

(1997) 04 MAD CK 0049
In the Madras High Court
Case No : C.R.P. No. 551 of 1997
Periyar Pallivasal

Date of Decision : 24-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151, 152, 153, 92
Trusts Act, 1882 — Section 34

Citation : (1997) 1 CTC 576

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : N. Vanchinathan, for the Appellant;

Final Decision : Dismissed

Judgement

S. Jagadeesan, J.—The petitioner is governed by the scheme framed in O.S.No. 4 of 1936, Sub-Court, Kumbakonam. The petitioner filed

an application E.A.No. 256 of 1995 in O.S.No. 4 of 1936 before the lower court u/s 151, 152 and 153 of Civil Procedure Code, to modify some

of the clauses in the scheme. The lower court dismissed the said application on the ground that the application is not maintainable and the petitioner

has to file a separate suit u/s 92 of CPC for the amendment of the scheme decree. As against this, the present civil revision petition has been filed.

2. The learned counsel for the petitioner strenuously contended that the reliefs sought for by the petitioner are not for modification of the scheme,

but sought for certain directions for the management of the Trust in accordance with the resolutions passed by the Administrative Committee and

as such the petitioner filed before the lower court is maintainable, u/s 34 of the Indian Trust Act, 1882. There is no need to file a separate suit for

modification of the scheme u/s 92 of the Civil Procedure Code.

3. To appreciate the contentions of the counsel for the petitioner, it is necessary

to consider the averments made in the Affidavit filed in support of the petition and the relief sought for in the petition by the petitioner. In the affidavit, it is stated as follows:

4. Basing upon the averments made in the affidavit, the relief sought for in the petition are as follows:

5. From the prayer sought for in the petition, it is clear that the persons who are paying a sum of Rs. 150 by way of kist or land revenue shall be

entitled to vote, whereas, as per original scheme, the persons who pay a sum of Rs. 5 by way of kist or land revenue will be entitled to vote. By

virtue of the existing clause in the scheme, those persons who are paying a sum of Rs. 5 as kist or land revenue are all entitled to vote. By virtue of

the resolution of the Administrative Committee, now the right to vote is to be conferred on those who are paying a kist of Rs. 150 which means the

persons who already have a right to vote by paying a sum of Rs. 5 as kist or land revenue will be excluded from voting. In other words, they will

be losing their right to vote. Hence it cannot be said that the petitioner is seeking for a direction from the Court to implement their resolution, but,

virtually, the petitioner wants to modify the earlier scheme, whereby, the right to vote is restricted to those who are paying Rs. 150 and above as

kist.

6. So far as the second relief is concerned, the petitioner have stated in the affidavit that the voters have been divided into five divisions. But, now,

due to lapse of time, the Muslims have spread over in other areas which do not fall within the five divisions and as such those areas where the

Muslims are residing or spread over should also be included in the scheme, whereby, conferring the right on those Muslims who are residing in the

area which do not fall within the five divisions. Here also, the petitioner wants to modify the scheme by extending the wards or divisions to other

areas which have not been included in the original scheme. Merely, because the Administrative Committee has passed a resolution, it is not open to

the petitioner to seek for a direction to empower the petitioner to implement the resolution. Moreover, in the petition, the underlined portions

referred to Supra makes it clear that the petitioner is seeking to make the necessary corrections in the original scheme which means the petitioner is

seeking only to modify the original scheme framed by the court. The word do not

mean a direction. But it would only mean correcting.

7. In the light of the above facts, the scope of Section 34 of the Indian Trust Act has to be considered to find out the maintainability of the petition

before the lower court. Section 34 reads as follows:

34. Right to apply to court for opinion in management of trust property:-

Any trustee may, without instituting, a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on

any present questions respecting the management, or administration of the trust property other than questions of detail, difficulty or importance, not

proper in the opinion of the court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the

court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court, shall be deemed so far

as regards his own responsibility, to have discharged his duties as such trustee in the subject-matter of the application.

The costs of every application under this Section shall be in the direction of the Court to which it is made.

8. A reading of Section 34 makes it clear that it is open to the trustees to apply by way of petition to the principal Civil Court of original jurisdiction

for its opinion, advice or direction on any present questions respecting the management, or administration of the Trust property with regard to the

administration of the Trust. The right given under this Section is for the trustee to get clarification or direction or advice regarding the administration

of the trust and not otherwise. The jurisdiction of the Court under this Section is only consultative. The questions to be asked by the trustee to the

Court also relates to the present matters which is very clear from the words ""On any present questions"".

9. While so, the relief sought for in this petition by the petitioner is obviously not for clarification or opinion or advice of the court.

10. In the memorandum of grounds, the petitioner has stated that the Court below has not appreciated and properly considered the directions in

the petition on which basis the learned counsel put forth his arguments that petitioner is seeking only a direction. Seeking a direction should be on

the existing scheme and not for future. In this case, the affidavit filed in support of the petition before the lower court clearly reveals that the

Administrative Committee has passed a resolution, whereby, they want to confer the right on those who are paying a kist of Rs. 150 and above,

and to include the areas which do not fall within the five divisions mentioned in the original scheme.

11. In terms of the relief sought for, I am of the opinion that it is nothing but a modification of the scheme and as such the petition u/s 34 of the

Indian Trust Act cannot be entertained. Hence the finding of the lower court that the petition is not maintainable is confirmed. The civil revision

petition is dismissed.