
(1993) 01 MAD CK 0064
In the Madras High Court

S. Sukumar and Another

APPELLANT

Vs

M. Rammohan Shanmugham

RESPONDENT

Date of Decision : 05-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1993) 1 MLJ 416

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Division Bench

Judgement

A.R. Lakshmanan, J.—These two revisions can be dealt with together, as both of them arise from the same order dated 9.9.1992 in O.S. No. 68 of 1948 as amended in O.S. No. 17 of 1960 of the (Scheme Court), Subordinate Judge, Mayiladuthurai. Brief history of the case is as follows:

A.V. Charities, Mayiladuthurai, is a Trust which is governed by a Scheme Decree made in O.S. No. 68 of 1948 dated 24.7.1951 on the file of Sub Court, Mayavaram as amended in O.S. No. 17 of 1960 on the file of the same court. As per the said Scheme Decree, the Management of the Trust vests in a Board of Trustees consisting of a Chairman and five Trustees to be appointed by the Scheme Court from among the members of the original five families that gave the original endowment. The five families that gave the original endowment are: (1) Anbanathapuram family, (2) Enathimangalam family, (3) Pallavarayapet family, (4) Karugudi family, and (5) Kanganamputhur family. Every member of the Board appointed by the court is entitled to hold office for a period of five years from the date of his appointment. The Scheme Decree also provides that the appointment of a trustee in any vacancy caused by efflux of time by resignation, removal, death or disqualification shall be filled up by the Scheme Court from among the male members, of the five families having due regard to the representation of the aforesaid five families. Right from the inception the Board of Trustees of the aforesaid Trust has been represented by one member from each one of the aforesaid five families and the sixth member from any one

of the said families which vacancy has been termed as "general vacancy". Thus, as and when vacancy arose in the office of the Trustee, the same was filled by appointment by the court from among the male members of the respective family. Two vacancies were intimated, by the Manager of the Charities to the Scheme Court in August, 1992. One of the vacancy arose out of the expiry of the period of office of Trusteeship of the first petitioner S. Sukumar belonging to Kanganamputhur family. The second vacancy arose on account of the expiry of the period of office of the respondent who was holding the office under the "general vacancy". The Scheme Court issued a notice on 12.8.1992 inviting applications for filling up both the above vacancies. Pursuant to the aforesaid Notification 13 applications were made to the Scheme Court. The petitioners 1 and 2 in C.R.P. No. 2692 of 1992 and Thiru Sadayappan petitioner in C.R.P. No. 2807 of 1992 belong to the Kanganamputhur family and therefore they claimed appointment to the vacancy of Trusteeship in respect of the said family. The other ten applicants claim in respect of the general vacancy. The Scheme Court has passed an order on 9.9.1992 rejecting the claims of the petitioners and Thiru Sadayappan for appointment to the office of the Trusteeship in respect of the Kanganamputhur family and appointing the respondent herein as a Trustee in the place of the outgoing Trustee belonging to the Kanganamputhur family. By the said order the Scheme Court has also appointed Dr. Chockalingam belonging to one of the families in the general vacancy. Aggrieved by the order of the Scheme Court appointing the respondent as a Trustee in respect of a vacancy caused by the expiry of the term of office belonging to Kanganamputhur family, the petitioners filed the two revisions. According to them the order of the court below is patently illegal, opposed to the provisions of the Scheme Decree besides being opposed to the orders of this Court which have considered the scope of the provisions of the Scheme Decree. The Board of Trustees who comprise of six persons from among the male members of the five families having due regard to the representation of all the five families. According to the petitioners, at present there is no representative from the Kanganamputhur family while there are two representatives for Pallavarayapet family and Enathimangalam family. In terms of the Scheme Decree, only one family can have two representatives, one representing the family earmarked for them and the other in the general vacancy. The appointment of the respondent is thus patently illegal having regard to the fact that his appointment has been made to a Kanganamputhur family's vacancy and in particular having regard to the fact that the petitioners and the other person belonging to the said family are not found to be disqualified to hold the said office.

2. The revision petitions were resisted by the respondent Mr. Rammohan Shanmugham. According to the respondent, the impugned order of the scheme Judge appointing him as one of the Trustees is quite reasonable, and that the Scheme Court has got powers to appoint from among the general vacancies to the vacancy of any particular family. It is submitted that there is no illegality or irregularity in the order of Scheme Court. The Scheme Court has considered all

the relevant materials for assessing the entitlement of various claimants to the two vacancies in the Board of Trustees and has ample powers to pass the order under revision.

3. I have heard Mr. R. Krishnamurthy, learned Senior Advocate and Mr. A.S. Venkatachalamurthy for the petitioners and Mr. V. Sridevan, learned Senior Advocate for respondent in both the above revisions. Clause 5(c) of the Scheme Decree which is heavily relied on by both parties runs thus:

(C) The appointment of a Trustee in any vacancy caused on the Board of Trustees by efflux of time, by resignation or removal or death or disqualification, shall be made by the court, from among male members of the five families as far as possible. It shall be the duty of the Manager provided for, herein, to intimate the occurrence of any vacancy to the court within three weeks of the occurrence and the court shall proceed to call for applications and make appointment to the vacancy having due regard to representation of the five families known as Anbanathapuram, Enathimangalam, Pallavarayapet, Karkudi and Kanganamputhur families. A Trustee should be a major and should not be disqualified under the rules. It is open to the court, not to rigidly adhere to representation of each group, if efficient administration requires "a light departure.

Mr. R. Krishnamoorthy submits as under:

(A) The Scheme Court has committed a grave error in misconstruing the scope and content of Clause 5(C) of the Scheme Decree which has led the said court to come to the conclusion that it is permissible to ignore or bypassing a representation from a family.

(B) The lower court has erred in misconstruing the scope of the words "not to rigidly adhere to representation of each group" and the words "from among male members of five families as far as possible".

(C) The finding of the court below that once a trustee representing a family resigns or dies it is not necessary that another person should be selected only from that family is clearly opposed to the content and scope of the Scheme-Decree. Therefore it is submitted that the order appointing the respondent in relation to a vacancy belonging to Kanganamputhur family is patently illegal and is liable to be set aside.

(D) The lower court has patently erred in appointing the respondent as a Trustee in the vacancy earmarked for Kanganamputhur family when his application itself was only for the general vacancy. In this view alone the order of the lower court is liable to be set aside.

(E) A vacancy arising out of the resignation or death of a Trustee belonging to a particular family can be filled from among the members of any other family only in the event of the fact that the applicant/applicants from that particular family is disqualified under the Scheme.

(F) It is an admitted fact by the respondent that the petitioners are not in any manner disqualified by the Rules to hold the office of Trusteeship. Hence the order ignoring their claim is patently illegal and irregular and liable to be set aside.

(G) The reasoning given by the lower court to reject the claims of the petitioners are perverse since the lower court's order is based on irrelevant and extraneous consideration.

4. Mr. A.S. Venkatachalamurthy has also adopted the arguments of Mr. R. Krishnamurthy and has also submitted specifically that no family should be denied the representation in the Trust Board if they do not suffer any disqualification.

5. Mr. V. Sridevan, learned Senior Advocate appearing for Mr. Rammohan Shanmugham submits as follows:

(A) The scheme decree contemplates six Trustees. It does not say that there should be one representative from each family. On the other hand, it gives the power to the Scheme Court even to select an outsider if the circumstances warrant.

(B) This Court should cautiously exercise its power u/s 115 of the CPC even if this Court comes to a different conclusion on the materials available.

(C) It is open to the court to appoint a stranger if there are no fit persons in the families available.

(D) What is paramount is efficient administration and not representation of each group.

(E) Not impleading of the necessary parties is fatal to the case in C.R.P. Dr. E.S. Chockalingam, who was made respondent 2 in C.R.P. No. 2807 of 1992 was given up with some ulterior motive and mala fide intention, when such nonjoinder makes it impossible to deal equitably and sufficiently with the matter in controversy between the parties in revision.

(F) The High Court cannot while exercising its jurisdiction u/s 115 correct errors of fact however gross they may be or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the court to try the dispute itself.

(G) The decision of the lower court on all questions of law and fact and not touching its jurisdiction is final and however erroneous such a decision may be, it is not revisable u/s 115 of the Code of Civil Procedure.

6. Mr. V. Sridevan in support of his legal submissions cited a number of decisions which deal with scope of Section 115 of the Code of Civil Procedure. Mr. R. Krishnamoorthy cited the decision reported in Ajantha Transports (P) Ltd., Coimbatore Vs. T.V.K. Transports, Pulampatti, Coimbatore District, , which also

deals with the scope of Section 115 of the Code of Civil Procedure. It says that the High Court can interfere on two contingencies viz., (a) grant of relief on totally irrelevant grounds, and (b) relevant grounds are unjustifiably ignored. Thus he submits that this Court can interfere in revision if both the above grounds are satisfied.

7. As I propose to dispose of the two revisions on a shorter ground, I feel it wholly unnecessary for me to deal with the extensive arguments of both the parties or the citations cited by them

8. C.R.P. No. 2692 of 1992 is filed challenging the appointment of M. Rammohan Shanmugham, whereas C.R.P. No. 2807 of 1992 is filed initially against the appointment of Dr. E.S. Chockalingam and Mr. Rammohan Shanmugham. It will thus be seen the appointment of Rammohan Shanmugham is challenged in both the civil revision petitions, whereas the appointment of Dr. E.S. Chockalingam challenged in C.R.P. No. 2807 of 1992 is later given up. Thus parties challenging in both the civil revision petitions are aggrieved that the appointment of Rammohan Shanmugham is bad.

9. I feel that the giving up of challenge against the appointment of Dr. E.S. Chockalingam in C.R.P. No. 2807 of 1992 raises some misgiving and suspicion, if the same is caused due to some manouvering after the civil revision petition has been filed in this Court. It is unnecessary for me at this stage to probe further into the matter in the nature of the order which I am passing in these revisions.

10. There is no dispute whatever among the parties to the civil revision petitions that all of them are well qualified to become members of the Board of Trustees. Hence the only question is whether the appointments actually made suffer or vitiated by any error of jurisdiction apparent from the records as contended by Mr. R. Krishnamoorthy, learned Senior Advocate and Mr. A.S. Venkatachalamurthy learned Counsel for the petitioners. It is seen from the application of the respondent M. Rammohan Shanmugham that he has applied only for a general vacancy. It is seen from the publication made in the newspaper that the respondent Rammohan Shanmugham has applied only for the general vacancy. Normally when one applies for a specific post, the consideration for appointment must be only for that post. It is elementary. While so, he is appointed not for what he prayed for but for a different post. This is clearly an error apparent from the face of the record. The revision petitioners have specifically taken up this grounds as vitiating the order. I also do not see from the order of the lower court what prompted the learned Judge to make up such a deviation. Only he says that there is no need for rigid compliance in the matter of appointment of trustees to the Board which however in the context in which the words are used cannot be interpreted to mean what the lower court believes it means.

11. In my opinion the words "rigid" used in the Scheme Decree means to state that the appointing authority, viz., the court, ought not to be restricted in a

manner against the objects of the Trust. If any interpretation sought to be placed on the word "rigid" is understood as violating the intent and objectives of the Trust, I believe it ought not to be permitted. In my view, the lower court has erred in misconstruing the scope of the words found in Clause 5(c). Viewing thus, it will be seen that an appointment of a person to a post for which he did not apply is clearly against the Scheme but also against the very wish of the applicant himself. The lower court has erred in finding that once a trustee representing a family resigns or dies it is not necessary that another person should be selected only from that family. The said finding in my view is opposed to the scope of the Scheme decree and therefore the order appointing the respondents in relation to a vacancy belonging to Kanganamputhur's family is patently wrong. This reasoning alone is sufficient for me to allow both the revisions and set aside the order of appointments of both Mr. Rammohan Shanmugham and Dr. E.S. Chockalingam. But I do not propose to state anything that might effect the chances of any one of the parties to this litigation getting affected by any opinion expressed by me in this regard in this order. Hence, I refrain from evaluating in any manner the credentials of any of the parties in any manner. The fact that there has been an error committed by the lower court in the matter of appointment is sufficient by itself to allow both the civil revision petitions. Such view of mine is also fortified by a tint of suspicion I was forced to take in the conduct of the challenge against Dr. E.S. Chockalingam (R-2 in C.R.P. No. 2807 of 1992) at the beginning and change of stand later being given up. Ground Nos. 8 and 10 in C.R.P. No. 2807 of 1992 filed by Mr. Sadayappan will strengthen my suspicion. Ground Nos. 8 and 10 in C.R.P. No. 2807 of 1992 is reproduced herein for the sake of convenience:

Ground No. 8: The other reasons given by the court below is that the petitioner may not find time to discharge his duties as a trustee. But at the same time the lower court has appointed another trustee by name Dr. E.S. Chockalingam who is a Doctor.

Ground No. 10: The other reasons given by the lower court for not appointing the petitioner as a trustee and instead appointing the respondents in that place are erroneous and unacceptable particularly in view of the fact the earlier decision of this Hon"ble Court. Even in this regard it is only a suspicion. I must be clearly understood as having no bias against or in favour of the said party.

12. In this light I feel it is wholly unnecessary for me to deal with the arguments advanced by Mr. R. Krishnamoorthy, Mr. A.S. Venkatachalamurthy, learned Counsel appearing for the petitioners and Mr. V. Sridevan, learned Counsel appearing for the respondent relating to the merits of the respective causes or to the citations made in support of their arguments since I am remitting the matter to the lower court for being dealt with afresh in view of the error I have noticed as vitiating the order passed by the lower court. I also further feel that the matter after remand should be dealt with by a Sub Judge different from the one who dealt with the matter and pass the order in accordance with law. Thus I

direct the learned Subordinate Judge of Nagapattinam to dispose of this matter within four weeks positively from the date of receipt of a copy of this order from this Court on merits and in accordance with law. The said court will give due notice to the parties. It is always better to direct a different mind to deal with the matter afresh on the controversies raised by parties.

13. In the result, the order of the lower court dated 9.9.1992 appointing Mr. Rammohan Shanmugham and Dr. E.S. Chockalingam as Trustees are set aside. C.R.P. Nos. 2692 and 2807 of 1992 are allowed. No costs.

14. Mr. E.S. Ganapathy, who is the Chairman of the A.V.C. College Education Committee, is permitted to draw cheques from the bank account for the purpose of disbursing the salary to the staff members of the College and also to incur necessary expenditures in that regard, till the disposal of the matter by the Sub Court, Nagapattinam. This is purely an interim arrangement till the disposal of the matter by the Sub Court, Nagapattinam. The Scheme Court shall not fill up the vacancies which has arisen for educational agency till the disposal of the matter by the said court.