

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2015

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

CRP.No.665 of 2015

and

M.P.Nos.1,3 and 4 of 2015

1.PSG & Sons Charities,
a Public Charitable Trust,
Post Box No.1609,
Peelamedu,
Coimbatore 641 004.
Represented by its Present Managing Trustee,
Mr.L.Gopalakrishnan

2.L.Gopalakrishnan

3.G.R.Karthikeyan

4.D.Lakshminarayananasamy

...Petitioners/Respondents

Vs.

1.G.Rangaswamy

2.Suresh Jagannathan ...Respondents/Plaintiff and 5th respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India to reject the Plaint filed by the first respondent in O.S.No.1952 of 2012 on the file of the District Munsif Court, Coimbatore, and consequently, strike off the suit O.S.No.1952 of 2014 for want of jurisdiction.

For petitioners

:Mr.R.Muthukumaraswamy,
Senior Counsel,

For petitioner in M.P.No.3/2015

: Mr. H. Karthik Seshadri

For petitioner in M.P.No.4/2015

: Mr. M.S.Krishnan,

Senior Counsel for

M/s.Sarvabhauman Associates

For RR2

: Mr.S.V.Jayaraman, Senior Counsel

O R D E R

The Civil Revision Petition has been filed against the order of injunction granted by the Trial Court restraining the petitioners herein and Mr.Suresh Jagannathan for second respondent herein from in any manner filling up of the vacancy arose in the office of the elected Trustees of the first respondent Trust except by giving notice to all the Board of Trustees and conducting the meetings with the minimum quorum of 5 as per the Chapter IX para 5 of the SOA.

2. Heard Mr.R.Muthukumaraswamy, learned counsel appearing for the petitioners and Mr.S.V.Jayaraman, learned Senior Counsel appearing for the respondents and Mr.H. Karthik Seshadri, learned counsel appearing for the petitioner in MP.No.3/2015, and Mr. M.S. Krishnan, learned senior counsel appearing for the petitioner in MP.No.4/2015.

3. The learned Senior Counsel appearing for the respondents would submit that the respondents, who are plaintiffs before the Trial Court want to withdraw the original suit filed by them and therefore, Civil Revision Petition has become unnecessary. However, learned Senior Counsels, Mr.R.Muthukumaraswamy and Mr.M.S.Krishnan opposed such issue stating that, whenever inconvenient circumstances arise, they are in the habit of withdrawing the proceedings initiated unnecessarily and thereafter initiate different proceedings. They are bent upon stalling the process of filling up the vacancy in the trust somehow. In any event, the statement made on behalf of plaintiff, the first respondent herein, that he would withdraw the suit in O.S.No.1952/2014 is recorded.

4. There are two types of trustees viz., Founder Trustees, who are four and elected Trustees, who are five. As on date, there are only three founder trustees and two elected trustees. One founder trustee has to be chosen and three elected trusteeships are vacant. Contending that, the defendants (the petitioners herein) are trying to fill up three vacant elected trusteeships before choosing the founder trustee to him and minimum quorum of 5 without notice and therefore, he approached the civil court and obtained order of injunction. After hearing both the parties, the trial court held that without giving notice to all the trustees with the minimum quorum of 5, the meeting cannot be held.

5. Thereafter argument was advanced by all the parties at length, Mr.H. Karthik Seshadri, learned counsel appearing for the petitioner in MP.No.3/2015, viz., Mr.V. Prakash would submit that the petitioner in MP.No.3/2015 has to be appointed as founder Trustee to represent Mr.P.S.G. Narayanaswami Naidu as the petitioner in MP.4/2015, viz., Mr.V.Rajan sustained disqualification by resignation from the first petitioner-Trust. As per para-2 of the

D (1) (c) of Chapter IV of the Scheme of Administration, if any Founder Trustee expressed his unwillingness to accept the office shall be precluded from putting forward his rights again but his right to exercise his vote in the selection of a founder Trustee in his line shall remain unaffected. Further, the petitioner in MP.No.3/2015, Mr.Rajan (petitioner in M.P.No.4 of 2015) resigned on 25.04.2012 and thereafter, Mr.Prakash, (petitioner in MP.No.3 of 2015) was selected as Founder Trustee on 31.07.2012, and the same was challenged before the Court and the Court set aside the said selection and again, the matter was remanded to the Electoral College to choose the Founder Trustee. Thereafter, there was a contest between V.Prakash, the petitioner in MP.3/2015 and Mr.Naren Rajan, son of petitioner in M.P.No.4 of 2015, the electoral College selected Naren Rajan, the son of petitioner in M.P.No.4/2015. Subsequently, in an accident, the said Naren Rajan died on 21.05.2015 and therefore, a vacancy of family trustee has arisen. The said vacancy alone has become cause for the proceedings and for that vacancy, the petitioner in MP.No.3/2015 alone is competent to contest and Mr.Rajan is incompetent to contest.

6. However, Mr.M.S.Krishnan, learned Senior Counsel appearing for the petitioner in MP.No.4/2015 would submit that there is no disqualification for Mr.Rajan, the petitioner in M.P.No.4/2015; He has to be selected or his candidature should be considered while choosing the Founder Trustee by the rest of the family Trustees. Further, he would submit that the petitioner in MP.No.3/2015 is a Green Card Holder of USA and he only visits India rarely and there is a disqualification for him as he got converted to Christianity and a Christian cannot become founder Trustee.

7. Mr.R.Muthukumaraswamy, learned senior counsel appearing for the petitioners and Mr.S.V.Jayaraman, learned senior counsel appearing for the second respondents would submit that if the task of selecting the founder Trustee is left to family trustees, they will select a person based on the qualification of the petitioners in MP.No.3/2015 and MP.No.4/2015.

8. Though the issue raised in the Civil Revision Petition is different, as the issue involved is the Administration of Public Trust and the administration of Public Trust cannot be affected because of the dispute between the parties. Therefore, this Court in the interest of justice and the Public Trust, especially when a number of Educational Institutions and Hospitals are run by the subject Trust, exercising powers under Section 92, 151 of the C.P.C as well as under Article 227 of the Constitution of India, decides the issue which has been addressed by all the parties as stated above.

9. The issue regarding the appointment of family Trustee representing line of P.S.G. Narayanaswami Naidu, is the basic issue for the proceeding. Therefore, this Court, decides the issue, so

that a final decision can be taken by the existing founder Trustees.

10. As, (D) (1) of Chapter IV of the Scheme of Administration is pressed into service by Mr.Karthik Seshadri, to contend that, Mr. Rajan, petitioner in M.P.No.4 of 2015 is disqualified by rule, it is appropriate to extract the same as follows:

"1. FOUNDER TRUSTEES

(c) If there are more than one in such line competent to hold office, according to the provisions herein contained, then they shall choose one from among themselves and the person so selected shall be appointed to the place. If there is disagreement among them then the opinion of the majority shall prevail. If there is no such majority concurring in such selection of one among them or if they do not select one from among themselves within six weeks of such vacancy then the remaining Founder Trustees shall either unanimously or by a majority select one from such competitors and the person so selected shall be appointed to fill the vacancy.

A person who is competent to hold office of a Founder Trustee who has however expressed his unwillingness to accept the office shall be precluded from putting forward his rights again but his right to exercise his vote in the selection of a founder Trustee in his line shall remain unaffected.

(Emphasis supplied)

From the above, as rightly pointed out by Mr.Karthik Seshadri, learned counsel appearing for the petitioner in M.P.No.3/2015, it is clear that a person who has resigned from the Trust cannot make his claim. The said contention was also accepted by this Court in earlier litigation in V.Rajan & another Vs.M/s.P.S.Govindaswami Naidu & Sons Charities, Represented by the present Managin Trustee RL.Gopalakrishnan & others, reported in 2014 3 LW 739. However, a different situation has arisen now. The petitioner in MP.No.4/2015 was a Founder Trustee and he voluntarily resigned on 25.04.2012 only to enable his son, Mr.Naren Rajan to become founder Trustee as evident from his resignation letter dated 25.04.2012 which reads as follows:

"Wednesday, 25th April, 2012

Mr.L.Gopalkrishnan

Managing Trustee, PSG & Sons' Charities

Dear Gopal,

This is to inform you that I resign my post as 'Founder Trustee' effective today.

This is in line with the various Trust Board deliberations that Founder Trustees should voluntarily resign in order

to facilitate a planned and orderly transition of Trusteeship.

As stipulated in Clause IV (D) (1) (c) of the SOA, among the three male lineal descendents of the 'P S G Narayanaswamy Naidu' branch, my son Naren Rajan (whose signature is also affixed here below in concurrence) and I, constituting a majority, hereby nominate Naren Rajan as 'Founder Trustee'. Henceforth Naren Rajan will attend all meetings and discharge all obligations bestowed by the SOA upon Founder Trustees.

My thanks to all to all Trustees & Staff in helping me discharge my duties as Trustee over the last two decades. My support and guidance to the Trust and Trustees shall always be available and look forward to a continued interaction.

With Warm personal regards,
Sincerely,

V. RAJAN

NAREN RAJAN
(Emphasis supplied)

11. After resignation of Mr.Rajan, though initially, the Board appointed the petitioner in MP.3/2015, subsequently it was set aside by the Court and remanded to the Board. After remand the Board chose Naren Rajan, the son of V. Rajan, as founder Trustee. The change of circumstances is that after appointment of Naren Rajan on 10.11.2014, unfortunately, the said Naren Rajan died in a road accident on 21.05.2015. Hence, a vacancy in the family Trustee arose. To fill up the said vacancy only the petitioner in MP.No.3/2015 and MP.No.4/2015 are making claims.

12. The contention of Mr.Karthik Seshadri, learned counsel appearing for the petitioner in MP.No.3/2015 is that the petitioner in MP.No.4/2015 acquired disqualification by resignation from the trusteeship. If there is change of circumstances, this Court has to see the circumstances under which, the Family Trustee resigned. Usually, no person will come forward to resign from trusteeship, unless the resignation is beneficial to his family or friends. In that manner only, Mr.Rajan, petitioner in M.P.No.4/2015 resigned his post on 25.04.2012 so as to enable his son, Naren Rajan to become family Trustee. Subsequently also, Naren Rajan became family trustee. Only with a fond hope that his son would continue as family Trustee even after Rajan's death, as was becoming old, the said resignation was made by Rajan. However, when the son who was a family trustee predeceased the father, within six months of his appointment, it does make the difference. The purpose for which Rajan resigned is lost by death of his son and therefore, the purposive resignation cannot be employed against Mr. Rajan, the petitioner in MP.No.4/2015. Hence, the disqualification alleged by the petitioner in MP.No.3/2015 against the petitioner in MP.No.4/2015 goes. To put it in other words, there is no

disqualification as per 5 (1) 4 of Chapter 4 of the Scheme of Administration for Rajan, petitioner in M.P.No.4 of 2015 to contest for Family Trusteeship. While formulating the Scheme, the Court would not have imagined many eventualities. No one would have thought of the present circumstance, which has arisen as on date due to death of Naren Rajan, son of petitioner in M.P.No.4 of 2015 at the time of framing of the Scheme. When new situation arises, this Court cannot go strictly by the literal meaning as stated, in 5 (1) 4 of Chapter 4 of the Scheme of Administration. The Scheme should be read in such a way that the interest of all the parties are safeguarded and the procedures contemplated under the Scheme are followed properly. Therefore, this Court holds that the disqualification suffered by Mr.Rajan due to his earlier, resignation as family trustee for making a claim for the post of trusteeship, is removed.

13. For the reasons stated above, this Court holds that Mr.Rajan, the petitioner in MP.No.4/2015 has got no disqualification and he is entitled to the claim founder Trusteeship. As the first respondent herein and the plaintiff in O.S.No.1952 of 2014 undertakes to withdraw the suit, he shall withdraw within one week from the date of receipt of copy of this order. It is made clear that irrespective order of injunction and withdrawal of the suit in one week, the process of election shall commence. In view of the above, the first respondent - Trust Board is directed to consider the claims of Mr.Prakash, the petitioner in MP.No.3/2015 as well as Mr.Rajan, the petitioner in MP.No.4/2015 and to take appropriate decision regarding appointment of founder Trustee from the line of P.S.G. Narayanaswamy Naidu family. After appointment of vacant family Trustee, it is open to the Trust to fill up the elected Trustees as per the procedures contemplated in the Scheme of administration. All the parties are directed to participate in the meetings to be convened and see that all the vacancies in trusteeships are filled up better functioning of the Public Trust at the earliest.

14. With the above direction, the civil revision petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Gv

Sd/-
Assistant Registrar

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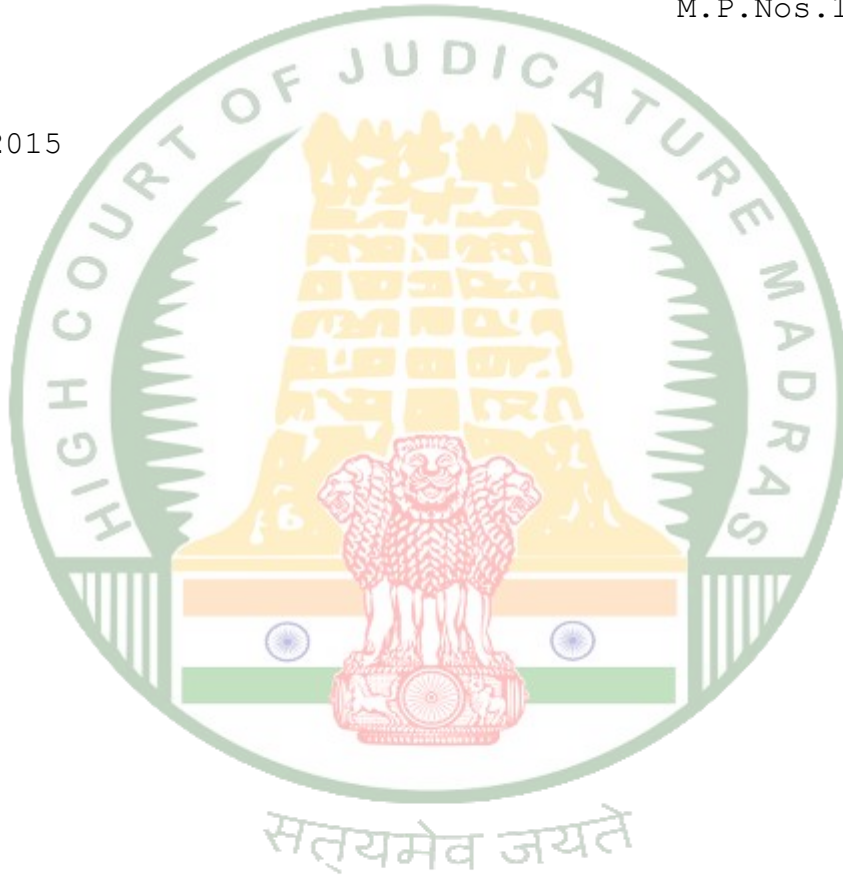
Sub Assistant Registrar

To
The District Munsif, Coimbatore.

1 cc to Mr.P.Mahesh Kumar , Advocate Sr.No.31973
1 cc to M/s.Sarvabhauman Associates , Advocate Sr.No.31961
1 cc to Mr.A.Jenasenan , Advocate Sr.No.31727
1 cc to Mr. H. Karthik Seshadri , Advocate Sr.No.31672

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