
(1995) 01 MAD CK 0080
In the Madras High Court
Case No : C.R.P. 2403 of 1994

R. Sadayappan

APPELLANT

Vs

P. Nagarajan and Another

RESPONDENT

Date of Decision : 21-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1995) 1 CTC 196

Hon'ble Judges : A. Thangamani, J

Bench : Single Bench

Advocate : A. Muthukumar, for the Appellant; R. Muthukumaraswamy, for the Respondent

Final Decision : Dismissed

Judgement

A. Thangamani, J.—Revision petitioner Sadayappan is applicant No. 1 in the proceedings dated 14-6-1994 in O.S.No. 68 of 48 in the court of Subordinate Judge, Nagapatinam (O.S. No. 17 of 60 in the court of Subordinate Judge, Mayiladuthurai). On 24-7-1951 in O.S.No. 68 of 48 learned Subordinate Judge of Mayuram passed a Scheme decree regarding "The Anbanathapuram vahaira Charities". As per the Scheme, the surplus income available after the performance of the charities in the Dhitta Japta is to be utilised for the promotion of education by the establishment of a college etc. Accordingly a college has been established by the charity under the name A.V.C. College, Mannampandal with the approval and sanction of the Court. On 6-4-1960 the Scheme was amended. Subsequently the suit was re-numbered as O.S. 17 of 1960. The Scheme provided that the entire property of the charities shall vest in a Board of Trustees consisting of a Chairman and five trustees to be appointed by the court as far as possible from members of the original five families that gave the original endowment if they are not otherwise disqualified. The administration and the management of the trust shall also be vested in the Board of Trustees. Every member of the Board of Trustees shall hold office for a period of five years from

the date of his appointment subject to the efflux of time, resignation or removal or death or disqualification so as to be made by the Court from among the male members of the 5 families as far as possible. The five families are known as Anbanathapuram, Enathimangalam, Pallavarayapet, Karkudi and Kankanamputhur families. In his proceedings dated 12-7-82, learned Subordinate Judge appointed one R. Sadayappan and M. Ram Mohan Shanmugham hailing from Kankanamputhur family and Pallavayapettai family respectively as trustees in the then existing two vacancies. It appears that subsequently a vacancy arose in respect of Kankanamputhur family trustee. The present revision petitioner Sadayappan and the respondent Nagarajan and D. Sugumar contested to the said post. After setting out the qualifications and other details of the contestants, learned Subordinate Judge appointed Sugumar as the trustee for a period of five years. Aggrieved by the said order, the revision petitioner herein preferred C.R.P. No. 1297 of 93 on the file of the Court. Abdul Hadi, J., allowed the Civil Revision Petition and set aside the order of learned Subordinate Judge and remanded it back for fresh consideration. Thereafter, the court below passed an order on 14-6-94 again appointing the said Sugumar as the trustee. And in the Civil Revision Petition, the said order is challenged by Sadayappan, one of the three applicants to the post.

2. In the impugned order, the learned Subordinate Judge has set out the qualifications and other details about the rival claimants as borne out by their own respective statements and documents in this manner. The revision petitioner Sadayappan who is 48 years old is a Bachelor of Arts. He is working as a Physical Instructor in a School. He has served as a trustee for one period from 12-7-82 to 1-7-87. He owns five lakhs worth of properties. He has produced the certificates from the school where he is working. The management has no objection to appoint him as a trustee. His further claim is that he is not in possession of any part of the trust property either as a trustee or in any other capacity.

3. The present first respondent Nagarajan is residing at Madras. There is no rule which states that the trustees should be residing in the locality of the trust. He is a member of the education committee of A.V.C. College. He is running a clinical laboratory at Tambaram. His assistants would look after his clinic in his absence. So far he has not been given any chance to act as a trustee.

3-A. The second respondent Sugumar had functioned as a trustee for, one period from 10-9-87 to 9-9-92. During his tenure, he has carried out many good schemes. He has participated in the meeting of the trust Board held every month. He has no other avocation. His properties are worth 3 Lakhs of Rupees. He is not in occupation of any portion other than the trust property. He visits the hostel of the charities twice a week and attends to the needs of the inmates there. During his tenure of the trustee, he looked after well the marriage hall of the trust.

4. Learned Subordinate Judge has first eliminated Nagarajan from the contest for the reason that he is a resident of Madras where he is running a clinical

laboratory and that he could not well attend to the needs of the trust by residing in Madras.

5. Though both revision petitioner Sadayappan and 2nd respondent Sugumar are residents of Mayiladuthurai and both belong to Kankanamputhur family, the choice of the court rested on Sugumar in preference to that of the revision petitioner for theses reasons:-

i) Revision petitioner who is working as a Physical Instructor in a school had not produced any no-objection certificate from the Education Department for appointing him as trustee.

ii) Since he is working as a Physical Instructor, it is doubtful whether he would be able to devote full attention to the work of the charities during his part time.

iii) Second respondent Sugumar is not employed any-whereelse. So, he can spend his whole time in the activities of the trust.

iv) He has served as a trustee for one period which was over only recently.

v) During his tenure as a trustee, he had attended all the meetings of the trust Board.

vi) During that period, he had maintained well the marriage hall of the charities.

vii) He possessed properties of his own.

6. Learned counsel for the revision petitioner who assails the order of the court below submits that the object of the trust is to promote education in the area. The purpose of appointing" trustees is mainly to represent the education committee which is the governing council of the college and polytechnic. So for the welfare of the trust, persons having knowledge in the education filed alone are competent to be appointed as trustees. The revision petitioner is serving as a Physical Instructor for more than 20 years. However, the court below has taken the view that because the revision petitioner is working in a school, he cannot spare his entire time for the work of the trust.

7. Learned Subordinate Judge has taken into consideration that both the rival claimants had served one year term in the post of trustee and that both are residents of Mayiladuthurai.

8. One of the grievances of the revision petitioner is that learned Subordinate Judge has over-looked his claim for the reason that he has failed to produce No-objection certificate from the Education Department. In this connection, he submits that the certificate produced from the management is sufficient for the purpose, since he is working in a private school and on an earlier occasion, when he was appointed as a trustee, he has produced only a similar certificate. Rule 5 of Annexure II prescribes the code of conduct for teachers and other persons employed in a private school. As prescribed in Rule 16 of Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 prior permission of the school

committee has to be obtained in a case where any teacher or other person employed in private school seeks to accept honorary work without detriment to his duty as a teacher. So, it cannot be said that the failure to produce a No-objection certificate from the Education Department is in any way against the revision petitioner in this connection.

9. The main argument of the learned counsel for the revision petitioner is that the second respondent Sugumar and his brother Vijayakumar constitute a joint Hindu family, when their father Sabapathy Pillai was the trustee, they got a house of the trust leased out in the name of Vijayakumar for a very low rent. Even now that house is in the occupation of the family of the 2nd respondent. Their sister is actually residing therein and they have not paid the rent properly. This is in contravention of the Scheme decree. As per clause () of Rule 7 of the Scheme, no person shall be chosen to the Board of Trustees if he is in any way obliged to that trust as a debtor or as a lessee. Learned Subordinate Judge has not considered this contention of the revision petitioner. In support of his claim learned counsel for the revision petitioner has pointed out that the minor son of Vijayakumar namely, Senthilkumar represented by his mother Santha has instituted O.S.174 of 90 in the court of learned Subordinate Judge, Mayiladuthurai, for partition and separate possession of his share in the family properties. 2nd respondent Sugumar and his brother Vijayakumar as well as the sister Raji are three of the defendants therein. The decree passed in the suit is found at page 34 of the typed-set. The sister is stated to be residing in Dhubash Agharam, Mayiladuthurai Town which according to the revision petitioner, belongs to charities. Learned counsel for the revision petitioner further argued that the above suit decree is an indication that the family of the second respondent and his brother still continues to be joint even though Vijayakumar's son has become separate. He also placed reliance on AIR 1925 49 (Privy Council) where in it has been laid down that

"a member of a joint family can separate himself from the other members of the joint family and is on a separation entitled to have his share in the property of the joint family ascertained and partitioned off for him. The remaining co-parceners without any special agreement amongst themselves, may continue to be co-parceners and to enjoy as members of a joint family what remained after such a partition of the family property. In a suit for partition which proceeds to a decree the decree for partition is the evidence to show whether the separation was only a separation of the plaintiff from the co-parceners or was a separation of all the members of the joint family from each other."

10. Learned counsel for the revision petitioner next submits that because he is working as a teacher he is better qualified than the 2nd respondent, who is a mere a farmer and who may not have knowledge in the field of education. In short, the grievance of the revision petitioner is that his claim for the post was not properly appreciated by the court below.

11. However, the second respondent has a sworn counter affidavit to the effect

that he is not a tenant of any property of the trust. One of the properties of the trust had been leased to Vijayakumar, who is his divided brother. There has been a division in the family as evidenced by the partition decree. The proceedings of the Board of Trustees dated 30-12-93 would go to show that Vijayakumar is residing separately and the 2nd respondent has nothing to do with the lease of the property taken by Vijayakumar. It is significant to note that even as per the revision petitioner, the lease was taken in the name of Vijayakumar, who is no longer number of the joint family. At any rate, in the absence of any evidence produced before learned Subordinate Judge, we cannot presume that the sister residing there as a tenant paying a low rent. Even learned counsel for the revision petitioner admits that no fresh documents could be exhibited at the revision stage. So, there is no positive proof to indicate that the 2nd respondent is in any way obliged to the trust in contravention of clause "a" of Rule 7 of the Scheme decree. Further, even assuming that the revision petitioner is better qualified than the 2nd respondent to become a trustee, and there is no necessity to produce N.O.C. from education department this court cannot substitute its own view for that of the court below in the Civil Revision Petition. We have also to bear in mind that several factors weighed with the learned Subordinate Judge in asking the collection. And after cumulative consideration of all aspects he has arrived at a Judgment that should not be disturbed in the revision, even if another view is possible. In *Masjid Kacha Tank, Nahan Vs. Tuffail Mohammed*, the Supreme Court has laid down the following proposition:-

"It is well settled position in law that u/s 115 of the CPC the High Court cannot reappreciate the evidence and cannot set aside the Concurrent findings of the courts below by taking a different view of the evidence. The High Court is empowered only to interfere with the findings of fact if the findings are perverse or there has been a non- appreciation or non-consideration of the material evidence on record by the courts below. Simply because another view of the evidence may be taken, is no ground by the High Court to interfere in its revisional jurisdiction."

While so, it is evident that there is no warrant for interference in this case.

12. In the result, the revision petition is dismissed. No costs.