
(2007) 06 MAD CK 0103

In the Madras High Court

Case No : C.R.P. (NPD) No's. 977 and 1251 of 2003

Shaik Ansar Basha alias S.A. Basha

APPELLANT

Vs

C.Y. Javid Ahmed and Others
Mohamed Nooruddin
Siddique Vs C.Y. Javid Ahmed and Others

RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2007) 06 MAD CK 0103

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : Zaffarullah Khan, in CRP. NPD. No. 977/2003 and Satish Parasaran, in CRP. NPD. No. 1251/2003, for the Appellant; Jayashree, for the Respondent

Final Decision : Dismissed

Judgement

S. Rajeswaran, J.—These Revision Petitions have been filed against the order dated 25.2.2003 of the Scheme Court (Principal Sub Judge

Court, Chingleput) on Memo in Scheme O.S.No. 27/1940.

2. Heard the respective counsel and also the parties in person.

3. Civil Revision Petition No. 977/2003 was filed by Sheik Ansar Basha, alias S.A. Basha, whose application for appointment of trustee of the

Covelong Darga was rejected by the Principal Sub-Judge (Scheme Court) on 25.2.2003 on memo in Scheme O.S.No. 27/1940. He is

challenging not only the rejection of his application but also the appointment of respondents 4, 6, 9, 11 and 12 as trustees.

4. C.R.P.NPD.No. 1251/2003 was filed by Md. Nooruddin Siddique challenging the very same order of the Scheme Court dated 25.2.2003 not

only the rejection of his application as a trustee for the same Darga but also the

appointment of the same respondents as trustees as shown in the other C.R.P. NPD. No. 977/2003. In effect the petitioners while reiterating that they should have been appointed as trustees, contended that the respondents above, namely, C.Y. Javid Mushtaq Ahmed, Khadar Basha, Md. Shafiul Hussain, M.A. Mohamed Haneef Ghouse and N. Khaleel Ahamed ought not to have been appointed at all.

5. First let me consider why the revision petitioner's (CRP. NPD. No. 977/2003) application was rejected by the Scheme Court.

6. The Scheme Court considering the fact that the revision petitioner was born in 1942 and he is an aged man when compared to other persons, rejected his application. The Scheme Court also adverted to the fact that even though he mentioned in the application that he has studied up to E.S.S.L.C, he did not produce any document to prove his qualification.

7. I do not find any illegality in the above findings of Scheme Court while rejecting the petitioner's application warranting interference u/s 115

C.P.C. In a trust matter of this nature while appointing the trustees on the basis of a Scheme decree, some element of discretion is always

conferred on the scheme court while appointing the trustees keeping in mind the welfare of the trust and its proper administration. Further in the

Scheme decree passed in O.S.No. 27/1940 on 19.12.1941, the Scheme Court has clearly observed that the court while making appointment of

trustees, shall have regard to the candidate's status, learning, influence, character and piety which shall be grounds for preference.

8. Whether these grounds are adhered to in the appointment of the five respondents whose appointments were challenged in both the revision

petitions, ought to be considered now. Insofar as the appointment of M.A. Md. Haneef Ghouse and N. Kaleel Ahamed are concerned, the major

objections seem to be that they are practising lawyers who could not devote much time for the institution.

9. I do not find any merit in the above objection as the practising lawyers would find time for administration of the institution and on that ground

their appointment cannot be set aside.

10. Insofar as C.Y. Mushtaq Ahamed's appointment is concerned it is assailed on the ground that when he was the President of the Board of

Trustees, he misrepresented to the court that on 21.2.2001 in I.A. No. 72/2001

and called for applications only from the male lineal descendants

of the founder. The further allegations against him is that when he was functioning as a trustee from 1996, he failed to deposit 5% of the hundial

income and failed to account for the grant of Rs. 3,50,000/- obtained by him from the Tamil Nadu Wakf Board.

11. A counter affidavit was filed by C.Y. Mushtaq Ahmed denying the allegations. He raised a preliminary objection for considering the revision

petitioners themselves as the revision petitioners did not make any objection within the stipulated time of 15 days before the Scheme Court and

having failed to raise any objection at the relevant point of time, they could not be permitted to raise these objections for the first time before this

Court.

12. I find force in the above contentions of this respondent. It was not explained by the revision petitioners for not raising the objections before the

Scheme Court itself when 15 days" time were given for doing so. Further the allegations levelled against him still remain as allegations and they are

substantiated with adequate materials. In fact the notification calling for applications for the post of sharer trustee from the lineal male descendants

is concerned, this Court in C.R.P. NPD. No. 3241/2081 on 38.18.2001 clearly observed that this notification is simply the reproduction of the

order passed as per the decree and therefore the challenge made to their notification was rightly rejected by the Scheme Court. Further on the

basis of the allegations alone the appointment cannot be set aside. In fact, some allegations were levelled against the revision petitioner himself in

CRP. NPD. No. 1251/2883 resulting in his removal as a trustee but his innocence was proved before the court which directed reinvestment of a

sum of Rs. 26,635.59 spent by the petitioner from his pocket. Therefore I do not find any merits in challenging the appointment of C.Y. Mushtaq

Ahamed.

13. Insofar as the appointment of Kadar Basha is concerned it was mainly objected to on the ground that when his father was a sharer as on date,

he is not a sharer and therefore he could not be appointed as a trustee.

14. No material was placed before me by the revision petitioners to show that when his father who is a sharer is very much there, the son could not

be appointed as trustee. No provision in the Scheme decree passed in O.S.No.

27/1949 was brought to my knowledge barring such

appointments. In his counter affidavit, the above said Kadar Basha referred to an appointment in the year 1973 when one C.N. Moinuddin

Ahamed, S/o. Nazir Ahamed was appointed as a sharer trustee during the lifetime of his father. He also referred to two other such appointments

and in such circumstances I do not find any merit in the contentions of the revision petitioners and this appointment cannot also be set aside.

15. Regarding the appointment of Shafiul Haq is concerned excepting making some general and bald allegations, no specific case has been made

out to set aside his appointment. As already mentioned by me, the revision petitioners did not explain before this Court with conviction as to their

failure to raise these objections before the Scheme Court when 15 days time were given for doing so. Further I do not find any substantial material

to interfere with the order of the Scheme Court, which has got some element of discretion in the matter of this nature. Unless such exercise of

discretion is illegal, unreasonable and perverse, this Court cannot interfere with the same u/s 115 C.P.C.

16. In the result, both these Civil Revision Petitions are dismissed. No costs. C.M.P. Nos. 10183 and 13766 of 2003 are also dismissed.