

(1965) 09 MAD CK 0013
In the Madras High Court
Case No : A.A.O. No. 197 of 1962

K. Meenakshi Ammal and Another

APPELLANT

Vs

Commissioner, Hindu Religious and Charitable Endowments,
Madras and Others

RESPONDENT

Date of Decision : 10-09-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 92

Citation : AIR 1966 Mad 475 : (1966) 79 LW 168

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

(1) This appeal arises out of an order passed by the learned Subordinate Judge, Dindigul, in I.A. 451 of 1961 in O.S. 19 of 1961 allowing the

petition for recording the compromise under Order XXIII Rule 3 C.P.C. The appellants filed O.S. 19 of 1961 for framing a proper scheme for the

better management of the High School founded by Meenakshi Ammal, the 1st appellant, in Chinnamannoor and for utilising the surplus funds by

applying the doctrine of Cypres for maintaining the said educational institution and for some other reliefs. The appellants filed the above suit after

obtaining the sanction of the Advocate General under S. 92 C.P.C. since the suit related to a public trust, namely, High School.

(2) The suit properties originally belonged to one Krishna Iyer the father of the 1st appellant. The 1st appellant is the only daughter of the said

Krishna Iyer. During his lifetime, on 25-1-1930, Krishna Iyer executed a settlement deed in favour of the first appellant settling all his properties on

her. She was also put in possession of the properties even during his lifetime. But it was the desire of the Settlor that all the income from the

properties should be spent on educational and religious purpose. In order to carry out the desire of her father, the first appellant attempted to maintain a Veda Sastra Padasala at Madurai, but she failed in her attempts, since sufficient boys were not forthcoming to receive their Vedic education. Therefore, she removed the Veda Sastra Padasala to Chinnamanoor, her native place. It was found that a sum of Rs.3000 out of the income from the Immovable properties settled on the first appellant, was sufficient for the maintenance of this Veda Sastra Padasala. In order to utilise the surplus income and also in order to carry out the noble intentions of her father, the first appellant started a High School at Chinnamanoor in the year 1952, for giving education to the boys and girls of that village. On 5-5-1951, the first appellant executed a settlement deed providing for the conduct of the Veda Padasala and in addition creating a charge over the properties for the conduct of a High School in Chinnamanoor. She also sought the co-operation of the local public by creating a general body and an executive committee from out of it among the villagers and necessary rules and by-laws were framed for the administration of the High School. M. Malachami, the third respondent was appointed correspondent of the school and he was virtually in management and administration of the school. The present strength of the boys and girls is 750. There are about 30 teaching staff and 5 clerical staff. The majority of the teaching staff are L.Ts. and B.Ts. Thus the High School in Chinnamanoor has become very popular as it is imparting education to the students in and around that village. But unfortunately various forces began to work against the first appellant who is the founder of this institution, by moving the Hindu Religious and Charitable Endowments Board complaining the diversion of the income for purposes other than the Veda Sastra Padasala quite against the desire of the original settlor. In the meantime the first appellant filed a writ petition in this court and obtained interim stay. The writ petition is still pending. Differences arose between the third respondent and the appellants in regard to the management of the institution. The present suit is to overcome the difficulty in the actual running of the day-to-day administration of the school, the objections of some of the persons working against the institution and for permission to apply the doctrine of Cypres for diversion of funds to maintain the school and also to

frame a proper scheme for the efficient management and administration of the school, In her plaint the first appellant made serious allegations of

malfeasance and misfeasance such as interference with duties of the Headmaster, misusing the funds of the the institution, against the 3rd

respondent who is the correspondent.

The suit was filed on 20-3-1961. During the pendency of this suit, a compromise was effected between the parties to the effect that the first

appellant would be appointed as the correspondent in the place of the third respondent, that till the appointment was recognised by the Education

Department the 3rd respondent to continue as the correspondent, that the parties should withdraw or give up the prayer, regarding the framing of a

proper scheme for the efficient administration of the institution and that the suit should proceed only with the prayer regarding the application of the

doctrine of cypres. After the compromise was signed by the first appellant, she realised that her signature was obtained under coercion, undue

influence and misrepresentation, that she herself was not aware of the consequences of the compromise and that her object of coming to the court

for an efficient management and administration of the institution, in the interests of the public, was outwitted by interested parties especially the 3rd

respondent. Subsequently she refused to participate with the respondents in recording the compromise. Therefore respondents 2 and 3 filed an

application, out of which this appeal arises, for recording the compromise. This application was resisted by the appellants stating that the

compromise was not binding on the first appellant, that she was forced to sign the compromise and that she was not aware of the legal

consequences of the compromise. The learned Subordinate Judge came to the conclusion that the appellants signed the compromise knowing fully

the contents thereof and voluntarily and that he had no option but to record the compromise and declared that the main contest between the parties

in the suit would be only the prayer regarding the application of the doctrine of Cypres. It is against this order that the present appeal is directed.

(3) The main question to be considered in this appeal is whether the parties to the action proved to the satisfaction of the court that the suit had

been adjusted wholly or in part by any lawful agreement or compromise. As already stated, the suit relates to a public trust and the plaint was filed

with the sanction of the Advocate General. It is the common case that the parties to the action have not obtained either the consent or the sanction

of the Advocate General to record the compromise. The main reliefs sought in this suit are the framing of a proper scheme for the efficient

management and better administration of the institution and for the utilisation of the surplus funds for the maintenance of the institution by applying

the doctrine of cypres. The parties to the action now give up the important relief, namely, framing of a proper scheme for the future conduct of the

trust and better management of the institution but only confine to the prayer regarding the application of the doctrine of cypres. Learned counsel for

the appellants contended before me that such a compromise is binding neither on the appellants nor on the persons interested in this public

institution. His further contention was that the learned Subordinate Judge failed to apply his judicial mind and see whether such a compromise was

in the interests of the institution and whether it is lawful.

(4) It is useful to refer to the principle laid down in *Jenkins v. Robertson*, (1867) 1 H. L. Sc. 117, where it was held that a judgment by consent

will not bind the parties even if it was not a purchased consent and a fortiori if such consent was a purchased consent. This principle had been

followed in as early as 1901 by this court in *M. Bhaskara Sethupati v. Narayanaswami Gurukkal* (1901) 12 MLJ 360, where the court refused to

allow the Rajah of Ramnad, who was a temple trustee, to compromise the dispute with the Shanars which related to the alleged rights of the

Shanars to enter the temple, because such a compromise affected the usage of the temple and the rights of other sections of of the Hindu temple.

The same principle was again followed by a Bench of this court consisting of Sadasiva Aiyar and Tyabji JJ. reported in *Sundarambal Ammal and*

Kamalambal Ammal Vs. Yogavanagurukkal, . There Sadasiva Aiyar J. in a well considered judgment, observed that

a compromise which involved a right affecting not only parties to the action but the public cannot be compromised so as to oblige the Court to

pass a decree in terms whereof. The court itself has certain duties in connection with a case in which the judgment in rem has to be pronounced, or

in a case which involves the right of the public or the right to a religious and charitable office, or the right of a minor or other incapacitated person.

Where an agreement or compromise attempts to affect such rights after they are brought before the court for adjudication, it seems to me, that it is not a lawful agreement or compromise.

The learned Judge extracted the observations made in *Mahadeo Prasad v. Bindeshri Prasad*, ILR(1908) All 137, that a party can refer a matter of

a private individual right of a civil nature to arbitration, but he has no power to refer a matter which is not purely of a private civil character.

(5) In ILR(1908) All 137 an application under S. 10 of the Guardians and Wards Act, was made to the District Judge for appointment of a

guardian of the person and property of a minor. When the application was pending, the parties requested the District Judge to refer the matter to

the arbitration of a gentleman of high social position. Accordingly the learned Judge passed an order appointing an arbitrator to decide the question

as to who should be appointed guardian. The learned Judge seems to have decided the question as to who should be the guardian solely on the

award of the arbitrator. An objection was taken that the District Judge was not competent to refer to an arbitrator the question as to who should

be appointed guardian. In that connection Aikman J said:--

In my opinion, the intention of the law is that the question as to who is the best guardian of the minor's interest is one to be decided by the court,

and that a court cannot delegate its functions to any arbitrator, however competent and above suspicion that arbitrator may be. It rival claimants to

a certificate of guardianship are allowed to refer the dispute between them to an arbitrator, a door would be open to collusion and the interests of

minors might suffer".

Tudor on Charities, page 362, 4th Edn, states:

It is the prerogative of the Crown to protect the interests of infants, lunatics and charities. In the case of charities, Lord Eldon lays down the law as

follows: "It is the duty of the King as *parens patriae*, to protect property devoted to charitable uses, and that duty is executed by the officer who

represents the Crown for all forensic purposes. On this foundation rests the right of the Attorney General in such cases to obtain by information the

interposition of a court of Equity". This duty of the King falls under the direction of the court of Chancery, being part of the general equitable

jurisdiction. And, inasmuch as charitable trusts are matters which concern the

public, it is one of the functions of the Attorney General, representing the King in his character of *parens patriae*, and not by virtue of any estate or interest he has in the property, to institute proceedings for the protection of charities.

(6) In *Muhammad Ibrahim Khan v. Ahmed Said Khan*, I L R(1910) All 503 there was a dispute in regard to a property dedicated to wakf. There was a litigation between the rival claimants in regard to the succession to that property. The parties referred the dispute to private arbitration and an award was made in favour of the appellant in that case. When an attempt was made to have the award filed into court, an objection was taken by the aggrieved party that the award was not binding on him. The learned Judges of the Allahabad High Court came to the conclusion that the right to succeed to the trusteeship of Wakf property is not a right which can be settled by reference to arbitration, and that the court below had no jurisdiction to entertain an application for filing the award in court. With the result the learned Judges did not pass a decree in terms of the award.

(7) In *Abdur Rahim v. Abu Md. Barkat Ali* AIR 1928 PC 16 there were prior litigations questioning the character of a property belonging to a mosque, whether it was a secular or trust property. The parties to the suit compromised to the effect that out of the disputed properties some items were given away to the plaintiffs who were asserting that it was not wakf property. In regard to the other items, it was agreed between the parties that they should be treated as wakf property. The compromise provided for the appointment of new mutavallis and the future succession to the mutavalliship. After sometime, some of the Mohamedans residing in the neighbourhood filed a suit against the persons to whom properties were given away under the compromise in the previous litigation, questioning the validity and the binding nature of the compromise decree passed in the previous suit. The question that arose for consideration by their Lordships of the Judicial Committee was whether the compromise decree in the previous litigation would be a bar to the subsequent suit. It is in that connection their Lordships of the Judicial Committee, after referring to the decision in (1867) 1 Hindu law Sc. 117 observed:

..... persons instituting a suit on behalf of the public have no right to bind the public by compromise decree, though a decree passed against

them on contest would bind the public.

In *Narayanasami v. Board of Commrs. for the Narayanaswami Mudali and Others Vs. The President of the Board of Commissioners for the*

Hindu Religious Endowments and Another, the suit was brought by the Board of Commissioners for the modification of a scheme under the

Madras Religious Endowments Act. The plaintiff compromised the suit with certain of the defendants and asked the court to recognise the

compromise and pass a decree accordingly. The District Judge refused to comply with the request on the ground that the compromise was not in

the interests of the temple in question. There was an appeal against the refusal to recognise the compromise. It was in that connection that

Venkatasubba Rao J. sitting with Madhavan Nair J. observed

.....it seems to us plain, that in such cases the court has plenary power to subject the terms to scrutiny and reject the compromise for valid

reasons. We would go further and say that if any party opposes a compromise from sordid motives or on improper grounds the court, even then

has a right to take suitable action. These in our opinion, are the principles that should guide the courts. But we may rest our judgment on narrower

grounds. In the case of a public trust, no compromise can be said to be lawful which sacrifices its interests; on the ground, therefore, that a

compromise entered into without due regard to the trust, is under Order 23 Rule 3 and unlawful agreement, our conclusion may be supported. It

matters little how the question is viewed, the same result follows.

(8) Again *Mahant Banabehari Puri Vs. Naga Ananda Puri and Another*, , was a suit for a declaration that the defendant (trustee) should be

removed from the trusteeship of a public endowment, for appointment of some competent persons as trustees and for settling a scheme for the due

administration of the trust. Several allegations of malfeasance, misfeasance, misappropriation and illegal alienation of the math properties were

made against the defendant. Issues have been framed, the important of them being whether the defendant had committed any breach of trust, etc,

and whether the settlement of a scheme by the court was necessary for the administration of the endowment. During the pendency of the suit, an

application was filed by both the parties in which they prayed that the case may be referred to arbitration to decide the dispute by settling a scheme

for smooth and better management of the math by the defendant. When the arbitrator filed the award, an objection was taken that the court should

not pass a decree in terms of the award, as the court has no jurisdiction to refer the dispute to arbitration. Once again, their Lordships, following

the principles laid down in AIR 1928 PC 16 observed:--

The interest of the institution has been wholly ignored and neglected by the parties, by the arbitrators and by the court. In our opinion the proper

course which should have been adopted by the learned Judge was that he should have first decided issues 2, 3 and 4. If it had been decided that

the defendant was not guilty of breach of trust as alleged, the suit should have been dismissed, but if on the other hand, it had been decided that the

defendant was guilty, then the learned Judge might have, with the agreement of the parties, taken the help of the arbitrators to settle a scheme and

to appoint another trustee or a committee of trustees. If the scheme for the management of the trust property thus proposed there was sound and

trustworthy, the learned Judge could have accepted it and disposed of that part of the suit under O. 23 Rule 3 C.P.C.

The learned counsel for the respondents brought to my notice the decision reported in Kuppaswami Reddi and Another Vs. Pavanambal, that a

compromise under O. 23 Rule 3 C.P.C. cannot be attacked by allegations that it is a voidable compromise brought about by fraud, undue

influence and duress. There again their Lordships observed:--

It has been held that under O. 23 R. 3 C.P.C. a compromise cannot be attacked by allegations that it is a voidable compromise, brought about by

fraud, undue influence and duress. Provided that compromise is lawful, that is, not contrary to law, the court is obliged to record it".

Therefore, the principle that has to be followed in regard to the recognition of a compromise under O. 23 R. 3 C.P.C. is, in the words of

Venkatasubba Rao J, "in such cases the court has plenary power to subject the terms to scrutiny and reject the compromise for valid reasons".

(9) In regard to the other contention urged by the learned counsel for the appellants that the compromise decree was passed without the consent of

the Advocate General, the authorities, for instance, Mohamad Idris Haider and Others Vs. Mohammad Habibur Rahman, lay down that the

consent of the Advocate General is not necessary and there is nothing in O. 23 R.

3 which suggests that any particular form of suit is outside the scope though the question as to what is lawful agreement or compromise will vary with the very character of different suits. There is nothing to prevent a suit under S. 92 from being compromised like any other case. The learned Judges press the most important point, once again following the dictum laid down by Venkatasubha Rao J. In *Narayanaswami Mudali and Others Vs. The President of the Board of Commissioners for the Hindu Religious Endowments and Another*, that the court has plenary power to subject the terms to scrutiny and reject the compromise for valid reasons.

(10) On a review of the entire case law I feel that the learned Subordinate Judge did not exercise his plenary power to subject the terms of the compromise to scrutiny. He was merely satisfied by a mere statement that the learned counsel for the plaintiffs had not drawn his attention to any clause in the razinama which is against the interest of the trust. It is for him to scrutinise the terms of the compromise in order to form a plenary opinion whether the agreement between the parties is in the interests of the institution. There are wild allegations in the plaint against the 3rd respondent Malachami, the correspondent of the school which is a public institution, in the maintenance and administration of which the citizens of Chinnamanoor are interested. The plaint further prayed for a proper scheme to be framed for the administration of the institution. The plaint was filed after obtaining sanction from the Advocate General under S. 92 and the suit is now in a representative capacity. The parties to the action cannot suddenly come to an agreement to give up the main reliefs, namely, whether the various acts of malfeasance and misfeasance alleged against the 3rd respondent is true or not and whether the scheme is absolutely necessary for the better management and administration of the institution. The parties cannot adjust their disputes by merely appointing the first appellant as a correspondent of the school and the learned Judge should have satisfied whether the first appellant, a lady aged about 63 years, could act as a correspondent efficiently and in the best interest of the institution and has the capacity to manage the institution. The parties to the action were very anxious to record the compromise that the plaintiffs should give up the case regarding the framing of a proper scheme for the management and

better administration of the institution. I feel that this compromise should not be recorded as it is not in the interests of the institution and as such in the interests of the public in general and the citizens of Chinnamanoor in particular. Any compromise now recorded in the suit would not be binding on the public in those circumstances, I set aside the order passed by the learned Subordinate Judge, and direct him to take the suit on file and dispose it of on the merits. No costs.

(11) Appeal allowed.