

In Re: R. Raghupathy and 2 ors.

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Court : Chennai

Decided On : Mar-13-2003

Reported in : 2003(2)CTC38; (2003)2MLJ290

Judge : K.P. Sivasubramaniam, J.

Acts : [Trusts Act, 1882](#) - Sections 34

Appeal No. : C.R.P. No. 801 of 1997

Appellant : In Re: R. Raghupathy and 2 ors.

Advocate for Pet/Ap. : R.G. Rajan, Adv.

Disposition : C.R.P. dismissed

Judgement :

ORDER

K.P. Sivasubramaniam, J.

1. This revision is directed against the order of the learned District Judge, Nagapattinam in Trust O.P.No.38 of 1995.

2. The said Original Petition was filed by the petitioner/Trust represented by its hereditary Trustees. With reference to 'Mandagapadi' on the second day of Vidayathi festival of Sri Rajagopalaswamy temple, Mannargudi, a Trust was

created by the plaintiffs/Trustees. The ancestors of the Trustees had constructed a bungalow mentioned as 'A' Schedule property. The idol of Sri Rajagopalaswamy is brought and a Mandagapadi is conducted by their family. The festival involves considerable expenses. One K.R. Raghunatha Rao and K.R. Ramachandra Rao, two brothers, the predecessors of the present Trustees, were interested in providing for the above 'Mandagapadi' and in order to perform the same regularly and permanently and to provide funds and income had set apart some properties for the Trust. They therefore, earmarked plaint 'A' schedule property for the mandagapadi expenses by way of a registered settlement deed named as 'Kaingarya' Trust deed dated 16.9.1954. Under the said deed, they have provided that 'mandagapadi' must be performed in the 'A' schedule building every year and that the income from the 'B' schedule properties must be utilised for that purpose. During their life time they were performing the 'Mandagapadi'. Raghunatha Rao died on 14.12.1956 and Ramachandra Rao was looking after the same. He had executed his last Will and testament on 20.4.1965 by which he had nominated R.K.Rama Rao, father of the present Trustees, to succeed him. On the death of Ramachandra Rao on 23.6.1969 Rama Rao took over and he was managing the properties in terms of the Will. In his turn, he has executed a Will dated 3.8.1978 appointing his sons to be the Trustees after his life time. He died on 11.8.1978 and on his death one of his sons Padmanabhan died later. The other three sons are the present Trustees and they have filed the above petition.

3. It is further stated that the 'B' schedule properties are dry lands comprising of 13 acres and 14 cents, and not included in ayacut. Only punja crops could be raised if there are rains. Therefore, most of the years the lands will be left without cultivation. For the past eight years, there has been no cultivation for want of sufficient water supply. The lands are also on higher level. The Bungalow in 'A' schedule property is also more than 100 years old and now it is in a highly dilapidated condition. For want of funds, the Trustees are unable to carry out repairs to the old building, and even white washing is not possible. It is further stated that normal expenditure for the 'Mandagapadi' was steadily increasing and it was about Rs. 15,000 when the petition was filed. The Trustees have to obtain funds from other Trusts of their family and to perform 'Mandagapadi' and there are no fixed deposits or fixed income for the Trust on which they can depend for the

performance of 'Mandagapadi'. In fact, a portion of the lands, 4 acres and 7 cents were acquired by the Government under the Land Acquisition Act and a meagre compensation of Rs. 14,901.75 was awarded. The High Court has directed the State Government to fix the value of the land afresh. Till now, no action was taken and the compensation with accrued interest was in Court deposit in L.A.O.P.No.2 of 1977. Even the interest amount has not been paid to the Trust. It is also stated that 'A' schedule property is in the main road and had to be kept under constant watch to avoid encroachments. The southern wall of the property has fallen down. There is frequent nuisance during night times and unruly elements encroach upon the open land and the cost for putting up a compound wall will be very high and the Trust has no funds to meet the same.

4. It is further stated that to secure a permanent source of income for the maintenance of the property and for the performance of 'Mandagapadi' every year, it has become imperative for the Trustees to sell the unremunerative 'B' schedule lands and also some portions of 'A' schedule property which are lying waste and to invest the proceeds which will provide constant and good income by way of interest for the Trust to meet the 'Mandagapadi' expenses. Though the 'B' schedule lands are lying vacant, if borewells are put up, the Trust can be assured of income. If the unwanted portions of the building are sold, the purchasers can be asked to put up a compound wall at their own costs, so that the existing buildings can be retained by the Trust to discharge the objects of the Trust. A compact area consisting of the said building and open ground in the middle will be enough to perform the 'Mandagapadi'. Therefore, the Trustees request that they may be permitted to sell the above said areas, and then the sale proceeds can be invested in securities as provided under Section 20 of the Trusts Act and the income will be sufficient to meet the yearly expenses. They have no other motive except to perform the obligations of the Trust as have been done all these years. The Trustees are also agreed to abide by the directions of the Court and hence pray for an order permitting the petitioner to sell the schedule mentioned properties at the market value and permitting them to invest the sale proceeds as provided under the Trusts Act.

5. The learned District Judge on hearing the petitioner, however, rejected the petition on the following six grounds:

(i) Under the Trust deed, there was a bar on alienation of the property and hence the properties cannot be sold.

(ii) The lessees of the property have not been impleaded as parties.

(iii) The details relating to the properties, lessees, items leased out to the lessees and other details relating to the lease have not been filed and no steps have been taken under Section 19(3) of the Endowment Act.

(iv) As regards 'A' schedule property no details are given with reference to the nature and condition of the property.

(v) No details on the expenses required for 'Mandagapadi' and accounts have been filed.

(vi) Details of the proposed purchasers and the probable value of the property have not been stated and therefore, there was possibility of selling the property for lesser price.

6. With the result, on the basis of the aforesaid reasons, the petition was dismissed. Hence, the above revision petition.

7. Learned counsel for the petitioner contends that the O.P. was filed under Section 34 of the Indian [Trusts Act, 1882](#) and that is the only provision under which such reliefs can be sought for. It is further stated that the reason that the trust deed contemplated bar on alienation of the property, will not prevent the Court in ordering sale of the property for the survival of Trust and for effective execution of the objects of the Trust. Reference is made to the judgment of the K.M. Natarajan, J. in Sathyamurthi, R. v. R. Rukmani, 1989 (I) L.W. 388.

8. There are no parties opposing the above petition and this Court has to be satisfied about the legality of the petition filed by the petitioner. It is necessary to extract Section 34 of the Trusts Act which is as follows:

'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 for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property 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 the discretion of the Court to which it is made.'

9. A perusal of the above provision discloses that the jurisdiction of the Court is only to render opinion in the management of the Trust property. It is true that directions can also be issued for the management of administration of the Trust property.

10. The question which arises for consideration is as to whether the Court can order sale of the property even in the face of the Trust deed containing a specific clause prohibiting sale. I had examined the issue in detail and the following are some of the rulings of different Courts in the said context.

11. In Gangadhariah v. Thimmamma A.I.R. 1951 Mys. 6 a learned single Judge held that the Court has no general power to interfere with or disregard the provisions of a Trust, but the Court has, in exercise of its extraordinary jurisdiction, power to go beyond express provisions of the Trust instrument in cases of emergency, and authorising the Trustees to do an act, not authorised by the Trust.

Where a deed of Trust did not empower the Trustees to sell the trust properties, the Court can authorise the Trustees to sell the property subject to certain conditions when it was found to be in the best interests of the Trust to do so. The learned Judge held that the said jurisdiction was however, of an extremely delicate character and should be exercised with great caution.

12. In *Official Trustee, W.B. v. Sachindra*, : the issue which arose for consideration was as to whether under Section 34 of the Trusts Act permission can be granted to revoke or alter the clause relating to the quantum of interest payable to each beneficiary. The Supreme Court after examining the said issue in detail, held that the matter did not relate to the management and administration and that such an order cannot be passed by the Court. The Supreme Court held that under Section 34 of the Trusts Act the Court can give only opinion, advice or direction and not 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 to be given to the beneficiaries. The jurisdiction conferred on the Court under Section 34 was a limited jurisdiction and the Court has not been conferred with over-all jurisdiction in matters arising under the Trust deed. The Court had no jurisdiction to pronounce on the pleas put forward by the settlor. The Supreme Court went further to examine the law laid down by the Chancery Court in England and concurred with the observations in the judgment of House of Lords in *Chapman v. Chapman* 1954 A.C. 429. The Supreme Court concluded thus:

'24. From the above observations it is clear that the learned Judge proceeded on the basis that the Court has no jurisdiction to permit the alteration of any of the terms in a Trust deed excepting as regards the following matters:

- (a) changes in the nature of an infant's property e.g. by directing investment of his personality in the purchase of freeholds;
- (b) Allowing the trustees of settled property to enter into some business transaction which was not authorised by the settlement;

(c) Allowing maintenance out of income which the settlor or testator directed to be accumulated ; and

(d) Approving a compromise on behalf of infants and possible afterborn beneficiaries.'

13. On the issue which arose for consideration before the Supreme Court it was held that the alteration of quantum of interest did not relate to management or administration of the Trust property.

14. In *Sahebzadi Amina v. Syed Mohd. Hussain*, : a Division Bench of Andhra Pradesh High Court dealt with the situation where the Trustees were unable to meet the heavy and recurring wealth tax liabilities. The jewellery was kept idle in the Bank, and the Division Bench held that it was no use to keep the jewellery idle in the Bank when the Trustees had clearly stated that after meeting the present tax liability there would be sufficient balance which could be invested in fixed deposit to meet the recurring tax demand. With the result, the entire jewellery and ornaments were directed to be sold subject to certain conditions.

15. In *Nilima v. Prakriti Bhusan*, : a Division Bench dealt with the issue of Trustees entering into an agreement where there was no express provision in Trust deed authorising the Trustee to sell the property and a dispute was raised under Section 90, C.P.C. The Division Bench held that the lower Court was justified in refusing to answer the question so raised as it was not the Court specified in under Section 34 of the Trusts Act, and that the question referred to the Judge for his opinion was a matter relating to the management and administration of the trust property which could be answered only by the Principal Civil Court for its opinion. Under Section 34 of the Trusts Act, the Court was vested with wide powers to authorize sale of the properties by the Trustees even if the Trustee was not expressly authorised so to do.

16. As regards the judgment of this Court which was relied on by the petitioner, the same was a subject matter of an earlier order dated 28.11.1988 in C.R.P.No.334 of 1987 reported in *Satyamurthi, R. v. R. Rukmani* 1989 (1) L.W. 385. By the said order, K.M. Natarajan J. held that the petitioner had no right to sell the property

and there was no reason for doing so.

17. However, a Review was filed and in the orders in the Review Petition reported at page 388 of the same volume, the learned Judge had ordered the review and held that the proposed sale was for the benefit of the Trust and also to preserve the other properties. It was held that the Trustees can be permitted to sell the property. It was also noted that tenants who had earlier objected and appeared through Counsel and they have expressed no objection for the sale of the property.

18. In the above background, on examining the issues arising for consideration in this case, I have already extracted the six grounds on which the lower Court refused to grant permission. The first ground is that the Trust deed contemplated a bar on the alienation of the property. This issue has already been discussed above and in terms of the rulings cited above, under Section 34, the Court can order sale of the property even though there is a bar on the alienation in terms of the Trust deed, under very exceptional circumstances and rare cases, where the Court is satisfied that it was absolutely necessary for the very implementation and continuation of the objects of the Trust and that the conditions of the property were so bad and that the continued preservation of the property/Trust could be only by way of sale of the property.

19. The question as to whether such requirements are satisfied by the petitioners in this case has not been properly set out in the petition filed before the lower Court. As pointed out by learned District Judge, none of the details as required to be furnished by the Court have been complied with. No details have been stated regarding the nature of the property, the expenses involved in the conduct of the 'Mandagapadi' and the value of the property for which the properties could be sold etc. In the absence of such details, the learned District Judge was perfectly justified in rejecting the petition. Therefore, I have no reason to interfere with the orders passed by the learned District Judge except for holding that as regards the first ground for rejection, I am inclined to hold that it is open to the Court to permit sale of the property in rare and exceptional cases for the very preservation of the Trust. It is open to the petitioners to approach the District Court again for the said

purpose by furnishing all the required and proper particulars. On any such petition being filed by the Trustees, the District Court shall go into all the incidental issues and examine the issue as to whether the very survival of the Trust depends upon ordering sale of the property. In the event of the Court coming to the conclusion that the sale of the property would be necessary, then it has to consider as to whether the entire property has to be sold or only a portion of the property could be sold to satisfy the requirements and expenses for conducting 'mandagapadi' and the manner in which the sale consideration is to be invested in terms of the Trusts Act without there being any possibility of misuse or misapplication. Any amount to be invested should be directed to be invested only in a Scheduled Bank to the credit of the Trust and strict conditions have to be imposed for the withdrawal of only the interest amount and not the corpus of the deposit to be so made.

20. In the event of permission being granted for sale, then the District Court has to ensure a proper process for securing highest possible sale consideration by directing the Trustees to give proper advertisement and confirmation of sale only by order of Court only after the Court is satisfied about the entire process of sale.

21. Subject to the above observation, the above C.R.P. is dismissed.