
(1986) 07 MAD CK 0040
In the Madras High Court
Case No : C.R.P. No. 955 of 1986

E.S. Chockalingam

APPELLANT

Vs

N. Rathinakumar

RESPONDENT

Date of Decision : 09-07-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1986) 07 MAD CK 0040

Hon'ble Judges : M.A. Sathar Sayeed, J

Bench : Single Bench

Advocate : Habibullah Badsha for Mr. N. Kirubakaran, Adovcate, for the Appellant; R. Karuppan Advocate, for the Respondent

Judgement

Hon''ble Judges: M.A. Sathar Sayeed, J.—The above civil revision petition is filed by the petitioner questioning the correctness and legality of the order passed by the Subordinate Judge, Mayiladuthurai dated 10.3.1986 in O.S.No. 68 of 1948 as amended in O.S.No. 17 of 1960. For the disposal of this civil revision petition, certain facts are necessary. A Scheme in O.S.No.68 of 1948 was framed by the Subordinate Judge's Court. Mayiladuthurai on 24.7.1951 for managing the A.V. Charities, Mayiladuthurai. The management of the Charities should be with the Board of Trustees consisting of a Chairman and five Trustees appointed by the Sub Court from the members of the original five families known (1) Anbanathapuram, (2) Enathimangalam, (3) Pallavarayapet, (4) Karugudi and (5) Kankanamputhur. Every male member so appointed under the Scheme shall hold office for a period of five years from the date of appointment. The seniormost among the trustees so appointed shall be the Chairman of the Board of Trustees and he shall preside at all the meetings of the Board, In his absence, a Vice-Chairman to be elected by the trustees among themselves shall preside over the meetings of the Board. The Scheme also contemplates that no person shall be chosen to the Board of Trustees unless he is a male descendant of one of the families, but not related through a female and unless he has completed 21 years of age, provided he is not disqualified under the rules. It is open to the Scheme

Court not to rigidly adhere to representation of each group, if efficient administration requires a slight departure.

2. If by efflux of time, by resignation or removal or death or disqualification in the Board of Trustees, it is the duty of the Manager to intimate the vacancy to the Scheme Court and the Court will call for applications and shall appoint to such vacancy that has arisen having due regard to the representations of the five families. It so happened that the Manager of A.V. Charities informed the Scheme Court that the period of E.S. Chockalingam, member of the Board of Trustees has expired on 5.2.1936. This has led the Scheme Court to call for applications. Three persons, i.e., P. Nagarajan, E.S. Chockalingam and N. Rathinakumar applied for the vacancy. These applications were taken up By the Sub Court for consideration on 8.3.1986. Mr. P. Nagarajan did not appear before the Court. The other candidates that were left in the field for appointment as Trustees are Dr. E.S. Chockalingam and Mr. N. Rathinakumar. The petitioner herein, in his application to the Scheme Court, represented that he is a medical practitioner and he represents Enathimangalam family and since there is no one representing Enathimangalam family, he be appointed as a trustee.

3. The respondent herein Mr. N. Rathinakumar, on the other hand, contended that he was the trustee till 23.4.1985 and if he is appointed, he would serve the Charities to the best of his ability.

4. The learned Subordinate Judge, by his impugned order, appointed Mr. Rathinakumar, respondent herein thereby rejecting the claim of the petitioner. Hence this revision by the petitioner herein.

5. I have heard the arguments of the respective counsel appearing for the parties. The Scheme framed by the Subordinate Judge's Court for the administration of A.V. Charities, Mayiladuthurai clearly shows that in a vacancy caused in the Board of Trustees, "the Court shall proceed to call for applications and make appointments to the vacancy, having due regard to the representation of the five families known as Anbanathapuram, Enathimangalam, Pallavarayapet, Karugudi and Kankanamputhur". When the Scheme decree provides that the Court shall call for applications and make appointments having due regard to the representations of the aforesaid five families and when the petitioner specifically states that he belongs to Enathimangalam family and when there is no one in the Board of Trustees representing Enathimangalam family it is incumbent upon the Scheme Court to appoint the petitioner herein as a member of the Board of Trustees. In so far as the respondent herein is concerned, he belongs to Pallavarayapet family and it is conceded that this family is already represented by another member Mr. M. Rammohan Shanmugam. Such being the case, the respondent herein cannot be appointed as a Trustee representing Pallavarayapet family, when the said family is represented in the Board of Trustees of A.V. Charities. This itself is sufficient to set aside the impugned order of the court below.

6. Learned counsel for the respondent contends that it is not incumbent on the Scheme Court to appoint members only from the aforesaid five families and if efficient administration requires, there can be a slight departure in appointment of one or more members in either of the family. I do not agree. When one member represents a particular family as in this case respondent's family it is not necessary that another person from the same family should be appointed. That apart, nothing is mentioned against Mr. E.S. Chockalingam that he cannot efficiently act as a trustee of the Trust. First of all in appointing trustees in Charities, one should consider the age of the petitioner. If young persons are appointed as trustees, there will not be any smooth administration excepting heated exchanges. Comparing the age of the respondent and the petitioner, the petitioner is 19 years older than the respondent. He is a Doctor by profession and he has enough experience to assist the administration of the Trust. Just because there is an observation in Clause 5 (c) of the Scheme, that does not mean that the legal right of the petitioner to represent his family should be negated particularly when no member from the Enathimangalam family functions as a trustee. It is on this aspect, I am of the view that the impugned order of the Court below is unsustainable.

7. I may further add that to be a member of the Board of Trustees is one thing, and to be a member of the Education Committee is another. The question now is, whether the petitioner is a fit person to be appointed as trustee of A.V. Charities and whether A.V. Charities is represented by a trustee from the family of Enathimangalam. The learned Subordinate Judge was more influenced by the fact that the petitioner's brother is a member of the Education Committee in A.V. Charities and therefore, the petitioner cannot be appointed as trustee. As stated already, that is not the question here. In order to manage the Trust, each member should represent a particular family. In so far as the petitioner is concerned, there is no one as trustee representing the Enathimangalam family and the petitioner is the only person who has applied for the appointment of trustee from the said family. Under the circumstances the conclusion of the Scheme Court that the petitioner's brother is a member of the Education Committee and hence the petitioner cannot be appointed as trustee is unsustainable. It is on this ground the order of the Scheme Court is set aside.

8. Learned counsel for the respondent contends that this civil revision petition itself is not maintainable since it does not arise under S.115, C.P.C. This argument also has no substance. A similar question arose before Varadarajan, J., as he then was, regarding the appointment of trustees with respect to A.V.C. Educational Committee, in C.R.P., Nos. 495 and 1135 to 1138 of 1974, dated 2.7.1975. Those revisions were filed against the appointment of trustees under S.115, C.P.C. That was a case arising under S.115, C.P.C. wherein it was contended that the revisions filed by those petitioners were not maintainable. The learned Judge negated the contentions. In any event, I am of the view that when once the order of the Subordinate Judge is such which affects the very appointment which has not been regularly done as per the tenor of the Scheme

decree as is found in this case, this Court has jurisdiction to revise that under S.115, C.P.C. On a close reading of the impugned order, I am of the view that the impugned order of the Court below has to be set aside and it is accordingly set aside. Under the Scheme Decree, the appointment has to be made only by the Subordinate Judge's Court, Mayiladuthurai. In view of the fact that the learned Subordinate Judge, Mayiladuthurai has already taken a different view in this case, I am of the view that this matter has to be remitted to the District Judge, East Thanjavur at Nagapattinam for a decision, considering the claims of the petitioner and the respondent for the post of trusteeship. The learned District Judge, within fifteen days from the date of receipt of a copy of this order from this Court, will issue notice to the parties and will pass appropriate orders for appointment of trustees for A.V. Charities. With these observations, this civil revision petition is allowed; but there will be no order as to costs.