

**L. Narayanan and anr. Vs. Nil**

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**SooperKanoon Citation :** [sooperkanoon.com/831025](http://sooperkanoon.com/831025)

**Court :** Chennai

**Decided On :** Aug-16-2004

**Reported in :** AIR2005Mad17

**Judge :** V. Kanagaraj, J.

**Acts :** [Trusts Act, 1882](#) - Sections 1; Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 - Sections 34

**Appeal No. :** Civil Revision Petition (NPD) No. 152 of 2004

**Appellant :** L. Narayanan and anr.

**Respondent :** Nil

**Advocate for Pet/Ap. :** K. Ilango, Adv.

**Judgement :**

ORDER

**V. Kanagaraj, J.**

1. This Civil Revision Petition is directed against the fair and decretal order dated 3-9-2003 made in Trust O.P. No. 1 of 1990 by the Court of Principal District Judge, Tiruchirapalli seeking to set aside the same on certain grounds that the Court below failed to see that the lands in question regarding which a Trust Settlement Deed had been executed by the father of the petitioners have been lying waste

without income and hence the intention of the executor of the settlement cannot be implemented in any way consequent to which the petitioners are unable to perform 'uthsavams' as directed by their father; that the H.R. and C.E. Board will not get any vested right and cannot object for the sake of the immovable property as the Trust created is not a public charitable trust; that the lands in question cannot generate any income in the present condition since irrigation facility is not available; that the petitioners are giving undertaking to deposit the sale proceeds in the name of the Trust for the purpose mentioned in the Trust Settlement deed; that the proposed sale is only to fulfil the intention of the testator. On such and other minor grounds, the petitioners have come forward to pray to the relief extracted supra setting aside the fair and decretal order passed by the Court below.

2. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners, what comes to be seen is that the property described in the schedule to the petition filed below originally belonged to the father of the petitioners by name Ayyavu Pillai alias Laxman Pillai and by a document dated 1-3-1957, he executed a trust settlement deed in and by which he dedicated the schedule property for charitable purpose along with some other properties that were not subject matter of the petition; that in the Trust-cum-settlement deed, he had nominated himself as the trustee and after his lifetime, appointing the petitioners to continue as the trustees; that the founder trustee, the father of the petitioners, is no more and as per the Trust-cum-settlement deed, the petitioners are the present trustees and in these circumstances, the petitioners on ground that the property is not yielding any income and the adjacent properties have become house sites and that if some arrangement is not there to dispose it of, it would be trespassed by the land-grabbers and if the same is disposed of, it would fetch a good amount as the sale price which will be beneficial for the trust and the' intention of the vendor of the Trust could very well be fulfilled, had come forward to file the above application before the lower Court.

3. The lower Court, having traced the facts and circumstances of the case as pleaded by the petitioners, would also trace the objections raised by the objectors

to the effect that the Trust was created by the founder trustee dedicating the petition mentioned property along with other property for the performance of charity and special endowment in certain temples which are under the control of the H.R. and C.E. administration that the allegation that the petition mentioned property has become Inca pable of cultivation is not correct; that the property having been leased out and income by way of lease amount and other such particulars have not been mentioned in the petition and the petition itself is outside the scope of statutory provision contemplated under Col. 8 of the Trust Deed; that the allegations that if the property Is sold will be beneficial to the Trust and the intention of the founder could be fulfilled are false; that it has been specifically drafted under Col, 8 of the Trust Deed that the property should not be alienated at any cost and even if any alienation is made by the trustees, it will not bind the Trust; that the Honorable Supreme Court has held that the Court has no power to grant permission to the trustee to sell the properties when there is an express provision in the trust deed that the properties must not be sold, as per the case reported in Official Trustee, West Bengal v. Sachindra, : [1969]3SCR92 ; that the cherished desire and wish of the founder of the trust is not to sell away the trust properties whereas the petitioners have entirely suppressed the material facts of the trust deed and have come forward to file the above petition; that the specific endowments created in the Trust Deed are religious and public in nature and therefore they automatically come under the control and purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act (Act 22/51) and therefore only the Commissioner, H.R. and CE. Department is empowered to deal with the matter for which provisions are made under Section 34 of the Act wherein it is specifically provided for that any sale or exchange or lease for a period not exceeding five years is null and void unless it is sanctioned by the Commissioner, H.R. & C.E. Department; that the Court itself has no jurisdiction to entertain the matter and that the petitioners have no locus standi to alienate the petition mentioned properties as it is against the provisions of the Trust Deed and against the le gal provisions and the petitioners are not entitled to file a petition of this sort as per Section 1 of the Indian Trust Act (Act II of 1882); that the petition is bad for non-joinder of parties and hence it would be praying to dismiss the petition with costs.

4. The Court below, then framing its own point for consideration and having further perused the Trust Deed and having a wide discussion on the subject would not find any reason behind the relief sought for by the petitioners in the above Trust O.P. and would find that the petitioners were not entitled to sell the petition mentioned properties ultimately dismissing the same without costs and it is this fair and decretal order passed by the Court of Principal District Judge, Trichy, which is under challenge in the above civil revision petition.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners, it comes to be known that not only late Ayyavu Pillal alias Lakshmana Pillal created the trust deed dated 1-3-1957 dedicating the schedule mentioned properties but also has created an endowment nominating himself as the founder trustee and providing for his children to become the trustees after his lifetime enumerating therein the object and purpose of creating the Trust-cum-Settlement Deed and It would be seen from the averments of the petition that much against the object sought to be achieved by the creation of the trust and settlement deed, the petitioners being the sons of the founder trustee wanting to sell away the properties mentioned in the schedule, on false grounds that there is no income from out of the property, without even disclosing the lease of the said properties in favour of the lessees and the income derived from the said sources and offering such false and bogus reasons have come forward to file this petition not only much against the objects for which the trust and settlements have been made by the founder trustee but also against the dictum of law that 'once a trust always a trust wherein even in the event that the trustees do not want to act as trustees or to put an end to the very Trust itself still the Trust properties cannot either be sold or disposed of in any other manner even by special resolution passed by the trustees but in such event when the Trust becomes? non-functional and cannot be operated, the properties of the Trust could only be transferred to another Trust having similar objectives and no one much less the Trustees could dispose of the properties or could create encumbrance regarding the property in any other manner which they are not entitled to.

6. Besides following the recitals of the deed of Trust scrupulously, the legality should also be taken care of so far as it is concerned with the Trust properties are concerned in which event, it could be put in a nutshell the prayer of the petitioners in the above Trust O.P. cannot be complied with and in fact to the recitals of the document dated 1-3-1957 and to the legal dictum as propounded by the Honourable Supreme Court, it is the Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department who is empowered to do anything with regard to the property and not the present petitioners who have only revealed that they are unable to act as the trustees carrying out the intentions of the creator of the Trust and the object sought to be achieved and therefore neither a petition of that Court which had been attempted to be filed in the above Trust O.P. could be filed in the circumstances of the case nor could the Court pass any order much less as prayed for in the petition and the said petition has been rightly dismissed by the lower Court.

7. Whether it is regarding the conclusions arrived at by the lower Court or the manner in which the conclusions have been arrived at are beyond question since they have been legally and following the procedures on the given facts and circumstances and hence the interference of this Court sought to be made into the well considered and merited order passed by the lower Court is neither necessary nor called for in the circumstances of the case and hence the following order :

In result,

- (i) The above civil revision petition does not merit acceptance and is dismissed.
- (ii) The fair and decretal order dated 3-9-2003 made in Trust O.P. No. 1 of 1990 by the Court of Principal District Judge, Tiruchirapalli is here by confirmed.