

**N. Seetha Devi Vs. Janaki Ramachandran Educational and Charitable Trust
Rep. by Its Trustee N. Ramachandran and N. Ramachandran**

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Court : Chennai

Decided On : Sep-13-2005

Reported in : (2005)4MLJ360

Judge : P.K. Misra and ;N. Kannadasan, JJ.

Acts : Indian Trust Act - Sections 73; Letters Patent Act

Appeal No. : O.S.A.No. 48 of 2005 and C.M.P.No. 4576 of 2005

Appellant : N. Seetha Devi

Respondent : Janaki Ramachandran Educational and Charitable Trust Rep. by Its
Trustee N. Ramachandran and N. Rama

Advocate for Def. : G. Rajagopalan, Sr. Adv. for ;C. Saravanan and ;S.
Thenmozhi, Advs.

Advocate for Pet/Ap. : R. Subramanian, Adv.

Disposition : Appeal dismissed

Judgement :

N. Kannadasan, J.

1. The above appeal is filed as against the order dated 2.2.2005 in Original Application No. 827 of 2004 in C.S.No.791 of 2004 wherein the defendant/appellant herein is restrained from in any manner whatsoever interfering with the smooth functioning of the second plaintiff/second applicant as the trustee of the first plaintiff/first applicant and as the Correspondent of the schools coming under the trust in pursuance of the trust deed dated 24.4.1985 as amended from time to time, including running of the schools and operating the bank accounts and for consequential reliefs.

2. The suit is filed to declare the second plaintiff as validly appointed trustee of the first plaintiff trust (hereinafter called as the 'Trust') and for a consequential injunction restraining the defendant from in any manner interfering with the smooth functioning of the second plaintiff as the trustee of the first plaintiff including functioning as the Correspondent of the schools coming under the trust in pursuance of the trust deed as amended from time to time.

3. The plaintiffs have filed the application seeking the relief as stated therein by contending that the defendant by executing a supplemental deed dated 27.9.2004, whereby Clauses 5 and 6 of the original trust deed dated 24.4.1985 which was later on amended on 21.8.1995 as being restored and unilaterally declared herself as a trustee and attempted to interfere with the functioning of the office of the trustee of the second plaintiff. The said application was resisted by the defendant by contending that the second plaintiff has committed serious irregularities resulting in the supplemental deed came to be executed on 27.9.2004 and she, being the author of the trust, is entitled to alter the terms of the trust and as such, the second plaintiff has no authority to hold the office any longer. The learned single Judge, by order dated 2.2.2005, has passed an order of injunction as prayed for in favour of the plaintiffs, against which the above appeal arises.

4. Learned counsel for the appellant/defendant would contend that the learned single Judge has not considered the fact that the defendant has executed the supplemental deed wherein the Clauses as set out in the original trust deed dated 24.4.1985 were restored and subsequent amendments to the said trust deed cannot be construed as legal, since the said amendments affected the basic

structure of the original trust in respect of the line of succession to the office of the trustee. It is further contended that the appointment of second plaintiff as trustee is only by way of nomination by his father who was appointed as trustee as per the original trust deed dated 24.4.1985 and as such, there is nothing illegal on the part of the defendant to execute a supplemental deed by restoring the same Clauses as set out in the original trust deed dated 24.4.1985. It is further contended that the author of the trust is entitled to exercise the powers under Section 73 of the Trust Act to restore the original position with respect to appointment of trustees and as such, the power under which the second plaintiff came to be appointed as trustee by virtue of subsequent amendment to the original trust deed was rightly taken away and hence, the nomination of the second plaintiff consequent to the subsequent amendment has to be declared as invalid.

5. Per contra, learned senior counsel appearing for the respondents/plaintiffs would contend that the learned Judge has correctly held that by virtue of a supplemental deed dated 27.9.2004, the second plaintiff cannot be removed as a Trustee and at any rate, the said amendment would be only prospective in nature and it cannot interfere with the office of the second plaintiff who was appointed consequent to the relevant Clauses which was introduced by way of an amendment in the year 1995 and the discretion was rightly exercised for the grant of an interim order.

6. We have considered the rival contentions of the learned counsels appearing on either side.

7. The point for determination that arises in the appeal is:

'Whether the plaintiffs have made out a case for the grant of an interim order as held by the learned Judge or not?

8. The trust deed was executed on 24.4.1985 by the defendant herein wherein she has styled herself as the 'author of the trust' or the 'author'. The relevant Clauses which requires interpretation reads as follows:-

'5) In the event of death or voluntary retirement of the first trustee, a new Trustee shall be elected by the then existing Governing Body/Board of Management. The new Trustee shall hold the office of the Trustee for a period of five years or until his voluntary retirement or his death. Succession to the Trusteeship shall continue in the above manner by election.

6) The Day-to-day Management of 'JANAKI RAMACHANDRAN MATRICULATION SCHOOL' or other Schools or Institutions under this Trust shall be by the Governing Body/Board of Management consisting of the following persons:-

1) Sri P.Narayanan, The Trustee (President)

2)Mrs.N.Seethadevi,W/o.P.Narayanan

3)Mrs.LathaRajendran, W/o.Rajendran

4)Mr.Ramachandran, S/o.P.Narayanan

5)Miss. Bhanu, D/o.P.Narayanan'

9. It is not in dispute that one Thiru P. Narayanan, who is none-else than the husband of the defendant was nominated as the first trustee. By another amendment of the trust deed on 27.12.1988, the author viz., the defendant has incorporated certain Clauses by describing them as omissions and modifications in the interest of the trust. Though the preamble of the said amendment deed proceeds as if the said deed is executed by the author, in the concluding portion of the deed both the author as well as the first trustee viz., her husband P. Narayanan have signed as if both of them have executed the said document. Subsequently, on 18.8.1995, the governing body passed a resolution which proceeds to the effect that the first trustee viz., P.Narayanan nominated the second plaintiff viz., N.Ramachandran as trustee who is none-else than the son of the said P.Narayanan and the defendant and he would assume office from the date on which the abovesaid P.Narayanan relinquishes the post or after his death. It further proceeds that the said nomination is in terms of the proposed amendment in the governing body meeting held earlier. Though the first trustee has chosen to nominate the second plaintiff as a trustee even before the actual

amendment was effected, the resolution is passed as in the manner as stated above by referring to the proposed amendment as agreed to in the earlier governing body meeting which took place on 10.7.1995. It is pertinent to note that when the earlier resolution was passed in the meeting of the governing body on 10.7.1995, and in the subsequent meeting on 18.8.1995 wherein it was resolved authorising the first trustee P.Narayanan to nominate his son Ramachandran as the second plaintiff as a trustee, the defendant was one of the signatory apart from the other members of the governing body. Subsequently by a registered deed of amendment dated 21.8.1995, the amendment was introduced in respect of Clause-5 and Clause-6. The relevant amendment to Clause-5 reads as follows:-

'Clause 5:

Thiru P.Narayanan the Founder Trustee during his lifetime shall have the power to nominate his successor as Trustee who shall hold office for life after Founder Trustee's life/retirement or relinquishment. The person who succeeds as Trustee shall have the power to nominate his successor.

In the event of death of the Trustee without nominating his successor a new Trustee shall be selected by the then existing governing body from one among them by majority.'

A perusal of the amendment in Clause-5 as amended discloses that the founder trustee P.Narayanan was empowered to nominate his successor as trustee to hold office either after the founder trustee's life/retirement or relinquishment. The said deed of amendment is also executed in the same manner as referred to supra viz., by the defendant as well as the founder trustee. Immediately thereafter, on 1.9.1995, the founder trustee viz., P.Narayanan has nominated the second plaintiff as a trustee who will hold office after his lifetime/retirement/relinquishment. On 4.2.1999, the governing body met and the minutes of the said meeting proceeds to the effect that the founder trustee P.Narayanan has confirmed his earlier nomination of the second plaintiff as a trustee after his lifetime. The minutes of the said meeting is admittedly signed by the defendant as well as the other members of the governing body. Subsequently, the founder trustee P.Narayanan has died on 3.6.2004 and consequent to his death, the governing body has again met on

6.6.2004 wherein the nomination of the second plaintiff as a trustee was approved and the powers conferred upon him were also approved and the relevant Clauses are as set out hereunder:-

'

... ..

Mrs.N.Seetha devi member present nominated Thiru N.Ramachandan as the Trustee as per the amended Trust Deed registered on 21st August, 1995.

... ..

... ..

A letter dated 1 Sep. 1995 by Mr.P.Narayanan nominating Mr.N.Ramachandran as Trustee after his life time was read and approved.

The proposal of nominating Mr.N.Ramachandran as Trustee was seconded by Mr.S.N.Venkatasubramaniaym. The nomination was approved unanimously by the Members of the Trust.

For the functioning of the schools under the Trust, Members present requested the nominated Trustee N.Ramachandran to regularise the day to day activities of the Trust from 6 June, 2004. It is decided to feed poor people on the 11th day function of the Late Trustee in a grand manner on 13th June, '04.

It is resolved to nominate the Trustee N.Ramachandran to be the Correspondent of all the Schools under the Trust. It is also resolved to nominate the Trustee N.Ramachandran to operate the school bank accounts from 7 June, '04 as the schools have already re-opened for the academic year 2004-2005.

... ..

... ..

sd./-S.N.Venkatasubramanian

sd./-N.Seetha Devi.

sd./-N.Ramachandran

sd./-R.Seema'

Here again, the defendant is one of the party to the resolution of the governing body.

10. From the facts as narrated above, it is clear that consequent to the death of the trustee P.Narayanan, the second plaintiff was nominated as a trustee and he was authorised to act as correspondent of all the schools and to operate the bank accounts. As early as from the year 1995 onwards, it was the intention of the founder trustee as well as the defendant to ensure that the second plaintiff will succeed the founder trustee viz., his father P.Narayanan. Till 25.9.2004, there was no complaint whatsoever as against the second plaintiff and it is only on the said date, a telegram was sent by one Mrs.Banu Sridhar to the second plaintiff questioning him about non-remittance of the daily collection fees from 20.9.2004 till 25.9.2004. It is only thereafter, the supplement deed dated 27.9.2004 came to be executed by the defendant by restoring the original Clauses 5 and 6 as per the trust deed dated 24.4.1985. The above facts would disclose that the defendant has executed the supplemental deed in a hurried manner within a short span of time viz., on 27.9.2004 within two days from the date of issuance of the telegram by Mrs.Banu Sridhar on 25.9.2004, complaining about the non-compliance of the daily collection of fees pertaining to a period of five days. In the said supplemental deed, the defendant had appointed herself as a trustee of the trust and correspondent of two schools; and Clauses 5 and 6 of the original deed as having been restored and reconstituted the governing body wherein the second plaintiff's name does not find place; and declaring that the nomination of the second plaintiff as trustee ceases to have any effect and he will not have any right either in the trust or administration of the schools and so on. Under the said circumstances, the second plaintiff was constrained to approach this Court by filing the suit as well as the application seeking the relief as stated therein.

11. The narration of the facts as set out supra clearly discloses that on 1.9.1995, though not earlier, when the second plaintiff was nominated as a trustee by the founder trustee P.Narayanan, he was empowered to do so in terms of the amendment introduced to the original trust deed on 21.8.1995. It is also not in dispute that the nomination of the second plaintiff as trustee and conferring powers upon him was approved by the governing body even prior to the said amendment and after the amendment. Even though much importance need not be attached to the nomination prior to the amendment, we cannot ignore the fact that consequent to the amendment of the trust deed on 21.8.1995, the same was approved by the governing body later on. The author of the trust deed having executed the amendment and subsequently, ratified the nomination of the second plaintiff in the governing body meeting more than once, cannot turn around and say that such nomination will cease to have any effect by executing an another supplement deed on 27.9.2004. Even the relevant clause in the supplement deed clearly proceeds to the effect that consequent to the supplement deed, the nomination of the second plaintiff ceases to have any effect which would mean that the said nomination was acted upon and the second plaintiff continued to function as trustee after the death of founder trustee. If that is so, it cannot be suggested that the relevant clauses in the supplement deed can have retrospective effect in operation and thereby nullifying all the acts that was done prior to the execution of the said deed either by founder trustee or by others in terms of the powers conferred upon under the said deed.

12. That apart, if we accept the contention of the learned counsel appearing for the appellant that in terms of the supplement deed dated 27.9.2004 that Clauses 5 and 6 of the original trust deed of declaration of trust dated 24.4.1985 are treated to be restored, even then that will not come to the aid of the defendant in terms of the recitals as contained in the said Clauses. Clause 5 of the original trust deed proceeds in the manner in which a new trustee shall be elected consequent to the death or otherwise of the first trustee. In the instant case, the death of the first trustee already took place as early as on 3.6.2004 and immediately on his death, the new trustee viz., the second plaintiff assumed office. Similarly Clause-6 speaks about the power of the governing body to run the administration of the day today management of the schools. It is the very same governing body has already

authorised the second plaintiff to run the administration of the schools by way of resolution consequent to the nomination of the second plaintiff. Since a situation does not arise to elect a new trustee consequent to the death of the trustee as on today, by virtue of the restoration of the said clauses, it cannot be suggested that the new trustee shall be elected once again even though no vacancy to the post of trustee available on the date of the execution of the supplemental deed.

13. As regards the next contention of the learned counsel for the appellant to the effect that the supplemental deed came to be executed in terms of Section 73 of the Indian Trust Act (hereinafter called as the 'Act'), it is seen that the learned single Judge, by referring to the said provision of law, has rightly come to the conclusion that Section 73 of the Act will have no application with regard to the facts of the case.

14. The learned counsel though placed reliance upon several decisions and would contend that the amendment introduced by way of registered deed dated 21.8.1995, cannot have any legal force to decide an application for the grant of interim order during the pendency of the suit, and it is always open to the appellant to agitate the said issues at the time of final hearing of the suit. Under the said circumstances, we do not propose to deal with all the decisions cited by the learned counsel for the appellant. Further, the scope of interference by this Court under Clause-15 of Letters Patent, as against the grant of interim orders is limited. It is settled law that the Court cannot interfere with the discretionary orders of the learned single Judge in an appeal filed under Clause 15 of the Letters Patent Act and if two views are possible and the view adopted by the learned single Judge is neither arbitrary nor capricious nor perverse as held by the Division Bench of this Court in T.T.K. Textiles Ltd., v. Seagull Clothing (P) Ltd. 1997 (III) CTC 55. From the materials available on record, we are of the opinion that the view adopted by the learned single Judge in the instant case is neither arbitrary nor capricious nor perverse.

15. Further, as narrated supra, the second plaintiff having assumed office as a Trustee consequent to his nomination and continued to discharge the functions as trustee as well as the Correspondent of the Schools. Hence he cannot be

prevented from discharging the said duties immediately on the execution of a supplemental deed dated 27.9.2004 by the defendant, wherein the power is usurped upon herself. The entire problem cropped up only on 25.9.2004, on which date a telegram was sent by one of the members of the governing body, who is none-else than the daughter of the defendant, alleging that the second plaintiff has not remitted the daily collections relating to previous five days and immediately within a period of two days viz., on 27.9.2004, the supplemental deed came to be executed. Under the abovesaid circumstances, the second plaintiff has established a prima facie case for the grant of an interim order and admittedly the balance of convenience is in his favour and if the interim order is not granted, it would cause irreparable loss to him.

16. Therefore, we do not see any reason to interfere with the order of the learned single Judge and accordingly, the appeal is dismissed. It is made clear that the observations made by the learned single Judge or by us, while disposing of this appeal, are only prima facie observations and obviously the suit should be decided on its own merits in accordance with law. No costs. Consequently, connected CMP is also dismissed.