

(1933) 01 CAL CK 0013
In the Calcutta High Court

Tarapasanna Ganguly and Others

APPELLANT

Vs

Naresh Chandra Chakrabarty and Others

RESPONDENT

Date of Decision : 25-01-1933

Acts Referred:

Trusts Act, 1882 — Section 75, 76

Citation : AIR 1933 Cal 329

Hon'ble Judges : Mitter, J;M.C. Ghose, J

Bench : Full Bench

Judgement

Mitter, J.—This is an appeal on behalf of the decree-holders and is directed against an order dismissing their application for execution of a money decree obtained in their favour. The circumstances which have led to the order appealed against may be briefly stated thus: The appellants instituted a suit against the Secretary, Ex-Officio President and the then members of the Madaripur Donovan Girls" School Committee, (who were all named in the plaint) for recovery of Rs. 5,728 due on bills on account of a contract entered into on 7th March 1925 between the appellants and the then school committee for the construction of the school premises. Various defences were taken in the suit amongst which it is necessary to notice only one, namely, that the suit was not maintainable as the personnel of the managing committee had changed since the date of the agreement. On 9th February 1931 the appellants' suit was decreed in part for Rs. 1,561-12-0 with interest Rs. 699-8-0 and costs and it was directed that the decree shall not be executed personally against the defendants. Against this decree the plaintiffs-appellants preferred an appeal to the High Court (F.A. No. 148 of 1931) in which the defendants to the suit preferred cross-objections. Both the appeal and the cross-objections are pending determination in this Court. It may be mentioned here that on the issue as to the maintainability of the suit in the form in which it was laid was decided in favour of the plaintiff and the Subordinate Judge was of opinion that:

there is no reason why the suit could not be legally instituted against the

institution although its members were changed,

2. The appellants applied for the execution of the decree in execution case No. 59 of 1931; and as after the decree in the suit three members of the managing committee went out of office and three new members, were substituted in their place, the appellants brought the new members on the record and subsequently another member Miss Kiranbala De, was added as a party to the execution proceedings as another now member of the school committee. The plaintiffs-appellants prayed for attachment and sale of the moveables of the judgment-debtor which were lying in the Donovan Girls' School and Boarding premises and of the money lying in certain Madaripur Banks in the name of the Secretary and Joint Secretary as also of other moneys held by the Secretary on behalf of the School Committee either with himself or in the Madaripur Post Office. The plaintiffs prayed that if necessary the attachment and the sale of the immovable properties of the judgment-debtor might also be effected. Various objections were raised in three petitions of objections (1) by 8 members of the old school committee, (2) by the three new members, (3) by another new member in three miscellaneous cases. The principal objections need only be noticed. They are: (a) that the decree cannot be executed against the assets of the school, (b) that the decree was not against the committee or at all events not against the present committee as the personnel of the committee has since changed. These objections have prevailed with the Subordinate Judge below. Hence the present appeal by the plaintiffs decree-holders. The Subordinate Judge is of opinion that as there is no decree against some of the present members of the school committee the petition for execution can only be executed against what the present members and the outgoing members held or owned as the managing committee of the school and

as the petition for execution was not on that footing as the former body was not on the petition,

the petition must be dismissed. The lower Court recognizes that this position sounds startling and absurd, but nevertheless gives effect to the objection as he considers that his duty is to construe the decree as he finds it. His reasoning is that the school committee is not a Corporation which remains constant though its members change; that it is not a firm, that it was not sued as a fluctuating class by a representation under Order 1, Rule 8 Civil P. C, and that on no conceivable theory he could call the new members judgment-debtors. Mr. Atul Chandra Gupta who appears for the appellants has attacked this reasoning of the Subordinate Judge with great force. He contends that beyond a Corporation and a firm there are certain things as holders of office and that the members of the school committee really formed a body of trustees which does not change with the change of its personnel and refers to a passage in Lewin on Trusts (Edn. 13 at p. 235) and to the provisions of the Trusts Act (2 of 1882), Sections 75 and 76, as embodying the rules of equity, justice and good conscience in support of his contention. The Trusts Act, it may be mentioned, does not apply to Bengal. He

contends that the managing committee hold the property or the assets of the institution and that the present execution can be levied against the assets of the institution in the hands of the managing committee for the time being. He argues that if the view taken by the Subordinate Judge is upheld, no school committee in this province can get anything done except on the cash system.

3. In reply for the respondent Dr. Basak argues that the decree is really a decree against certain members of the committee and points out that there is no trust deed in this case and in the absence of such a deed the property of the institution cannot be regarded as having vested in the members of the committee on behalf of the school. It is also said for the respondent that the committee is not a legal entity and its legal position is that it is not a person at all. It is argued that the Court never intended to pass a decree against the committee much less against the school properties and refers to the circumstance that the prayer "Kha" of the plaint was struck off by an order dated 19th January 1931. The prayer "Kha" was to the effect that a decree should be given for realization of the decretal amount from the school fund of the Madaripur Donovan Girls' school and if the decretal amount be not realized from the said fund then a decree should be passed for realization of the decretal amount by the sale of the moveable and immovable properties of the Donovan Girls' School. In support of the contention that an unincorporated institution is not an association which is legally recognized reference has been made to Halsbury's Laws of England Vol. 4, p. 420, para. 903.

4. It is true that an unincorporated members' club is not a partnership and questions frequently arise as to who are the persons liable for goods supplied to such a club or on contracts professedly made on its behalf; it has been held that trustees of committee of management of such clubs have only such authority to contract on behalf of the members generally as may be given to them expressly or by necessary implications by the rules. An ordinary club is formed upon the tacit understanding, judicially recognized, that no member as such becomes liable to pay its funds or otherwise any money beyond the subscriptions required by its rules: see: *Wise v. Perpetual Trustee Co. Ltd.* (1903) AC 139. In the same case their Lordships of the Judicial Committee laid down that trustees of a club who have incurred liability under onerous covenants contained in a lease accepted by them on its behalf are entitled to indemnity out of any property of the club to which their lien as trustees extends. The analogy of clubs does not really apply to the present case. The only decree that could be passed in the present case is a decree against those who represent the public in their affairs of the school and all such members for the time being were made parties to the suit, and in passing the decree the Court was careful enough to state that the members of the managing committee were not to be personally liable. The intention of the Court was that they are to be liable in a representative capacity.

5. The decree might have been more explicit but a reasonable construction must always be put on a decree and the Court should always lean against a

construction which would render a decree inexecutable. The only reasonable construction seems to be that the decree was passed against persons representing the institution and must bind the institution even if at the time of execution of the decree there has been some change in the personnel of the representatives. In this view it is not necessary to consider the preliminary objection taken that Dharendra Nath Das, one of the present members of the committee was added as a party long after time in this appeal, for where several persons were sued in a representative capacity the addition of one of such representatives on the record of the appeal after time does not really make the representation any the less effective. I am therefore of opinion that this appeal should be allowed. The order of the Subordinate Judge must be set aside and he is directed to proceed with the execution of the decree in the manner asked for by the decree-holders appellants. In all the circumstances there will be no order as to costs.

6. My conclusions may be summarized as follows: The decree against the managing committee of an unincorporated association for example, a school like the Donovan Girls" School with a direction that the managing committee are not personally liable must be reasonably construed to mean a decree against them in their representative capacity and binds the school even if the members of the managing committee change after the decree, such a decree can be executed against the assets of the school at the time of execution; it is enough if all the members of the present managing committee are on the record before execution is proceeded with; the members of the managing committee if they pay the debt due by the school are liable to be indemnified out of the assets of the institution; that Order 1, Rule 8, Civil P.C., has no application to the present case as all the members of the managing committee at the date of the suit were sued; that the managing committee stood in law for the school and therefore the decree against them binds the school. In the present suit which is against the managing committee of the school in their representative capacity if there is a change in the members of the representative body there is really a devolution of interest within the meaning of Order 22, Rule 10, Civil P.C., and the preliminary objection raised by one of the respondents must fail although properly speaking the new member ought to have been added as a party on notice. We have however heard his learned advocate, and the objection by him is not of substance.

M.C. Ghose, J.

7. I agree.