th defendant - in Account No. 6614. It is in this paragraph few more allegations are made which culminated in the cause of action for this suit.

Those details are as follows :

'The defendants have no manner of right whatsoever to have an account opened in the name of the same plaintiff Trust and seek transfer of the amount standing to its credit in the said Account No, 6614 thereto. The acts of defendants 1 to 7 that they are empowered to maintain the affairs of the plaintiff-trust and also the Ambedkar College is wholly illegal and unsustainable. The defendants 1 to 7 have no powers either to maintain the affairs of the plaintiff-Trust or to run the institution - the Medical College.'

It is further mentioned as follows :

'In the instant case the relief claimed is to declare the resolution in any appointing the 8th defendant as principal is illegal, null and void and to restrain the 9th defendant from transferring any amount in favour of defendants 1 to 8.'

In para-7 it is stated that it is Dr. N. T. Mohan who has been principal of the college who is entitled to carry on the affairs of the college and not the 8th defendant till he is relieved by the plaintiff-Trust. This is asserted notwithstanding the fact that Dr. Mohan's services are withdrawn by the Government and he is placed under suspension.

In para-8 the averments relates to cause of action which reads thus :

'The cause of action for the suit arose on when the defendants meddle with transfer of amount of the plaintiffs, available in the 9th defendant-bank and also they proclaimed that they are entitled to maintain the affairs of the plaintiff-Trust and the college on 29-11-1984 within the jurisdiction of this Hon'ble Court.'

8. It is significant to note that the first plaintiff is ANANDA SOCIAL & EDUCATIONAL TRUST, represented by its Chairman Dr. N.T. Mohan. The second plaintiff H, S. Shivaswamy has described himself as Managing Trustee of the said Trust. The averments in the plaint make it clear that the suit was filed on behalf of the plaintiff-Trust. Neither Dr, N. T. Mohan nor Mr. H. S. Shivaswamy mention any personal injury or personal right so as to give them any independent cause of action dehors of the Trust. It is not the case of either Dr. N. T. Mohan or Mr, H. S. Shivaswamy that they are instituting the suit as Trustees against co-trustees in the interest of the affairs of the Trust. These factual details have been narrated so as to meet the arguments on behalf of the defendants, which I shall deal as and when occasion arises.

9. Along with the plaint, the plaintiffs filed an application seeking injunction. In the I. A.I the relief sought for was :

'To issue an order of temporary injunction restraining the defendants 1 to 8 from opening a new account in the name of Ananda Social and Educational Trust and Principal Ambedkar College in the 9th defendant-Bank and further restraining the 9th defendant, from transferring the amount standing to the credit Account No, 6614 in the name of plaintiff-Trust named above which is being operated jointly by the plaintiffs 1 and 2 pending disposal of the above suit and also from drawing the amount in the name of the plaintiff-Trust.'

10. It has to be mentioned that as per clause-9 of the Trust deed, the account to be opened in the Bank has to be operated by any two of the three office bearers, viz., the Chairman, the Managing Trustee and Treasurer. It is precisely for this reason that the Chairman and Managing Trustee have worded the interim prayer in the above terms. The affidavit in support of this I.A.I is sworn to by H.S. Shivaswamy, Plaintiff No. 2. The affidavit contains the details which are more or less similar to the allegations in the plaint. Even the averments in the affidavit

make it clear that the action is being brought on behalf of the Trust and there is nothing to indicate that either Dr. N.T. Mohan or H.S. Shivaswamy were moving the Court as Trustees.

11. The defendants have filed a counter. They have also furnished details as to how the Trust came into being. The Court-below issued interim order as prayed for in I.A.I. Thereafter, after hearing the parties, the impugned order has been passed. The Court-below has set down the following points for determination in the impugned order :

- 1) Whether the plaintiffs make out a prima facie case for the issue of temporary injunction ?
- 2) Whether the plaintiffs would be put to irreparable injury if temporary injunction is not issued in their favour ?
- 3) The balance of convenience ?

12. The Court-below has come to the conclusion that the plaintiffs have established that they have a prima fade case for the issue of interim order and that the plaintiffs would suffer serious injury if the temporary injunction is not ordered, Having thus held, the injunction as prayed for was granted. It is the correctness of this order that is challenged in this appeal.

13. Sri Suresh Joshi, appearing for the defendants-appellants, contended that the impugned order is unsustainable for the following reasons :

That the suit on behalf of Trust, as framed, was not maintainable and neither Dr. N.T.Mohan nor H.S Shivaswamy individually or collectively had the requisite authority to bring an action on behalf of the Trust. Therefore, the suit, was not maintainable and as such the Court below had no jurisdiction to grant the temporary injunction.

That the suit is vexatious in as much as the chain of events and the series of litigation makes it clear that two of the Trustees want to protect their unlawful position by obtaining orders from the Court much against the will and desire of

other trustees, who constitute the majority.

Lastly, he submitted that since the majority of the members, who are arrayed as defendants 1 to 7, are not in favour of the plaintiffs 1 and 2, namely. Dr. N.T. Mohan and H.S. Shivaswamy, they are not entitled for any injunction since the injury alleged is personal vendetta that is being ventilated in the name of the Trust.

14. In support of this argument, Mr. Suresh Joshi relied upon certain rulings of the various High Courts and Supreme to urge that a suit on behalf of the Trust can only be brought by all the Trustees joined together and it is not possible for any one or two of the Trustees to bring such an action.

15. In this context, he relied upon a decision in *Lala Man Mohan Das - v. - Janki Prasad and Others* wherein it is observed thus :

'Even if their Lordships accept the finding of the Subordinate Judge that Respondent-1 was the de facto manager and trustee entitled as such to act in emergency, still in law, the execution by him alone of the deed would be ineffective in conveying a valid claim to the suit property. In this connection, attention may be drawn to the following statement of the law from *Lewin on Trusts*, Edition page 196 :

'In the case of co-trustees the office is a joint one. Where the administration of the trust is vested in co-trustees, they all form as it were but one collective trustee, and therefore must execute the duties of the office in their joint capacity. It is not uncommon to hear one of several trustees spoken of as the acting trustee, but the Court knows no such distinction; all who accept the office are in the eyes of law acting trustees. If any one refuses or be incapable to join, it is not competent for the others to proceed without him, but the administration of the trust must in that case devolve upon the Court. However, the act of one trustee done with the sanction and approval of a co-trustee may be regarded as the act of both. But such sanction or approval must be strictly proved.'

Their Lordships consider this to be a correct statement of the law applicable in England and that same doctrine applies in India also.'

16. That this doctrine is applicable in India is affirmed by the Supreme Court in I.L. Janaki Rama Iyer and Others - v. - P.M. Nilakanta Iyer and others.

17. In *Atmaram Ranchhodbhai - v. - Gulambusein Gulam Mohiyaddin and Another*, at Full Bench of Gujarat High Court had an occasion to consider a suit brought by the members, in the name of some Trustees. All the trustees had not joined the suit as plaintiffs. It was in this context that the Full Bench made the following observations :

'It is, therefore, clear that one co-trustee cannot give notice to quit determining the tenancy. The decision to determine the tenancy by giving notice to quit must be taken by all co-trustees unless, of course, the instrument of trust otherwise provides, or the beneficiaries being competent to contract consent, or in any particular case it is established that on the peculiar facts obtaining in that case, the delegation of the power to determine the tenancy was necessary. But when we say that the tenancy must be determined by all co-trustees, we must make it clear that what we mean is that the decision to terminate the tenancy must be taken by all the co-trustees. The formal act of giving notice to quit pursuant to the decision taken by all the co-trustees may be performed by one co-trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co-trustees and would be clearly a notice given by all co-trustees. Turning now to the second question which arise for consideration, it is clear that all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. That must follow as a necessary and logical consequence from the nature and character of the office of co-trustees to which we have referred in the opening part of the judgment - Section 48 of the Indian Trusts Act provides that when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides. The principle embodied in this Section must apply equally to a public religious or charitable trust as pointed out by the Supreme Court in : [1963]3SCR623 (Supra). Since all co-trustees must join in the execution of the trust, and recovery of possession of the property from the tenant after determination of the lease would be a duty arising in the execution of the trust, all co-trustees must join in filing a suit to recover possession of the property from the tenant. The only exception to this rule would be where the instrument of trust

otherwise provides. If the instrument of trust, provides that one co-trustee may institute a suit to recover possession of property from the tenant he would be competent to institute such a suit and it would be no answer on the part of the tenant to say that the other co-trustees have not joined in such suit. But where the instrument of trust does not so provide all co-trustees must join in the suit to recover possession of the property from the tenant for their office is a joint office and they all form as it were but one collective trustee. This position in law is now well settled and there is complete unanimity of opinion amongst the High Courts about it. We may mention only a few of the decisions Which have taken this view : Vedakannu - v. - Annadana Chatram AIR 1938 Mad. 982 and Ramesh Chandra-v. -Hemendra Kumar AIR 1941 Cal 519.'

The effect of this decision is that whenever a suit is brought on behalf of the Trust all the Trustees must join in the said action and it is not permissible for one or two Trustees to represent the Trust and bring an action. In the instant case, the Trust Deed does not make any provision authorising the Chairman or the Managing Trustee to file suits on behalf of the Trust.

18. A Division Bench of the Delhi High Court has dealt with this aspect in a more specific manner, in Dulchand - v. - Mahabit Pershad Trilokchand Charitable Trust, Delhi, The relevant paragraphs read thus :

'The question that requires decision is whether this resolution authorises the said Trustee Shri Tara Chand Jain to institute the suit in the name of the Trust or, whether it is necessary that all the trustees should join in the suit. It is well known that a Trust is not a legal entity as such. In fact, a Trust may be defined as an obligation imposed on the ostensible owner of property to use the same for a particular object for the benefit of a named beneficiary or a charity. Thus all Trustees in law are owners of the property but they are obliged to use the same in a particular manner. If a number of trustees exist, they are joint owners of the property. It is not like a Corporation which has a legal existence of its own and therefore can appoint an agent. A Trust is not in this sense a legal entity. It is the trustees who are the legal entities. Section 48 of the [Trusts Act, 1882](#), states:

'when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.'

Section 47 reads :

'A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.'

'There is, therefore) a very grave doubt in our mind as to whether a single trustee can sue and whether he can sue in the name of the Trust. It is also very doubtful whether a resolution can be passed authorising only some of the trustees to file a suit.'

(Underlining is mine)

The Delhi High Court has followed the Full Bench decision of Gujarat High Court.

Therefore, the legal position appears to be well settled, that an action on behalf of the Trust can only be brought by all the trustees. If the action is brought in the name of the Trust, as is done in the present case, it is not permissible for one or two of the trustees to represent the Trust.

19. Sri Joshi, also relied on a decision in *Fatim Fauzia & another - v. - Syed Ul-mulk & Others*, which has also taken a similar view as mentioned in the other cases and the said judgment has been affirmed by the Supreme Court in *In the matter of H.E.H. the Nizam's Jewellery Trust, Sbanti Vijay&Company; etc., etc , - v. - Princess Fatima Fouzia & Others*

20. Mr. Jawali, appearing for the plaintiffs respondents did not dispute the legal position. But he contended if the other Trustees do not join the plaint, then there would be a sufficient compliance if the non-co-operating Trustees are joined as defendants. It was also his contention that if for any reason the Court comes to the conclusion that a suit as framed is not maintainable, since all the Trustees have not been joined as plaintiff, it may be considered as having been filed by two

trustees against the other Trustees and the matter can be treated as praying for a relief coming under Section 34 of the Trusts Act. If the plaint averments and the cause title is examined, it is clear that in the present case the suit is brought on behalf of the Trust. I have mentioned earlier that neither Dr. N. T. Mohan nor H. S. Shivaswamy have mentioned any fact which is adverse to the interest of the Trust for which they are litigating in their capacity as5. : AIR 1979 AP229 6. AIR 1980 SC 17trustees. The averment in the plaint, the cause of action and prayer make it abundantly clear that the suit is filed for and on behalf of the Trust- Hence, in view of the principles laid down by the Supreme Court, the present suit as framed was not maintainable.

21. Now coming to the next question, can the plaint be treated as a Petition under Section 34 of the Trusts Act, Section 34 of the Trusts Act reads thus:

'Any trustee may, without instituting a suit, apply by Petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the Trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. A copy of such Petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit. The Trustee stating in good faith the facts in such Petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application. The costs of every application under this Section shall be in the discretion of the Court to which it is made'

Analysing the wordings of Section 34, it is clear that the remedy is available only in respect of any 'present' questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance not proper in the opinion of the Court for summary disposal. The scope and ambit of Section 34 came up for consideration before a Full Bench of Sind High Court in *In Re Muhammad Hashim Gazdar & Others*. The Learned Chief Justice who spoke for the Bench observed thus:

'All parts of the Section must be read together. That Section is clearly an enabling Section, in that, it enables any trustee, to apply by Petition to a Principal Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or 7. A.I.R. (32) 1945 Sind 81administration of the trust property other than question of detail, difficulty or importance not proper, in the opinion of the Court.'

The Learned Chief Justice, thereafter, observed thus :

'I think, upon the context in which the word 'direction' is used in Section 34, Trusts Act, I think, the three words 'Opinion, advice or direction' must be read together, as meaning nothing more than guidance. When directions are so given even when embodied in an order, the order is not an order in the sense that it is judgment or decree of the Court, of an order to which the Court is entitled to demand obedience. What the Court does is to advice or guide or direct a trustee as to the way he should proceed, but if the trustee rejects that advice, and usually, of course, a trustee would not ask for advice which he intended to reject and follows another course or line of action - he does it at his own peril ; indeed, his position is worsened so much by the fact, though the Court has given him its advice, opinion, or direction he has not followed it.'

The Supreme Court in *Official Trustee, West Bengal & Others - v. - Sachindranath Chatterjee & another* has observed thus:

'The jurisdiction conferred on the Court under Section 34 is a limited jurisdiction. Under that provision, the Court has not been conferred with overall jurisdiction in matters arising under a Trust deed. The statute has prescribed what the Court can do and inferentially what it cannot do....Under that provision the Court can give opinion, advice or direction on any question respecting the management or administration of the trust property or the assets of any testator or interstate...

A Learned Single Judge of the Jammu and Kashmir High Court, in *Krishen Kumar Khosa - v. - Krishen Land And others* held as follows :

' The words 'opinion, advice or direction' in Section 34, Trusts Act, must be read together as meaning nothing more than guidance. Under Section 34 the Court exercised what may be called its consultative jurisdiction, giving guidance to a trustee who presumably asks for it, because he wants it and intends to follow it. Section 34 is intended to enable a trustee to obtain the Court's guidance in suitable matters for his protection. The advice, opinion or direction given under Section 34 is not an order binding on parties and disobedience to it does not involve committal for contempt. It does not envisage a situation where a person claiming to be a trustee can be installed as such by an order of Court.'

It is further observed :

'Hence, where the contents of the petition under Section 34 showed that the petitioner sought a declaration to the effect that he and not Respondent No. 1 was entitled to the office of the trustee and the Petitioner did not seek any guidance but a declaration involving questioner of detail and importance.

Held, that the proper remedy in such a case was a suit under Section 92, Civil P.C. and not an application under Section 34 or any of the provision of the Trusts Act.'

The learned Judge also observed that a suit under Section 92 C.P.C., is entirely different from Section 34 of Trusts Act and the petition filed under Section 34 of the Trust Act cannot be as such treated as a Civil suit.

This ruling makes it clear that a petition under Section 34 is intended to be made by a Trustee, who being in charge of the management of the affairs of the immovable property of the Trust seeks certain guidance, directions from the Court for being followed in the management and administration of the Trust. The use of the word 'direction' is also to the same effect. Therefore, in view of the reliefs asked for in the plaint it cannot be said that the plaintiffs were asking for an opinion, advice or direction, as is contemplated in Section 34 of the Trusts Act. The reliefs, as is made clear in the earlier paragraphs was that defendants 1 to 7 had no right to appoint defendant No. 8 as principal and consequently the

defendants 1 to 7 had no authority to open a bank account in the name of the Trust nor do they have the competence to transfer the account standing in the name of the Trust. These matters, in my opinion, do not come within the scope and ambit of Section 34 of the Trusts Act. Therefore, it is not possible to treat the plaint in the instant case as an application under Section 34 of the Trusts Act.

22. In view of what is stated above, it is clear that the plaint as presented for and on behalf of Trust represented by Dr. N.T. Mohan and Shivaswamy, the Managing Trustee was not proper.

23. Mr. Jawali, appearing for the defendants maintained that Shivaswamy did not represent the Trust and that he was agitating in his own capacity as trustee. It is difficult to accept such a contention. I have, earlier, referred to the cause title of the plaint, details of the allegations, the reliefs asked for. I have no hesitation to hold that the two trustees desire to manage the affairs of the Trust against the wishes of the other trustees.

24. In the light of these discussions, it becomes necessary to find out whether the plaintiffs have made out a prima facie case for issue of an injunction. The Court-below has taken it for granted that the plaint as presented on behalf of the trust, was proper and the suit was maintainable. In view of the foregoing I have come to the conclusion that the Trust could not have maintained a suit through one or two Trustees, i.e., Chairman and Managing Trustee. In my opinion the Court-below was not justified in coming to the conclusion that the plaintiff-trust has made out prima facie case.

25. So far as the balance of convenience is concerned, if the averments in the plaint as also the antecedent facts which necessitated the plaintiff-trust to file, the present suit are concerned, it becomes clear that repeated attempts are being made to ventilate individual grievance and highlight the differences that are existing among the co-trustees and it is precisely for that reason Shivaswamy representing himself on behalf of the trust had filed Writ Petition and when that attempt failed, two suits, namely, O. S. No. 3028/82 and O. S. No. 3770/84 were filed. The present suit is third one which is filed by the present plaintiffs.

26. The real controversy appears to be that who should manage the affairs of the trust. While Dr. N.T. Mohan and Shivaswamy claim that they are the persons competent to manage the Trust, the others namely, defendants 1 to 7 profess that they are the Trustees who are capable of managing the Trust. If these facts are appreciated, it is clear that the present suit as brought was not only not maintainable but the balance of convenience does not lie in favour of the present plaintiffs. It cannot be forgotten that the present plaintiffs constitute minority in the Trust. Dr. N.T. Mohan is a Government servant; he is under suspension. His services are withdrawn by the Government. How fair and just it would be to permit him to profess as Principal of Medical College? In view of this, to issue an injunction in favour of the plaintiffs as prayed for would not be correct and would not be legally sound. Such inference by Court would widen the differences and this will not be in the interest of 'Trust'. In this view, the Court below was not justified in granting the injunction as prayed for.

27. Mr. Jawali maintained that it is permissible for one or two Trustees to file a suit against other Trustees as defendants for injunction alleging that the defendants are committing acts which are prejudicial to the interest of the Trust. I have mentioned that this is not a suit of that type because the suit as framed, is filed on behalf of the Trust and I have also come to the conclusion that Dr. N.T. Mohan and Shivaswamy have filed the suit for and on behalf of Trust describing themselves as Chairman and Managing Trustee. Therefore, it is not possible to treat the suit as one brought by Trustees against co-trustee on the ground that their acts are prejudicial to the Trust, Indeed the object of the suit is to stop defendant No. 8 from functioning as Principal and permit the two trustees i.e., Chairman and Managing Trustee to act and manage the affairs of the Trust, against the will of the other seven trustees.

28. Mr. Jawali also referred to passage in Lewin on Trusts (15th Edition) at page 199 which reads thus :

'A trustee is called upon, if a breach of trust be threatened, to prevent it by obtaining an injunction, and if a breach of trust has already been committed, to bring an action for the restoration of the trust fund to its proper condition.'

The above passage is not applicable to the facts and circumstances of this case because the reliefs prayed for are, that the appointment of defendant No. 8 by defendants 1 to 7, who profess to be members of governing Council, is illegal and defendants 1 to 7 were not entitled to appoint him. Further that defendants 1 to 7 who profess to constitute themselves as trustees of the Anand Social and Educational Trust, are not entitled to act on behalf of the Trust and it is precisely for this reason the second relief that they should not be permitted to open an account is prayed for. This is not a case where any breach of trust is alleged because the reliefs as quoted above make it clear that Dr. N. T. Mohan wants to continue as Principal, notwithstanding his services being withdrawn and he being under suspension. Secondly, the two trustees intend to manage and utilise the 'Trust' administration and property against the will of other 7 Trustees. Their 'bonafide' and 'good faith' is questioned by defendants- Therefore, in my opinion, the above quotation from Lewin on Trusts is not applicable to the facts and circumstances of this case.

29. Mr. Jawali submitted that if his client were to make an application under O. VI R. 17 of the Code of Civil Procedure, to amend the cause title or any part thereof, he should be permitted to do so. If and when such application is made, the defendants will have the right to file their objections and the Court below shall decide the same on merits.

30. Mr. Joshi stated that in continuation of the impugned order a clarification has also been issued by the Court below. Since I am setting aside the impugned order, it is not necessary to set aside the clarification, which does not survive.

31. For the aforesaid reasons, I am of the opinion that this appeal is entitled to succeed. Accordingly, I make the following:

ORDER

The appeal is allowed. The impugned order of injunction is set aside.