

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON 22.08.2017

DELIVERED ON 30.08.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.2 of 2017 and C.M.P.No.299 of 2017
O.S.A.No.202 of 2017
and
C.M.P.No.14152 of 2017

O.S.A.No.2 of 2017

Mrs.Latha Rajendran

...Appellant

VS.

1.The Hon'ble Mr.Justice
Hariparanthaman (Retd.)
High Court, Madras,
Administrator.

2.Nirmala Ravindaran,

3.Geetha Madhumohan,

4.M.Swaminathan,

5.Sudha Vijayakumar

...Respondents

(RR 2 to 5 impleaded as party
respondents as per the common
order dated 15.03.2017 made in
C.M.P.Nos.3928, 3420, 3421 and
3645 of 2017 in O.S.A.No.2 of 2017)

Prayer:

Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent praying to set aside the order dated 24.11.2016 passed by the Learned Judge in A.No.682 of 2013 on the file of the Original Side of this Court and the appellant be appointed as the representative to administer the estate of late Dr.M.G.Ramachandran as prayed for in O.A.No.682 of 2013.

For Appellant : Mr.T.V.Ramanujam (SC)
for Mr.C.Jagadish

For Respondents : Mr.R.Krishnaswamy for R1
Mr.P.Chandrasekaran for R2 & R3
Mr.N.S.Nandakumar for R4
Mr.V.Selvaraj for R5

O.S.A.No.202 of 2017

Mrs.Geetha Madhu Mohan ...Appellant

1.Latha Rajendran

2.Sudha Vijayakumar

3.Janaki Sivaraman

4.Radha Gopalakrishnan

5.Nirmala Raveendhran

6.The Hon'ble Mr.Justice
Hariparanthaman (Retd.)
High Court, Madras,
Administrator.

...Respondents

COMMON JUDGMENT

For Appellant : Mr.P.Jagadeesan

For Respondents : Mr.T.V.Ramanujam (SC) for R1
for Mr.C.Jagadish
Mr.V.Selvaraj for R2
Mr.V.Raghavachari for R4
Mr.P.Chandrasekaran for R5
Mr.R.Krishnaswamy for R6

ABDUL QUDDHOS, J.

Both the Original Side Appeals O.S.A.Nos.2 of 2017 and 202 of 2017 have been filed against the Common Judgment and Order dated 24.11.2016, dismissing the applications filed by the respective appellant, who had individually sought for appointment as the Administrator for the Estate and Trust of the testator late Dr.M.G.Ramachandran, whose Will dated 28.04.1986, was probated by

Order of this Court dated 14.07.1992 in O.P.No.388 of 1992. O.A.No.682 of 2013 in O.P.No.383 of 1992 was filed by the appellant in O.S.A.No.2 of 2017 before the learned Single Judge seeking for her appointment as the administrator of the Estate and the Trust of late Dr.M.G.Ramachandran. Application No.2571 of 2013 was filed by the appellant in O.S.A.No.202 of 2017 before the learned Single Judge seeking for her appointment as the administrator of the Estate and the Trust of late Dr.M.G.Ramachandran. Both the applications along with other application filed by the parties seeking the same relief came to be dismissed by the learned Single Judge by a Common Judgment and Order dated 15.11.2016 against which the present appeals have been preferred by the respective applicant.

2.The appellant in O.S.A.No.2 of 2017 seeks appointment as an administrator, not as a legal representative of the deceased executor M.Rajendran, but, based upon her qualification as she has been managing the affairs of the estate and trust of Late Dr.M.G.Ramachandran for quite sometime even during the lifetime of her husband M.Rajendran who was the executor under the Will who obtained an order of probate on 14.07.1992.

3.The appellant in O.S.A.No.202 of 2017 seeks appointment as an administrator not alone as a beneficiary under the Will dated 18.01.1987 of late Dr.M.G.Ramachandran but also as a qualified person.

4.The appellant in O.S.A.No.2 of 2017 Mrs. Latha Rajendran is the wife of Mr.M.Rajendran who was one of the executors under the Will of late Dr.M.G.Ramachandran. Mr.M.Rajendran as an executor obtained probate of the Will on 14.07.1992 by Order of this Court in O.P.No.388 of 1992. Till his death on 08.01.2013, the executor Mr.M.Rajendran administered the Estate and Trust created by late Dr.M.G.Ramachandran under his Will dated 18.01.1987.

5.After the death of the executor Mr.M.Rajendran, his wife, the appellant in O.S.A.No.2 of 2017 filed Application No.681 of 2013 before the learned Single Judge to appoint her as a representative as an interim measure to administer the Estate and the Trust created under the Will of late Dr.M.G.Ramachandran and probated in O.P.No.388 of 1992. Another application was also filed by Latha Rajendran in Application No.682 of 2013 seeking for her appointment as a representative to administer the Estate and the Trust created under the Will of late Dr.M.G.Ramachandran. The learned Single

Judge of this Court by his Order dated 13.02.2013, appointed the appellant in O.S.A.No.2 of 2017 as the representative as an interim measure to administer the Estate and the Trust created under the Will of Dr.M.G.Ramachandran subject to the fulfilment of the following conditions:

"a)That her appointment as a representative is purely temporary subject to further orders of this Court in Application Nos.681 and 682 of 2013.

b)That she shall render true and proper accounts together with the report to this Court once in three months.

c)She shall not encumber or deal with the properties bequeathed under the Will of Dr.M.G.Ramachandran without prior permission of this Court.

d)She shall not make any appointment to any post or take major decisions relating to the affairs of the Estate and the Institutions without the prior permission of this Court.

e)She shall conduct herself keeping in mind the laudable objects for which the properties were bequeathed under the Will and if anything adverse is brought to the notice of this Court, the interim arrangement is liable to be revoked."

6.As against the Order dated 13.08.2012 passed by the learned Single Judge impleading Mr.M.Rajendran as a party to the proceedings in O.P.No.388 of 1992, an appeal was filed in O.S.A.No.457 of 2012 and notice was ordered by the Division Bench of this Court to Mr.M.Rajendran. Thereafter, M.Rajendran died on 08.01.2013. After the death of M.Rajendran, the Division Bench of this Court in that appeal passed the following Order in O.S.A.No.457 of 2012 on 10.02.2015:

"a)The learned Counsel for the appellants submit that after the demise of the original respondent/Mr.M.Rajendran, the appeal has become infructuous. But the name of Dr.Mrs.Latha Rajendran has been substituted in his place, vide dated 10.03.2014 in M.P.No.3 of 2013, while she has no caveatable interest.

b)The learned Counsel appearing for Dr.Mrs.Latha Rajendran, on the other hand, submits that her impleadment is not as a legal heir of Mr.M.Rajendran but on account of the provisions of Section 258 of the Indian Succession Act, 1955.

c)The aforesaid controversy has to be determined before the learned Single Judge and it is not an issue before us in the present appeal, which was directed against the impugned order dated 06.08.2013 against the impleadment of Mr.M.Rajendran.

d)The appeal, thus, dismissed as infructuous and parties are at liberty to raise all pleas before the learned Single Judge. No costs".

7.Apart from the respective appellant in O.S.A.No.2 of 2017 and O.S.A.No.202 of 2017, there were other persons who had also sought for appointment as an administrator of the Estate and the Trust of late Dr.M.G.Ramachandran before the learned Single Judge. Those applications were also dismissed by the Common Judgment and Order

dated 24.11.2016 passed by the learned Single Judge, but, those applicants as of now are not an appeal before us.

8.After the Order dated 10.02.2015 passed by the Division Bench of this Court in O.S.A.No.457 of 2012, all the applications filed by various parties including the applications filed by the appellant in O.S.A.No.2 of 2017 and the appellant in O.S.A.No.202 of 2017 seeking appointment as an administrator were taken up for hearing by the learned Single Judge.

9.The appellant in O.S.A.No.202 of 2017 and some of the beneficiaries under the Will of late Dr.M.G.Ramachandran submitted that Mrs.Latha Rajendran, the appellant in O.S.A.No.2 of 2017 who was appointed as an interim administrator by the Order of the learned Single Judge dated 13.02.2013, has no legal right to continue as an interim administrator and ever since her appointment as interim administrator, she has been misusing the properties of the Trust. They allege that life threats at the behest of Latha Rajendran are being exerted on others. The action in constructing the College, receiving donations and other activities pertaining to the property situated at Ramavaram Garden, over which action was taken, were not intended by the testator. An attempt was made by Latha Rajendran to usurp

some of the properties by clandestinely obtaining a patta, which was rightly cancelled subsequently. There were allegations and counter allegations between the parties and there was no consensus even amongst the beneficiaries before the learned Single Judge. All the remaining parties also opposed before the learned Single Judge, the continuation of Dr.Mrs.Latha Rajendran, the appellant in O.S.A. No.2 of 2017 as an interim administrator.

10.Earlier, even during the life time of Mr.M.Rajendran, the executor, a learned Single Judge of this Court by his Order dated 06.04.2006, appointed Hon'ble Mr.Justice K.P.Sivasubramaniam (Retd.) as a Commissioner to fix the identity of the property ABCDEFGHIJ portion under the Will of Late Dr.M.G.Ramachandran and note down the physical features and find out whether division by metes and bounds was feasible and if not whether there is any possibility of making divisions for the convenient enjoyment of the properties by the parties. The learned Commissioner by his report dated 25.08.2006, also expressed his disappointment in not being able to persuade the parties to come to an amicable agreement as the attitude of all of them was extreme and unrelenting and they were complaining against each other on trivial and past events and were not prepared to look forward.

11.The learned Single Judge after hearing the submissions of all the parties came to the conclusion that there is no consensus between the parties to appoint a Common Administrator amongst themselves. Hence, the learned Single Judge by a Common Order dated 24.11.2016, passed in Application Nos.681, 682, 865, 1686, 2571 and 4703 of 2013 in O.P.No.388 of 1992 and Application No.2223 of 2015 in O.P.No.69 of 2012, dismissed all the applications and appointed Hon'ble Mr.Justice Hariparanthaman (Retd.) a former Judge of this Court, as the Administrator to administer the Trust and its properties created by late Dr.M.G.Ramachandran under his will dated 18.01.1987. Aggrieved by the Order of the learned Single Judge dated 24.11.2016, the appellants have preferred the appeals.

12.In both the appeals notice was ordered by this Court and all the parties are now represented by Counsels.

13.Mr.T.V.Ramajunam, learned Senior Counsel for the appellant in O.S.A.No.2 of 2017, submits that the appellant is a well qualified person to act as an Administrator to administer the Trust and its properties bequeathed by the testator late Dr.M.G.Ramachandran under his will dated 18.01.1987. He submitted that there was no

necessity for the learned Single Judge to remove the appellant from acting as an interim Administrator since she has been dutifully and sincerely acting as the interim Administrator ever since her appointment by this Court on 13.02.2013. He placed merit certificates and other documents in favour of the appellant to prove her credentials. The learned Senior Counsel also submitted that she has specialized qualification to teach and train deaf and dumb children and she will be the most suitable person to act as the Administrator. The curriculum vitae of the appellant was also placed before this Court by the learned Senior Counsel. The learned Senior Counsel also submitted that the remuneration of Rs.1 lakh fixed for the administration by the learned Single Judge is on the higher side and the estate and trust of Late Dr.M.G.Ramachandran does not have the income to pay that much monthly remuneration to the administrator.

14.Mr.P.Jagadeesan, learned Counsel for the appellant in O.S.A. No.202 of 2017, submitted that the appellant is a beneficiary under the Will of late Dr.M.G.Ramachandran. He submitted that she is also well qualified and further she is a beneficiary whereas the appellant in O.S.A.No.2 of 2017 is not a beneficiary. The appellant in O.S.A.No.202 of 2017 also seeks appointment as an Administrator of

the Trust and its properties bequeathed under the Will of late Dr.M.G.Ramachandran.

15.The learned Counsels appearing for the respondents in both the appeals oppose the appointment of the respective appellant as the Administrator for the Trust and its properties of late Dr.M.G.Ramachandran under his will dated 18.01.1987. They sought dismissal of both the appeals.

16.Apart from the two appellants, who have filed separate appeals O.S.A.No.2 of 2017 and O.S.A.No.202 of 2017 respectively before us, we find from the records that there were other applications filed by various parties either as beneficiaries or otherwise seeking appointment as Administrator before the learned Single Judge. Even though, those applications were also dismissed by the Order of the learned Single Judge, the aggrieved parties in those applications have not preferred any appeal as of now.

17.After having perused the records and after hearing the submissions of the respective Counsels, we observe the following:

"a)Admittedly, there are allegations and counter allegations between the parties to the dispute and some of which are serious in nature.

b)There is no consensus for appointment of a Common Administrator amongst the parties.

c)The properties bequeathed by late Dr.M.G.Ramachandran under his Will dated 18.01.1987, are large in number and valuable. They need to be protected from misappropriation/diversion.

d)The noble and laudable objects of the Trust, which includes the establishment and administration of a deaf and dumb school must be safeguarded.

e)As the estate of Late Dr.M.G.Ramachandran is huge and generating sufficient income, the monthly remuneration of Rs.1 lakh fixed for the Administrator is reasonable."

18.We are in agreement with the finding of the learned Single Judge that there is no consensus even amongst the beneficiaries and

there is also a strong objection for the appointment of Mrs.Latha Rajendran as the Interim Administrator. We are of the view that no useful purpose will be served if one of the parties to the dispute is appointed as an Interim Administrator. It will only lead to further litigation and multiplicity of proceedings. Hence, it is in the interest of all the parties to the dispute as well as the beneficiaries and to safeguard the laudable objects of the testator late Dr.M.G.Ramachandran under his Will dated 18.01.1987, that a Court appointed Administrator administers and manages the affairs of the Estate and the Trust.

19. This is a matter, in which, the learned Single Judge has employed his discretion, after considering all aspects of the matter. There is, according to us, no error of law and/or fact, which would have us to interdict the impugned judgement. Merely, because we may have a different view of the matter is not a good enough reason for us to interfere with direction issued qua appointment of an Administrator. It is a plausible view, with which, we find no fault.

20. The approach that the appellate court is required to adopt in such like matters has been well articulated by the Supreme Court in a judgement rendered in ***Wander Ltd. and another Vs. Antox India***

P. Ltd., 1990 Supp (1) SCC 727. The relevant observations are extracted hereafter :

".... 9. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the Appellate Court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by the court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the Trial Court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles **Gajendragadkar, J. in Printers (Mysore) Private Ltd. v. Pothan Joseph :**

..... These principles are well established, but as has been observed by Viscount Simon in Charles

Osention & Co. v. Johnston the law as to the reversal by a court of appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well settled principles in an individual case."

21. In the result, we find no infirmity in the Common Order dated 24.11.2016, passed by the learned Single Judge in Application Nos.681, 682, 865, 1686, 2571 and 4703 of 2013 in O.P.No.388 of 1992 and Application No.2223 of 2015 in O.P.No.69 of 2012. Hence, we dismiss both the appeals O.S.A.Nos.2 and 202 of 2017. However, there shall be no order as to costs. Consequently, all connected CMPs also stands dismissed. We make it clear that in case of any change of circumstances and there is consensus amongst the parties to the dispute in the near future, the parties are at liberty to approach the learned Single Judge for any appropriate relief in the interest of the estate and trust bequeathed by the testator Late Dr.M.G.Ramachandran under his Will dated 18.1.1987.

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[R.S.A.,J.]

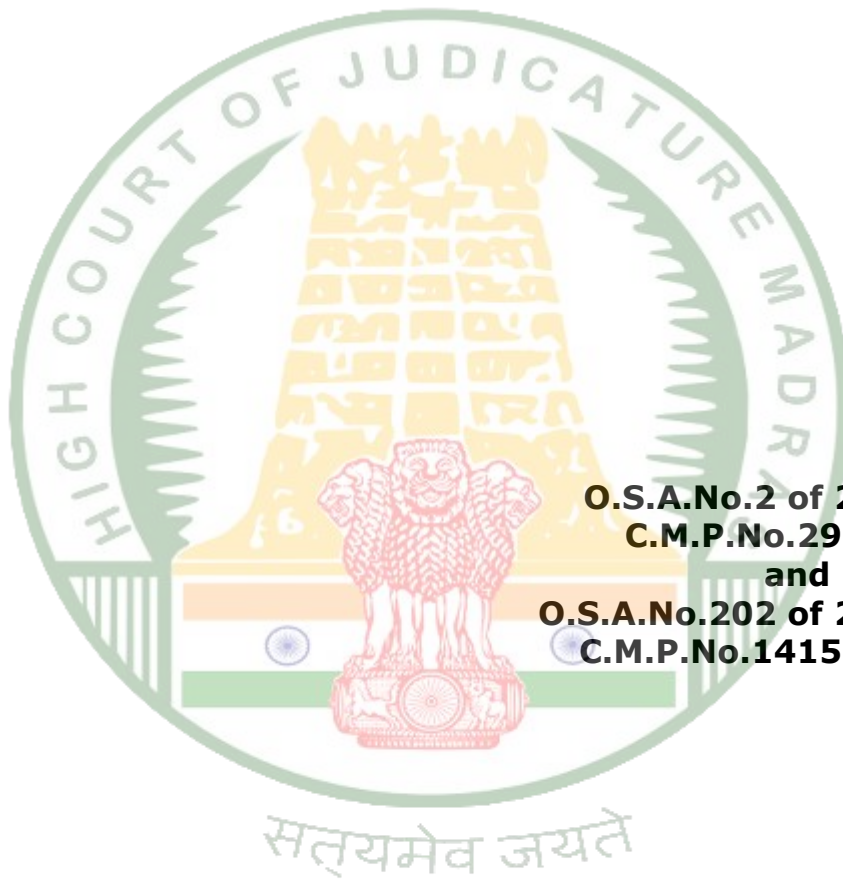
[A.Q.,J.]

30.08.2017

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Speaking order / Non Speaking order
Index: Yes / No
Internet: Yes / No

**RAJIV SHAKDHER, J.
AND
ABDUL QUDDHOSE, J.**

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**O.S.A.No.2 of 2017 and
C.M.P.No.299 of 2017
and**

**O.S.A.No.202 of 2017 and
C.M.P.No.14152 of 2017**

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30.08.2017