

**Avoch thevar Vs. Chummar**

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**Court :** Kerala

**Decided On :** Feb-01-1957

**Reported in :** AIR1957Ker171

**Judge :** Koshi, C.J. and; Varadaraja Iyengar, J.

**Acts :** Charitable and Religious Trust Act, 1920 - Sections 7 and 12; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115; [Trusts Act, 1882](#) - Sections 34

**Appeal No. :** Civil Revn. Petn. Nos. 353 of 1955 (E) and 50 of 1956 (K)

**Appellant :** Avoch thevar

**Respondent :** Chummar

**Advocate for Def. :** T.M. Mahalinga Iyer,; S.K. Brahamanandan and; K.P. Abrah

**Advocate for Pet/Ap. :** K.K. Mathew, Adv. in C.R.P. No. 353/55 (E) and S. Subramonia, Adv. in C.R.P. No. 50/56 (K)

**Disposition :** Revision allowed

**Judgement :**

**Varadaraja Iyengar, J.**

1. These are two revision petitions calling in question two different orders passed by the istrict Judge of Parur but to the same effect of authorising the sale of the

properties appertaining to the Jewish Synagogue at Parur. As they involved difficult questions of law and practice they were referred to a Division Bench by one of us before whom it came on in the first instance.

2. The matter arises in execution of a decree in O. S. 37 of 1116 of the Parur District Court. This suit was filed by some members of the Jewish Synagogue at Parur for removal of the trustees of the Synagogue for alleged misconduct and for rendition of accounts. The suit was decreed by the trial court and appeal was taken as A. S. 207 and 230 of 1951 before the High Court by some of the defendants. The appeals were, however disposed of not on the merits but on basis of a compromise between the parties in recognition of the state of things touching the entire community which had newly arisen viz., the ardent and more or less unanimous wish of the members to migrate to Palestine and become citizens of Israel.

It would appear that all the adult members of the community at Parur had assembled together on 5-9-1951 to consider the question and take steps thereon. It was then resolved to appoint S. S. Koder, a most respectable and leading member of the community to be the sole trustee of the Synagogue & its estates with authority to deal with them for effectuating the emigration until such time as a large body or a committee was constituted. It was this resolution that was embodied in the decree of the High Court dated 19-9-1951.

For some reason Koder was unable to push the programme through and he subsequently on 13-8-1952 filed an application, O. P. 11 of 1952 praying to be relieved of the responsibility of the trusteeship for personal reasons. The application was allowed and along therewith the present respondent Chum-mar was, with the consent of all parties, appointed trustee in place of Koder. In or about 1954 the question of the migration was seriously taken up with the Director of Jewish Agency for Palestine, India office, and in due course 313 of the members were taken over leaving about 135 here behind.

Towards the expenses of transport of the persons emigrated a few of the Trust properties were, with the sanction of the court, sold by the trustee and the amount of Rs. 20,000 realised was remitted but the Jewish Agency had estimated the cost

per individual at Rs. 953 and thus had incurred in all a sum of more than 2 lakhs and thirty thousand rupees in the matter. The sale of the balance of about seventy acres of the trust properties and of the Synagogue might not fetch even enough to liquidate this original investment but the Agency was insisting, as a preliminary to the transport of the rest of the members, upon the remittance of whatever was possible of realisation.

The trustee thereupon applied to the Court invoking its jurisdiction under Section 7 of the Charitable and Religious Trusts Act XIV of 1920, and praying for opinion, advice or direction to sell the properties as per private offers which he had collected and which in his opinion were on the whole fair. This motion was objected to by some of the members of the community on various grounds covering not alone the adequacy of the particular offers but also the jurisdiction of the Court itself to entertain the matter. The court below summarily overruled the objection as to jurisdiction but directed the sale in public auction rather than under private bargain.

It is against this order dated 26-8-1955 that C. R. P. 353 of 1955 has been taken, by two of the objectors in the court below. The connected C. R. P. 50 of 56 (originally filed as A. S. No. 50 of 55) is directed against an order dated 17-1-1955 passed at an earlier stage on different motion of the trustee though to same effect. As the same question of jurisdiction has been raised in both the revision petitions, they were heard together and are being disposed of by this single order.

3. Learned counsel for the revision petitioners attacks the availability in the circumstances of the jurisdiction invoked under Section 7 of the Charitable and Religious Trust Act XIV of 1920. According to learned Counsel the opinion, advice or direction which was being sought was not concerned with the management or administration of the trust property but rather the winding up of the trust for achievement of stranger purpose. Anyhow the matter had turned out to be controversial and the Court below would accordingly have exercised its discretion better, if it had refused to entertain the same.

Learned Counsel for the respondent trustee on the other hand urged that it ought not to be open to some few members of the community to backslide and retard the

emigration jointly resolved upon and indeed partly carried out, with sanction of court also obtained. The decree in the case, as well as various orders in execution, it was submitted precluded a reconsideration of the matter. The order passed by the court below did not therefore call for interference particularly in revision.

4. Now Section 7 Clause (1) of the Charitable and Religious Trust Act runs as follows :

'Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for opinion, advice or direction of the court on any question affecting the management or administration of the trust property, and the court shall give its opinion, advice or direction as the case may be, thereon, provided that the court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.'

Clause (4) then provides for a statutory indemnity for the trustee stating in good faith the fact of the matter in application, herein and acting on the opinion, advice or direction of the court given thereon. And finally Section 12 says :

'No appeal shall lie from any order passed or any opinion, advice or direction given under this Act'.

5. The first question that arises for consideration is how far the Revision Petitions herein are maintainable. This precise question came up for consideration before the Allahabad High Court in Mohammed Abdul Wahid v. Radha Kishun, AIR 1929 All 581 (A), where it was observed that the Legislature in enacting Section 12 of the Act, intentionally confined the prohibition to appeal and said nothing about revision and the Court held accordingly that revision under Section 115 C. P. C., was not shut out. That was a case where a direction by the District Judge for sale of wakf property for particular price to particular person in the face of competing offer was considered to be of doubtful propriety.

The learned Judges also contemplated the possibility of a revision before the High Court for better advice when the advice by the District Judge was manifestly to the detriment of the trust property. There can be no doubt therefore, an approach to the High Court in revision, in proper cases e.g., lack of jurisdiction, illegal procedure, etc., is perfectly maintainable.

6. The next question is as to the scope of the jurisdiction of the court under the section and whether the court below has acted in excess. The section it is clear, grants liberty to a trustee to get the direction, advice etc., of the court regarding the management or administration of the trust property. The Court under the section exercises what might be called its consultative jurisdiction, giving guidance to the trustee. The court is not, however, to grant sanction merely because it is applied for. The limitation is that the court will refuse to consider the matter if in its opinion the question is one not capable of summary disposal e.g., if it is one of detail or difficulty. In any event the court will consider judicially the matters placed before it before disposing of the matter

7. In *In re Samuel Marie Brereton*, ILR 7 Bom 38Z (B), the question came up before the Bombay High Court under Section 43 of the Indian Trustees' and Mortgagees' Act, 28 of 1866 in regard to the payment out by the Administrator-General of Bombay of the net collections in his hands to the administrator of the domicile. The section, as here, empowered any trustee, executor, or administrator without the institution of a suit, to apply by petition to any Judge of the High Court for the 'option, advice or direction' of such Judge on any question respecting the 'management or administration' of the trust property or the assets of any testator or intestate. Latham, J., referred to and followed the English authorities on the almost identical provisions contained in S, 30 of the English Act 22 and 23 Vic. C 35 Law of Property Amendment Act 1859 (known as Lord St. Leonad's Act). He quoted the observations of Kindersley V. C., in *In re Lorenz's Settlement*, (1861) 1 Dr. and Sm. 401 at p. 404 (C):

'My understanding of that section of the Act is, that it was intended by the Legislature that the court should have the power to advise a trustee or executor as to the management and administration of the trust property in the manner which

will be most for the advantage of the parties beneficially inter-fisted, but not to decide any question affecting the rights of those parties inter se: otherwise the effect would be that a deed or will involving the most difficult questions, and relating to property to an amount however large, might be construed, and most important rights of parties decided, by a single judge, without any power of appeal whatever. This, I am satisfied, the Legislature never intended'.

He next referred to the opinion of Sir J. Romilly in *In re Mary Hooper* (1861) 29 Beav. 656 at p. 657 (D), in regard to the same section,

'that the object of this clause was to assist the trustees in the execution of the trusts as to little matters of discretion'

and in the result refused to give any opinion on the question proposed because,

'It is no part of the duty of a Judge under Section 43 to give any opinion on a point the decision of which may depend on questions of right or title',

In *In re Lakshmi Bai*, ILR 12 Bom 638 (E), where again opinion was sought under this Section 44, Scott, J., referred to the English cases and also ILR 7 Bom 381 (B), just cited and said :

'The court will not, under this section, advise trustees as to disputed points of law or fact, but will do so only as to undisputed matters of management, such as questions of advancement, maintenance, change of investment, sale of a house, compromises taking proceedings etc.'.

8. We have again cases under Section 302 of the Indian Succession Act which empowers the High Court to give any 'general or special directions in regard to the estate or in regard to the administration thereof' on application made to it by an executor or administrator. Page J., in *Provesh Chandra v. Ashutosh Mukerji*, ILR 56 Cal 979 at p. 988: (AIR 1930 Cal 258 at p. 261) (F), was inclined to think that the Court would not be competent On such application to determine any disputed question of title and the issue of directions to the executor or administrator should be confined to the management and administration of the estate. In *re Akshoy K. Ghose*, AIR 1949 Cal 462 (G), P. B. Mukherji J., dealing with the scope of the

expression, 'directions' in Section 302, of the Indian Succession Act observed that the word did not mean adjudication and determination of substantive right but only 'directions to help the executors in the difficulties in respect of practical management or administration where no disputed question of title or difficult question of construction of will or complicated questions of law are involved'

and added that the court was here exercising the same limited jurisdiction as was conferred by Section 30 of 22-23 Viet. chapter 35 or Section 43 of the Trustees' and Mortgagees' Act notwithstanding the additional words 'opinion or advice' in those sections.

9. Finally Section 34 of the Indian Trusts Act 1882 may be referred to in this connection. For, wholly providing for the trustee's right to apply to court for opinion etc., in the management of trust property, it embodies at the same time, the limitations governing the questions to be asked that is, they should be 'present' i.e., not future or contingent or hypothetical and also be other than questions of detail or difficulty or importance not proper in the opinion of the court for summary disposal". See *Armugan Chetty v. Raja Jagaveera*, ILR 28 Mad 444 at p. 450 (H).

10. Applying the tests suggested above to the facts herein, it appears perfectly clear to us that this is not a fit case for the exercise of the jurisdiction appealed to. For it presents problems of some difficulty and great nicety touching not alone the disposal of property but the disposition of human beings as well. Learned Counsel for the revision petitioners says that it may be possible for his clients to attack the appellate decree in the case, authorising by way of compromise the disposal of trust properties for purpose of carrying out emigration, as wanting in jurisdiction, since the suit as it was originated and carried on did not admit of such a termination.

And he referred to the suit O. S. 404 of 1954 in the Parur Munsiff's Court even now pending, where the foundation of the present trustee's right to function at all was questioned and permanent injunction against disposal of the trust properties was also prayed for. Learned Counsel submitted that even assuming that the compromise arrangement was validly constituted, still it was not as if it enured for

all time and unchangeably. The time factor and the personality of S. S. Koder were material circumstances and to the extent they have changed, the integrity of the original arrangement was broken up. And one could not also be sure whether emigration of the objectors and others left here would ever be accomplished. For the sale of all the remaining properties will help to wipe out but part of a so called prior debt and they had to depend on mere benevolence.

There are no doubt questions asked on the other side as to res judicata, estoppel and good faith and consistency. But we do not think we are called upon to answer these questions. Enough for us to say that the questions posed are such as could not be disposed of in a summary manner within the meaning of the proviso in Section 7(1). It follows that the motion of the respondent before the court below did not admit of proper consideration and disposal under Section 7 of the Charitable and Religious Trusts Act, 1920.

11. In the result we allow the revision petitions herein and dismiss the petition filed by the respondent in the court below for directions, advice etc., in the matter concerned. The parties will get their costs from out of the Trust.

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