

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NOS.6680 & 6866 OF 2017

Date: 29.12.2017

CRP No.6680 of 2017:

Between:

Vellanki Thirumala Prasad, s/o.Suguna Bhusan Rao,
Aged 49 years, occu: Civil Engineer, r/o. Ramanagar,
Hanamkonda and others.

..... Revision Petitioners/
plaintiffs

and

Sri K.V.N.Appa Rao, S/o. K.Appa Rao, Aged 79 years,
Occu: Business r/o.Siddharthnagar, Kazipet and others.

.....Respondents/
defendants



The Court made the following:

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COMMON ORDER:

Heard Sri Bankatlal Mandhani for the petitioners and Sri P.Kamalakar for Sri C.H.Purnachandra Rao, counsel for respondents on record, in both revision petitions.

2. These two revision petitions arise out of orders in I.A.No.1339 of 2016 in O.S.No.21 of 2007 and I.A.No.1340 of 2016 in O.S.No.90 of 2010 pending on the file of the Principal District Judge, Warangal. Revision petitioners are plaintiffs and respondents are defendants in both the suits. Parties are referred to as arrayed before Court below.

3. Plaintiff no.2 in both suits is 'Medicare Educational Trust', represented by Smt Thoutireddy Laxmi Rama Devi. 4th defendant in O.S.No.21 of 2007 and 2nd defendant in O.S.No.90 of 2010 is late Dr.T.Ravinder Rao. Plaintiffs in both suits filed I.A.Nos.1339 of 2016 in O.S.No.21 of 2007 and I.A.No.1340 of 2016 in O.S.No.90 of 2010 to bring on record the legal representatives of late Dr. T.Ravinder Rao, as defendant Nos.19 to 22 in O.S.No.21 of 2007 and defendant nos.17 to 20 in O.S.No.90 of 2010. Both IAs were contested by existing defendants and proposed defendants. Both IAs were heard and by separate orders made on the same day i.e., 01.09.2017, for identical reasons, both applications were dismissed.

4. By construing paragraphs 4.3 and 4.4 of the Trust Deed learned judge observed that Mr. K.Joseph (defendant No.15 in O.S.No.21 of 2007 and the defendant No.13 in O.S.No.90 of 2010)

was nominated by late Dr.T.Ravinder Rao (defendant No.4/ defendant No.2, respectively) to be a trustee in his place and that no relief was sought against late Dr.T.Ravinder Rao in personal capacity and suits are filed against respondents in their representative capacity. Learned judge held, “the cause of action arose from a dispute concerning to Medicare Education Trust and the relief sought was also not to interfere with the affairs of the trust by the respondents, who according to the petitioners, are not the members of the trust”.

5. Learned counsel for petitioners/plaintiffs submitted that late Dr. T.Ravinder Rao while functioning as trustee has misused his position and caused loss to the trust and is personally responsible for loss caused to trust fund. According to learned counsel, as per Section 23 of the Indian Trust Act, 1882 (short, ‘Act, 1882’), where the trustee commits a breach of trust, he is liable to make good the loss caused to the trust property or benefits secured thereby. After his death also his estate is equally liable. As the loss caused to the trust funds have to be recovered, the proposed defendants, being legal heirs of late Dr. T.Ravinder Rao, are necessary parties.

6. By drawing attention of this Court to pleadings in plaint and prayer sought, learned counsel contended that proposed defendants are proper and necessary parties as legal heirs of late Dr. T.Ravinder Rao and lower Court erred in dismissing the applications.

7. In support of his contention, learned counsel for petitioners/plaintiffs placed reliance on the following decisions:

i) Tirunarayana Pillai and another v. P.R.Y.Manickavachagam Chettiar and others¹; and

ii) Maharaja Srish Chandra Nandy and another v. Supravat Chandra and others².

8. *Per contra*, Sri P.Kamalakar contended that terms of Trust Deed enable original trustees, during their life time, to appoint any other person and such person becomes a trustee on permanent retirement of the original trustee and shall be vested with all the powers as vested in the original trustee. Late Dr. T.Ravinder Rao, during his life time, nominated Mr. K.Joseph (defendant No.3 in O.S.No.90 of 2010) as trustee in his place and he retired on 18.05.2004, even before the suits were instituted. After retirement, Mr.K.Joseph became trustee in his place and, therefore, Mr.Joseph is answerable to all the issues raised in the suit. According to the learned counsel, arraying of late Dr. T.Ravinder Rao as defendant itself is erroneous and, therefore, his legal heirs cannot be brought on record as defendants as no relief can be granted against them on the allegation of committing certain illegalities by late Dr. T.Ravinder Rao during his tenure as trustee. He further submitted that decisions relied by learned counsel for plaintiffs have no application to the facts of these cases and do not come to the aid of the petitioners/plaintiffs.

9. In **Shri Krishna Singh v. Mathura Ahir and others³**, several issues were considered. Insofar as the present revision is concerned, the Hon'ble Supreme Court held that on the death of Mahanth of the Math, suit does not abate and cause of action

¹ AIR 1934 Madras 448

² AIR 1940 Calcutta 337

³ AIR 1980 SC 707 = (1981) 3 SCC 689

survives and successor Mahanth can prosecute the suit. In the present revisions that issue does not arise.

10. In **Tirunarayana Pillai** (supra), appellants before the Madras High Court were defendants in the suit. On the death of first appellant (defendant No.1), pending appeal, the 2nd appellant applied to add legal representatives of first appellant. The said plea was opposed and legal heir contended that he did not wish to continue the appeal. The appellants being co-trustees and the presence of all trustees before the Court was necessary to determine the appeal by surviving trustee and questions arising between the trustees and the respondents. The Madras High Court ordered addition of legal representative of the deceased (defendant no.1) as co-respondent. While considering the appeal, added respondent raised objection that he cannot be impleaded on account of breach of trust, even if breach is established against deceased (defendant No.1). It was contended that cause of action on breach of trust does not survive against legal representatives of a deceased trustee, but dies with him. This objection was overruled. Madras High observed, "As the legal representatives of a deceased trustee certainly be proceeded against in respect of breaches of trust by the deceased. The manner in which and the extent to which they will be liable are different matters, but ordinarily there can be no doubt that the assets of the deceased in their hands are liable for the breaches of trust."

11. In that case, defendants 1 to 4 and another were constituted as trustees to sell and distribute the proceeds rateably among their creditors of the plaintiffs. The plaintiffs charged the trustees with

several breaches of trust, passive and active, such as not getting in all the properties, not getting the lands cultivated and houses let, not keeping proper accounts, buying the trust properties at auctions themselves in the name of benamidars while not paying the purchase money due on those purchases, underselling the trust properties, partiality in the distribution of dividends etc. They prayed for removal of the trustees, appointment of new trustees, administration of trust properties, accounts of the dealings by the trustees and recovery of what may be found due from the trustees and other appropriate reliefs.

12. In **Maharaja Srish Chandra Nandy** (supra), three persons were heavily involved in debts. On 20.08.1904, they executed a trust deed by which they conveyed all their properties to Maharaja Manindra Chandra Nundi as trustee for payment of their debts. The trustee was in possession of the trust estate up to his death. After the death of Maharaja, disputes arose between three persons and Maharaja Srish Chandra Nandy, son of Maharaja Manindra Chandra Nundi. Differences ultimately resulted in instituting the suit by the legal heirs of three persons, who initially created the trust. One of the prayers sought against the legal heirs of Maharaja Manindra Chandra Nundi was to make good from the inherited assets the loss caused to the trust estate by the father of defendant no.1 by his negligence and wilful default. The Court noticed that the claim sounds in damages resulting from breach of fiduciary duties. It was contended on behalf of defendant no.1 that he was under no liability to the *cestui que* trust because of want of privity. Calcutta High Court held “the first principle is that a trustee is liable to make good the loss caused by breach of trust.

The cause of action to obtain compensation survives and his legal representative is bound to make good the loss out of assets which he receives.

13. For the purpose of clarity, it is necessary to note, '*Cestui que use*' is a French phrase of medieval English invention. The '*Cestui que use*' is the person for whose benefit the trust is created. The '*Cestui que use*' is entitled to an equitable, as opposed to a legal, estate. In the modern contest, it is beneficiary, in whose favour trust is created.

14. Though the background in which issue of a legal heir vis-à-vis the alleged illegalities of trustee considered by the Madras High Court and Calcutta High Court were trusts in the form of '*cestui que use*', the principle laid down in those cases equally apply to the case on hand.

15. In O.S.No.90 of 2010, specific allegation is made against late Dr T.Ravinder Rao that he has misused the funds for personal gain and caused loss to the 2nd plaintiff trust and sought prayer to declare that defendants 2 to 4, 6 to 16 are jointly and severally liable to pay unliquidated damages. It is appropriate to note that the prayer sought in both suits is not same. After the amendment of the plaint in O.S.No.90 of 2010, paragraph-(a)(d) is added in the relief portion. To the extent relevant, it reads:

“a) d) that defendant nos. 2 to 4 and 6 to 16 (added as per order in I.A.No.1834 of 2012 dated 23.1.2013) are jointly and severally liable to pay unliquidated damages of 10,00,000/- (Rupees ten lakhs only) to plaintiff No.2.”

16. The difference in the reliefs sought in two suits lost sight by the court below. In view of the specific prayer sought in O.S.No.90

of 2010, Plaintiffs are entitled to maintain application to bring on record legal representatives of the 2nd defendant and the claim in the suit to that extent survives and in the event of plaintiffs succeeding in the suit, it is permissible for the plaintiffs to recover the loss caused and the damages from the estate of late Dr T.Ravinder Rao. Whether there is actual misuse of funds by the defendants including late Dr. T.Ravinder Rao and whether estate of late Dr. T.Ravinder Rao is liable for damages are matters which require consideration in the suit. Thus, the court below erred in dismissing the IA to implead legal heirs of Dr. T. Ravinder Rao.

17. In O.S.No.21 of 2007, no relief is sought against 4th defendant in his personal capacity, as noticed by the trial Court. Learned counsel for petitioners/ plaintiffs also fairly submitted that no relief is sought against late Dr. T. Ravinder Rao in personal capacity. Therefore, decision of lower Court rejecting the prayer in I.A.No.1339 of 2016 in O.S.No.21 of 2007 to implead legal representatives of late Dr. T.Ravinder Rao calls for no interference.

18. In the result, petitioners/plaintiffs succeed in CRP No.6680 of 2017. Order of the Court below made in I.A.No.1340 of 2016 is set aside. The respondents in I.A.No.1340 of 2016 be brought on record of O.S.No.90 of 2010 as defendants 17 to 20, and CRP No.6866 of 2017 arising out of I.A.No.1339 of 2016 in O.S.No.21 of 2007 is dismissed. Ordered accordingly.

Miscellaneous petitions if any pending in these revision petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 29.12.2017
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