

**Hasan Bln Mubarak Vs. Chief Judge, City Civil Court, Hyd. and ors.**

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**Court :** Andhra Pradesh

**Decided On :** Apr-07-1998

**Reported in :** 1998(3)ALD355; 1998(3)ALT370

**Judge :** V. Rajagopala Reddy, J.

**Acts :** Indian Trust Act, 1882 - Sections 34; [Constitution of India](#) - Articles 86 and 227; Trustees' and Morgages' Powers Act - Sections 43

**Appeal No. :** C.R.P. No. 5533 of 1997

**Appellant :** Hasan Bln Mubarak

**Respondent :** Chief Judge, City Civil Court, Hyd. and ors.

**Advocate for Def. :** M/s. J.V. Suryanarayana for T. Sudhakar Reddy

**Advocate for Pet/Ap. :** Mr. K.V. Satyanarayana, Adv.

**Judgement :**

ORDER

1. The C.R.P. arises out of the order passed by the Chief Judge, City Civil Court, Hyderabad, in O.P. No. 708/97. H.E.H.the Nizams Trust (hereinafter called 'the Trust') represented by its Secretary (2nd respondent) filed the O.P. against the wife of the petitioner (3rd respondent), who is one of the daughters of late Sir Osman Ali Khan (sic) hadur, VIIth Nizam of Hyderabad, under Section 34 of the

Indian Trust Act (for short 'The Act') seeking opinion and advice by the Court.

2. The 3rd respondent was one of the beneficiaries of the net income derived from the corpus of the Trust property. She was entitled to a half yearly payment of Rs.11,53,260/- and a monthly allowance of Rs.11,000/-, for her maintenance. The Management of the Trust has entertained a doubt in view of the serious allegations made by her husband, the petitioner herein, whether she was mentally unsound and whether the above payments could or could not be paid to her in the management of the Trust. Hence, the above O.P. was filed to clear any doubt as to the capability of the beneficiary to receive the amounts.

3. Learned Chief Judge, considering the facts of the case and examining the 3rd respondent herein advised the Trust to pay the amounts to the 3rd respondent as she was not found to be of unsound mind. But, by way of caution, he directed that the petitioner herein should be intimated before the amount was paid, to produce any evidence as to the alleged lunacy of the 3rd respondent and as to the appointment of any guardian by any Court on the ground that she was a lunatic. If no material was produced, the 2nd respondent was free to pay to the 3rd respondent all the amounts due to her. The present C.R.P. is filed under Article 227 of the Constitution, challenging the above order.

4. Sri K. V. Satyanarayana, learned counsel for the petitioner, advanced the following contentions:

(1) that the order is without jurisdiction, as Section 34 of the Act can only be invoked to seek direction or advice in respect of the administration of Trust, without entering into the merits of a disputed fact.

(2) The O.P. was not maintainable as the petitioner, being an interested party in the case, was not made a party.

5. The first contention of the learned counsel is that Section 34 of the Act gives a right to a trustee to seek the opinion or a direction on the questions respecting the management or administration of the Trust. The questions of difficulty or importance which could be determined only on the basis of evidence adduced,

cannot be referred to the Court. Those questions could be decided only by way of instituting a suit. Since the instant O.P. pertains to a decision on an important question whether the 3rd respondent was a lunatic or of unsound mind or not, which could be decided only on the basis of evidence adduced in a properly instituted suit, the Court has no jurisdiction to entertain and decide the matter.

6. Sri J.V. Suryanarayana, learned Senior Counsel, appearing for the respondents submits that since the Management of the Trust entertained a doubt whether the amounts could be paid to the beneficiary for the proper management of the Trust, the 2nd respondent, as the Secretary of the Trust, sought the directions or advice of the Court. Hence, the petitioner under Section 34 of the Act was maintainable.

7. Before I deal with the rival contentions, which involve the scope of Section 34 of the Act, it may be useful to notice few facts which impelled the 2nd respondent to file the petition:

8. H.E.H. Sir Osman Ali Khan Bahadur, VIIIth Nizam of Hyderabad, had created H.E.H. the Nizams Trust. As per the directions in the trust deed the 3rd respondent was entitled certain payments as the beneficiary. The 3rd respondent, however, was not paid the half yearly amount from October, 1996. It is the case of the 2nd respondent, that the petitioner in his letter dated 9-9-1996, had alleged that his wife became unsound and that she was being treated for Maniac Dipressive Phychosis under an eminent Psychiatrist Dr. Naga Raju and also in Osmania General Hospital. He also alleged that her maid-servants, taking advantage of her condition of mind, were stealthily appropriating whatever money she received. On a report given by him to the Magistrate, the Police were directed to produce her before the Mental Hospital. But she was not examined in the hospital nor was she under proper medical treatment. He, Therefore, requested not to pay huge amounts to her. However, by letter dated 23-11-1996, the 3rd respondent denied the allegations made by the petitioner and requested to release the payments to her. In those circumstances, the O.P. came to be filed as to the manner in which the Trust has to be administered.

9. The petitioner filed this C.R.P. mainly concerned about his wife's mental condition and to see that the people, including her servant maids around her,

would not stealthily enjoy the money that was paid to her. According to him, he was the only person who was interested in her and who was taking care of her and that there was no conflict of interest between them.

10. Thus, the only point that would arise is whether the 2nd respondent could seek the advice or direction from the Court below in the matter. Though the directions sought may, apparently, seem to be in the administration of the Trust, what is, in essence, that is requested of the Court was to give the opinion as to whether the 3rd respondent was mentally unsound or not, so that the Trust could make the payments to her.

11. At this state it is necessary to notice Section 34 of the Act. The relevant portion of Section 34 is as follows:

"Section 34. Right to apply to Court for opinion in Management of Trust Property:

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'

A look at the caption Right to apply to Court for opinion in management of trust property, and the provision make's it abundantly clear that it confers a right on the trustee to seek the opinion of the Court with regard to management of the Trust. The trustee could invoke the jurisdiction of the Court under this provision to seek the opinion of the Court with regard to questions respecting the management or administration of the property, which do not involve 'detail difficulty or importance.' Thus, the section contemplates disposal of the petition, in a summary manner, without entering into the merits of the case and giving a decision on the basis of the evidence adduced, which procedure should be adopted only in a regular suit.

12. Sri Satyanarayana, learned Counsel for the petitioner, in support of his contention cited the decision in the Matter of the Madras Deveton Trust Fund, (1895) ILR 18 Madras 443. In that case the Trust was empowered requiring the Trustees to invest, such portion of the trust monies which should exceed Rs.2 lakhs, in the purchase of buildings. Under that provision buildings were purchased for the Institution out of the money in excess of the prescribed Rs.2 lakhs. When the buildings required repairs without which they would deteriorate and which would impair the efficiency of the institution, a petition under Section 34 of the Act was presented for the opinion of the Court. The Madras High Court held that it was not a case in which the Court could 'authoritatively advise and direct the trustees to lay out the money referred to in the petition on repairs, which it is alleged, the buildings stands in need of. In expressing the above view the Court relied upon the decision in Re Barrington's Settlement, 1 J&H; 142, 143, where it was held as follows:

'My reason for not giving an express opinion is, that the case goes into details, with which the Court cannot effectually deal, without having a superintending power and being informed by affidavits; whereas, under this statute, the facts must be taken to be as they are stated in the petition of the trustees, who take the risk of mis-statement; and the Court has no means of exercising any controlling power over the subject-matter.'

Thus, it was clear that in a matter, where the case goes into the details, the Court could not exercise its jurisdictions. Hence the application presented under Section 34 of the Act was held to be not maintainable in giving opinion whether the buildings require repairs and whether the amounts could be properly used for the purpose of repairing the building.

13. Learned Counsel also cited the decision in Official Trustee, West Bengal vs. Sachindra Nath Chatterjee, : [1969]3SCR92 , where the Court considering the scope of Section 34 of the Act observed as follows:

'Under this provision the Court could have only given opinion, advice or direction on any presented question respecting the management or administration of the trust property' and not on any other matters. the relief prayed for by the settlor did

not relate to the management or administration of the trust property but on the other hand it asked for authority to alter the quantum of interest given to each of the beneficiaries by a deed inter vivos. The jurisdiction conferred on the Court under Section 34 is a limited jurisdiction. Under that provision, the Court has not been conferred with over all jurisdiction in matters arising under a Trust Deed. The statute has prescribed what the Court can do and inferentially what it cannot do. From the fact that the Court has been conferred power to grant only certain reliefs it follows as a matter of law that the Court has been prohibited from granting any other relief. The jurisdiction of the Court is circumscribed by the provisions of Section 34 of the Trusts Act. The Court had no jurisdiction to pronounce on the pleas put forward by the settlor. From the facts stated in the petition and from the relief asked for, it was obvious that the case did not come within the scope of Section 34 of the Trusts Act. Therefore when the learned Judge granted the relief asked for, he did something which he was not competent to do under Section 34 of the Trusts Act'.

Thus, the Court's jurisdiction to decide the application is limited and circumscribed by Section 34 of the Act.

14. Learned senior Counsel for the respondent, in support of his contention that the application was maintainable, has drawn my notice to the passages in certain authoritative Text Books on Trusts: 'Equity and the Law of Trusts', Sixth Edition, by Philip H. Pettit, at page 331 under the caption 'Applications to Court' is as follows:

'6. Applications to the Court : A Proceedings for Administration, or determination of question :

..... The Court, however, is not bound to make an administration order if the questions between the parties can be properly determined without it, and in fact will only undertake the administration of a trust as a last resort. It has been said that 'a general administration order will be made only in three categories of cases:

(1) where the trustees cannot pull together; or,

(2) the circumstances of the estate give rise to ever recurring difficulties requiring the frequent direction of the Court, or

(3) where a prima facie doubt is thrown on the bona fides or the discretion of one or more of the trustees.'

15. The jurisdiction of the Court was only to pass general administration order in cases where the trustees could not pull on together or in the circumstances where the management of the estate presented difficulties requiring the directions of the Court or where a doubt was thrown on the bona fides of a trustee.

16. In 'Modern Equity' Thirteenth Edition, by Hanbury & Maudsley, dealing with Doubtful Claims, at page 505, the author stated that where the trustees were in doubt as regard the claims of the beneficiaries, they may make an application to the Court for direction. It was clearly stated that trustees must not go to Courts just for their convenience surrendering discretions in toto to the Court.

17. Underhill's Law of Trusts and Trustees, Twelfth Edition, Article 86. the author stated that an action may be brought for the determination of the following questions:

'Article 86 - Right of Trustee or Beneficiary to Take the Direction of the Court or a Judge in relation to specific questions :

(1)(a).....

(i) any question arising in the execution of a trust (h);

(ii) any question as to the composition of any class of persons having a beneficial interest in any property subject to a trust (i);

(iii) any question as to the rights or interests of a person claiming to be beneficially entitled under a trust;

Following reliefs also can be sought:

(b) (i) an order requiring a trustee to furnish and, if necessary, verify accounts (j)

(ii) an order requiring the payment into Court of money held by a person in his capacity as trustee (k);

(iii) an order directing a person to do or abstain from doing a particular act in his capacity as trustee (1);

(iv) an order approving any sale, purchase, compromise or other transaction by a person in his capacity as trustee (m);

(v) an order directing any act to be done in the execution of a trust which the Court could order to be done if the trust were being executed under the direction of the Court (n);

18. The above throws light on the extent of jurisdiction of the Court and the question, a trustee could ask for advice even in England and the reliefs granted by the English Courts.

19. The scope of Section 34 of the Act came to be considered in *Krishen Kumar Khosa vs. Krishen Lal*, AIR 1979 J & K 13; considering a question whether the High Court has jurisdiction to entertain the petition under Section 34 of the Act, relying upon the decision in *Avoch Thevar v. Chummar*, : AIR1957 Ker171 , it has been held that-

'Section 34 of the Act envisages circumstances in which a trustee seeks guidance to safeguard his rights and to have the protection of the Court. It does not envisage a situation where a person claiming to be a trustee can be installed as such by an order of the Court.'

20. Keeping in mind the above principles, can it be stated whether the 1st respondent could seek a direction from the Court so as to enable him to make the payments to the 3rd respondent The only doubt that 2nd respondent entertained was whether 3rd respondent was not a normal person as alleged by the petitioner. The Court has therefore to decide whether 3rd respondent was an insane person in the exercise of its jurisdiction under Section 34 of the Act. The Court cannot exercise its jurisdiction unless it was satisfied with two conditions:

(1) Whether the question relates to the execution of the trust ?

(2) Whether the direction or advice could be given or tendered without entering into the merits of the question, by way of summary disposal.

21. In my view, both the conditions are not fulfilled. As seen from the passages in the Text Books extracted above, only matters relating to the administration of the trust as categorised therein, can be considered by the Court under Section 34 of the Act. The question of the mental condition of a beneficiary is wholly alien to the administration of trust and the Court is not competent to give guidance under Section 34 of the Act in this matter.

22. Secondly, the trustee instead of going to a doctor, went to the Court under the Act. It is no part of the function of the Court to give an opinion in regard to the mental condition of a party. This is also not a case where 3rd respondent was already examined by more than one Psychiatrist and conflicting opinions had been expressed by them regarding her mental condition. It may be, in such a situation a trustee could seek a decision by a Court. Even in such a case, since that decision involves entering into merits of the case, the Court under section 34 could not exercise its jurisdiction. Section 34 of the Act contemplates only a summary disposal on non-controversial issues. The mental condition of a person being an important personal problem, the Court cannot dispose of the same in a summary manner. What the Court below has done was to examine 3rd respondent, who is alleged to be an insane person and give the opinion on the basis of her statement. Though Ex.R-1, certificate, alleged to have been given by a psychiatrist, was marked, the Court made no effort to examine the said doctor. Obviously, this could not have been done because the matter has to be disposed of in a summary manner. Thus, it is evident that the advice that was sought for by the trustee required a determination on contentious facts and the jurisdiction of the Court under section 34 being only in the nature of giving guidelines or directions without entering into the merits, the application ought not to have been entertained by the Court. The trustee might have got a valid and satisfactory opinion had he approached a qualified medical man or the Court in a properly instituted suit.

23. In Avoch Thevar case (supra) following the decision in Armugan Chetty vs. Raja Jagaveera ILR 28 Madras 444, it was clearly held that while providing the trustees a right to apply to the Court for opinion to the Management and the Members, Section 34 embodied at the same time, a limitation governing the questions to be asked viz. that there should not be hypothetical and any questions of details or difficulty or importance, not proper in the opinion of the Court for summary disposal. None of the passages quoted or citations relied upon by the learned counsel for the respondents came to his assistance.

24. In view of the above discussion, it has to be held that both the conditions were not satisfied to enable the Court to exercise jurisdiction under Section 34 of the Act. The impugned order was therefore, without jurisdiction and void.

25. Coming to the next question, whether the petitioner was a necessary party to the O.P. it was contended that the petitioner, being the husband of 3rd respondent and interested in her health and also in seeing that the allowances paid to her should be enjoyed by her without being appropriated by persons surrounding her, was a necessary party and hence the O.P. was liable to be dismissed on the ground of non-joinder of necessary parties.

26. Learned Senior Counsel for the respondents refuted the contention submitting that the question being payment of allowances to the beneficiary and the petitioner was not interested in 3rd respondent, he was not made a party.

27. The answer to this question is found in Section 34 itself. Section 34 of the Act does not speak of who are the necessary parties to the petition. It however, expressly says that a copy of the petition shall be served upon the interested persons. It is left to the Court to decide in its discretion who was a necessary party in the subject-matter of the petition. It is true that the petitioner urges that, being her husband, he is interested in her. It is however, the case of the respondents that the petitioner was only interested in her money and not in her service he has not taken any care of her. If she were of unsound mind, the petitioner would have taken her to a Psychiatrist and would have treated her, which he has not done. There was no good reason for him for not doing so. There appears to be considerable force in the submission. Only 3rd respondent was a beneficiary

under the Trust. The only necessary party was the beneficiary herself. There is no sufficient material before me to hold in this C.R.P. that the petitioner was an interested person. It is true in the decision cited by the learned Counsel in the Goods of Akshoy K. Ghose, Deceased, AIR 1949 Calcutta 462, it has been held that non-service of application under Trustees' and Mortgagees' powers Act on person vitally interested, any order passed was liable to be set aside. (Section 43 of the Trustees' and Mortgagees' Powers Act was held to be similar to Section 34 of the Act, vide decision in Official Trustee, West Bengal Case, (3 supra) para 20). From the material on record it cannot be said that the petitioner was vitally interested in the subject-matter of the O.P. Though, he was as her husband, interested in seeing that she enjoys her allowances, the trust itself should be held as responsible to see that the allowances are properly paid to her. In the Text Book Maudsley & Bum's Trusts & Trustees' Cases & Materials, by E.H. Burn, Fourth Edition, it was clearly stated that all the persons having beneficial interest in her claim against the estate need not be parties to the act. Section 34 of the Act does not enjoin that all the interested persons should be made parties to the O.P. It only says that copies of the petition should be served upon persons who were found to be interested by the Court and they should be heard. The section also does not speak of dismissal of O.P. on the mere ground of non-joinder of interested persons. Thus, the petitioner, though he may be an interested person, being her husband, he cannot be said to be a vitally interested person in the subject-matter of O.P. as to make him a party to the petition. In the circumstances, I am not prepared to accept the contention that the petitioner was a necessary party to the O.P.

28. In the result, the C.R.P. is allowed, the impugned order is set aside, the O.P. 708 of 1997 on the file of the Chief Judge, City Civil Court, Hyderabad stands dismissed. No order as to costs.