

(1944) 08 MAD CK 0012
In the Madras High Court

Vanimisetti Satyanarayana

APPELLANT

Vs

Tummalapalli Vara Narayanamurthy and Others

RESPONDENT

Date of Decision : 11-08-1944

Acts Referred:

Citation : AIR 1944 Mad 574 : (1944) 57 LW 489

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—Some members of a family, three of whom had been adjudged insolvents, executed a trust deed conveying their property in

trust for the purpose of discharging their debts. The petitioner here is one of the trustees appointed. One of the executants of the trust deed, the

petitioner in the lower Court, filed an application praying for the removal of respondent 2, who is continuing in management of the trust properties,

and for the appointment of another in his stead, on the ground that he had committed breaches of trust. A preliminary objection was raised that

Section 74, Trusts Act, was not applicable. The learned District Judge disposed of that objection very summarily by saying:

Respondent 2 contends that the petition is not maintainable u/s 74. I disagree with him. The matter is governed by direct authority, vide Assanmal

v. Somimal AIR 1930 Sind 41. The matter will be posted for enquiry.

2. The matter has been considered in a few cases, one relied on by the learned advocate for the petitioner being Nathabhai Devidas Vs.

Vaghjibhai Jhaverbhai, . The argument advanced is that Sections 73 and 74 contemplate only cases where certain facts are admitted or beyond

dispute, and that if it is necessary to consider a complicated question such as

whether a trustee has committed a breach of trust, then the proper remedy is by way of a suit. The learned Judges in 52 Bom. 322 disposed of the matter very briefly. The learned Chief Justice, who delivered the judgment, said:

Speaking generally, applications for the removal of a trustee should undoubtedly be brought by a suit. And where, as here, it is alleged that the trustees have committed a breach of trust, that suit should ask for the delinquent trustees to make good the breach of trust. Further, the suit should normally ask for the administration of the trust estate by the Court. Nothing of that has been done here.

The learned Judges then referred to a citation from Lewin on Trusts, Edn. 9, p. 1166:

If there be ground for removing a trustee for misconduct or other cause, the application to the Court should be by suit.

The matter has been considered much more fully in various cases by the Sind Court. AIR 1930 Sind 411 was concerned with the question

whether the word "unfit" may be interpreted to mean physically incapable or whether it could also be applied to persona who had committed

breaches of trust. The learned Judge, after discussing this question, went on to say that there was no reason to think that Section 73 intended that

the party should have recourse to a suit before it could be declared that a person was unfit to continue as a trustee. The matter came up for much

fuller consideration before a Bench of the same Court in Tirathdas v. Parameshwaribai AIR 1943 Sind 223, where the learned Judges pointed out

that even in English Courts such questions were decided in summary inquiries. They held that as in England under the corresponding provision,

Section 73 was not intended to deal with questions which require an elaborate enquiry, but with matters that could suitably be disposed of in a

summary inquiry. They then went on to consider the merits of the allegations, and came to the conclusion that it was clear from the documents on

record in a previous suit that the trustee in question was; not fit to continue. They thereupon proceeded to apply Sections 73 and 74. I respectfully

agree with the reasoning in that carefully considered judgment.

3. Section 74 only applies to cases where Section 73 is inapplicable. Section 73 provides for the appointment of a new trustee in the place of a

trustee who has been found to be suffering from any disqualification mentioned in Section 73. There are several other trustees, and in the event of the petitioner's being removed, the remaining trustees would have to appoint another trustee in his place. The petition is dismissed with the observation that the issue is limited in its scope to matters that can be readily determined in an inquiry of a summary nature. The costs of this petition will be costs in the application.