
(1934) 10 PAT CK 0003
In the Patna High Court
Case No : Civil Revn. No. 139 of 1934

Kali Prasad Singh and others

APPELLANT

Vs

Harihar Nath Sinha and another

RESPONDENT

Date of Decision : 05-10-1934

Acts Referred:

Citation : (1934) 10 PAT CK 0003

Final Decision : Dismissed

Judgement

Fazl Ali, J.—The petitioners' case has been fully set out in the application made on their behalf in this Court and shortly put, it is as follows:

One Lalo Kuer the grandmother of the petitioners created a Charitable Trust for the administration of which a scheme was formulated by the District Judge of Gaya, but as the High Court did not approve of that scheme and set it aside, a revised scheme was prepared in 1909 and it was further modified in 1910. The revised scheme and the modification thereof are reproduced in the petition as filed in this Court as annexure A and B. It is provided in both the documents that the trust properties were to be managed by a committee consisting of certain members and it is also stated that the District Judge of Gaya was to be the ex-officio President and the Subordinate Judge (in whose jurisdiction the properties of the Trust might lie) the ex-officio Vice-President. The validity of these schemes has not been challenged before me, but it appears that subsequently (by what process it is not known) the District Judge and the Subordinate Judge dropped out of the committee and certain non-official gentlemen were appointed and began to act as President and Vice-President, respectively. The first non-official President seems to have been appointed in 1913 and he was then Government Pleader. Babu Janki Sahay and one Babu Ganpat Sahay a local pleader, was the first non-official Vice-President. In course of time the President began to be elected by the committee and it appears that on 20th May 1917, it was actually resolved by the committee that in case of vacancy caused by the death or resignation of the President or the Vice-President, the remaining members shall

be competent to elect a President or Vice-President as the case may be. The last President was Babu Dasarath Lal who was appointed in July 1932, but it is stated by the petitioners that as Babu Dasarath Lal had not time to devote to the management of the trust estate, its affairs became hopelessly disorganized and as Babu Dasarath Lal and the Vice-President Babu Nagesh War Prasad failed to convene a meeting and elect a new President and a Vice-President, the petitioners as members of committee, in a meeting of the committee, held on 20th July 1933, elected Babu Harihar Nath. Sinha and Babu Ashutosh Varma, two members of the local Bar, as President and Vice-President respectively of the Committee.

2. The petitioners then filed a petition for the revision of the scheme before the District Judge suggesting certain modifications of the existing scheme in order to facilitate the management of the estate. The learned District Judge after considering the representations-made to him on behalf of the three applicants as well as the application, filed by Babu Dasarath Lal and Babu Nageshwar Prasad, was of the opinion that the trust should be managed in strict accordance with the revised scheme and decided that he should be the President, and the Subordinate Judge the Vice-President as provided in the said scheme. It is against this order of the learned District Judge that the present application is directed and it is contended that the learned District Judge had no jurisdiction to alter the existing arrangement and to appoint himself the President and the Subordinate Judge the Vice-President. The learned advocate appearing for the petitioners relied in support of this contention upon the decisions in *Vythelinga Mudaliar v. Mahadeva Iyer*, 1926 Mad 659 = 91 IC 794 and *Ramalinga Mudaliar v. E. Sundara Sastrigal*, 1929 Mad 526 = 120 IC 874, but in my opinion these decisions have no bearing upon the present case. As I have already stated, the validity of the revised scheme framed by the District Judge in 1909 is not contended and that scheme clearly provided that the District Judge and the Subordinate Judge shall be the ex-officio President and Vice-President, respectively. The learned District Judge says in his order that he has not been able to trace:

how the present system by which the President and the Vice-President are private gentlemen came into force.

3. Even apart from this fact, it has been rightly pointed out by him that in the best interest of the Trust, it should be administered in strict accordance with the revised scheme according to which the District judge is to be the President. The District Judge had the power to revise the scheme and in fact he was asked to revise it. He had also ample materials to convince himself that the present system was not working well, because according to the present petition itself the affairs of the estate had been completely disorganized owing to the in difference of the gentlemen who were acting as President and Vice-President. In these circumstances, I do not think that the order of the District Judge can be questioned whether on the ground of want of jurisdiction or impropriety. I would

therefore dismiss this application.

4. I should like to observe here that as the petitioners are the grandsons of the lady who created the trust and as the intention of the testatrix appears to have been (as pointed out by the Calcutta High Court in 1909 that the property should vest in and be managed by them, the petitioners ought to have a voice in the management of the trust properties and the management should be carried on with, their co-operation.