



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 29.11.2019**

**CORAM:**

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**THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY**

**C.R.P (MD) Nos.1768 and 1769 of 2017  
and  
C.M.P. (MD) No.9502 of 2017**

**C.R.P. (MD) No.1768 of 2017:**

K.C.Babu Dhas (Died)

1.B.B.Kabeerdhas  
2.B.B.Cibi Dhas  
3.N.Bharathy Bai ... Petitioners / Petitioners /Plaintiffs

Vs.

1.K.C.Jeyadhas  
2.K.C.Monydhas  
3.K.C.Jeya Chandradhas  
4.K.C.Mohandhas  
5.B.I.Selvakumar

6.The District Educational Officer,  
Thuckalay, Thuckalay Village,  
Kalkulam Taluk,  
Kanyakumari District.

7.The Chief Educational Officer,  
Kanyakumari District,  
Nagercoil - 1.

8.The Director of School Education,  
College Road, DPI Campus,  
Chennai - 6. ... Respondents / Respondents / Defendants

**C.R.P. (MD) No.1769 of 2017:**

1.B.B.Kabeerdhas  
2.B.B.Cibi Dhas  
3.N.Bharathy Bai ... Petitioners / 3<sup>rd</sup> parties /3<sup>rd</sup> parties

Vs.

1.K.C.Arul Doss ... 1<sup>st</sup> respondent/petitioner/additional plaintiff



K.C.Babu Dhas (died)

2.K.C.Jeyadhas

3.K.C.Monydhas

4.K.C.Chandradhas

5.K.C.Mohandhas

6.B.I.Selvakumar

7.The District Educational Officer,  
Thuckalay, Thuckalay Village,  
Kalkulam Taluk, Kanyakumari District.

8.The Chief Educational Officer,  
Kanyakumari District,  
Nagercoil - 1.

9.The Director of School Education,  
Higher Secondary College Road, DPI Campus,  
Chennai - 6. ... Respondents 2 to 9 / Respondents 2 to 9/  
Defendants 1 to 8

**COMMON PRAYER:** Civil Revision Petitions are filed, under Article 227 of the Constitution of India, against the order dated 10.08.2017 made in I.A.Nos.102 and 103 of 2016 in O.S.No.115 of 2014 on the file of the Principal District Munsif Court, Padmanabhapuram, respectively.

For Petitioners in  
both C.R.Ps : Mr.M.Vallinayagam  
Senior Counsel  
for  
Mr.D.Nallathambi

For R-1 in  
both C.R.Ps : Mr.Isaac Mohanlal, Senior Counsel  
for  
Mr.B.Christopher

For RR-3, 5 & 6 in  
both C.R.Ps : Mr.Ananth C.Rajesh

For R-6 to R-8 in  
C.R.P.No.1768/17 &  
For R-7 to R-9 in  
C.R.P.No.1769/17 : Mr.R.Sethuraman  
Special Govt.Pleader

### **C O M M O N       O R D E R**

The Civil Revision Petition (MD)No.1768 of 2017 has been filed against the order dated 10.08.2017 passed in I.A.No.102 of 2016 in O.S.No.115 of 2014 by the learned District Munsif, Padmanabhapuram.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Civil Revision Petition (MD)No.1769 of 2017 has been filed against the order dated 10.08.2017 passed in I.A.No.103 of 2016 in O.S.No.115 of 2014 by the learned District Munsif, Padmanabhapuram.

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3.For the sake convenience, the petitioners K.C.Babu Dhas and three others will be termed hereinafter as petitioners and K.C.Jeya Dhas will be termed as respondent.

4.The said I.A.No.102 of 2016 in O.S.No.115 of 2014 was filed by the petitioners before the Court below to implead themselves as additional plaintiff Nos.2 to 4 as Legal Heirs of the first plaintiff K.C.Babudhas, whereas I.A.No.103 of 2016 in O.S.No.115 of 2014 was filed by the respondent to implead himself as second plaintiff as Legal Heir of the first plaintiff.

5.The Court below after hearing both parties, dismissed the I.A.No.102 of 2016 and allowed the I.A.No.103 of 2016 to implead the respondent as second plaintiff vide order dated 10.08.2017. Challenging the said orders, the petitioners preferred the present Civil Revision Petitions.

6.On behalf of the petitioners, the learned Senior Counsel Mr.M.Vallinayagam, submitted that the petitioners herein filed I.A.No.102 of 2016 to implead themselves as plaintiffs in O.S.No.115 of 2014. On the other hand, the respondent herein filed I.A.No.103 of 2016 to implead himself as second plaintiff in O.S.No.115 of 2014. The learned counsel would contend that the father of the petitioners Mr.K.C.Babu Dhas passed away and therefore, his sons filed the impleading application, since the suit was filed by the said Babu Dhas.

7.The suit was filed by the said K.C.Babu Dhas for the following reliefs:-

(a).Declaring that the plaintiff (K.C.Babudhas) is the managing trustee of K.C.Chelliah Memorial Education Trust and correspondent of the Educational Institutions of the trust namely The Yettacode Higher Secondary School, yettacode English Medium Nursery and Primary School and the K.C.Chelliah Memorial Tamil Medium Primary School, as per clause '6' of the deed.

(b).Injunction the first defendant K.C.Jeyadhas hence forth from addressing himself or acting as the 'managing trustee' of the aforesaid trust of correspondent of the aforesaid educational institutions of the trust and thereby cause interference to be plaintiffs functioning as such.

(c).Directing the first defendant K.C.Jeyadhas by decree of https://hmc.mca.gov.in/hc/judges/ to handover all records, minutes, files, papers



etc. relating to the administration of the trust and the aforesaid educational institutions of the trust and other reliefs.

8.From the prayer of the said suit, it is clear that the said K.C.Babu Dhas has filed the suit claiming the Managing trusteeship after the expiry of K.C.Jeyadhas, who was occupied the managing trusteeship with effect from 20.02.2006 and his managing trusteeship was expired upon the completion of his tenure of five years and therefore, his tenure has come to an end on 19.02.2014. So according to K.C.Babu Dhas , he was named as second trustee in the trust deed. Therefore, after the completion of the first named trustee's tenure of five years, the plaintiff in the suit only has to take over the charge of the managing trusteeship. Since the same was not handed over and occupied by the other trustees, the suit was filed and pending the suit, the said K.C.Babu Dhas died on 22.11.2015 and subsequent to his demise, the sons of the said K.C.Babu Dhas filed impleading application and the same was dismissed and on the other hand, the respondent's impleading application was allowed.

9.The learned Senior Counsel appearing for the petitioners would submit that one Thiru K.C.Chelliah had established a school in the year 1960 at Yettacode. Subsequently, the said school was upgraded as a Higher Secondary School. It was declared as a Christian Religious Minority Institution as per the decree dated 26.04.1982 in O.S.No.3527 of 1980 on the file of the Assistant Judge, City Civil Court, Madras. The said Chelliah, the founder of the said educational institutions had got six sons viz., (1) Bhakthadhas; (2) K.C.Jeyadhas; (3) K.C.Babudhass; (4) K.C.Monydhas; (5) K.C.Jeyachandradhass; and (6) K.C.Mohandhas. The elder son of K.C.Chelliah viz., Bhakthadhass died in the year 2005. After his death, the eldest among the remaining brothers viz., Jeyadhass created a Trust by name 'K.C.Chelliah Memorial Education Trust, Yettacode' under a registered trust deed, dated 20.02.2006. The author of the trust deed was K.C.Jeyadhass, who himself appointed as managing trustee for a period of five years. Further, he nominated (1) K.C.Babudhass; (2) K.C.Monydhass; (3) K.C.Jeyachandradhass; (4) K.C.Mohandhas and (5) B.I.Selvakumar, S/o.K.C.Bakthadhass, as trustees of the trust.

10.The learned Senior Counsel appearing for the petitioners would further contend that in terms of Rule No.6 of the Trust Deed, the term of office of the managing trustee including the present managing trustee shall be five years. After the expiry of the said term or for any other reasons whenever vacancy arises, the same shall be filled up by rotation by members who has attained the age of 30 years. The term of office of the other office bearers shall be five years.

11.The learned Senior Counsel further refers the Rule 3(2) and 3(3) of the trust deed, which states as follows:-



**"3.Membership of the Trust:-**

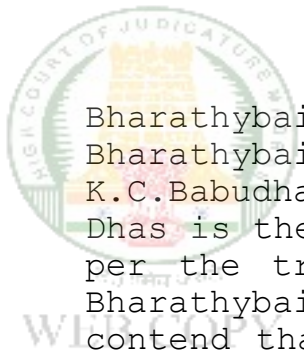
**1....**

2.If any vacancy arises in the membership of the Trust by reason of death or resignation of any member or by automatic cession of membership on account of insanity or incapacity such vacancies shall be filled up selecting a male member from the respective family of that member on whose death, resignation etc., the vacancy arose. The selection shall be in the case of K.C.Jeyadhas from K.C.Jeyadhas and Lilly Thankam family, in the case of Babudhas from K.C.Babudhas and BharathyBai family, in the case of K.C.Monydhas from K.C.Monydhas and Pappa Prema Kumari family, in the case of K.C.Jeyachandradhas from K.C.Jeyachandradhas and Vilayabai family, in the case of K.C.Mohandhas from K.C.Mohandhas and Edna Vimala Esebel family and in the case of B.I.Selvakumar from B.I.Selvakumar and Mercy bai family. If there are more male heirs than one in a family, that family can select any one of them to fill the vacancy. If there is no male heir in a family the female heir can be selected. If the person selected to fill the vacancy is a minor, he can be represented by guardian till he / she attains majority.

3.If in one family there are more persons than one competent to be members of the trust, they can be enrolled as member of the trust one by one in turn in every cycle of five years as per the Will executed by the Trustee concerned. In this behalf each trustee shall have right to nominate his successor through a registered Will. Under any instances there cannot more than one member in the trust from one family at a time."

12.By referring the above Rules, the learned Senior Counsel would contend that if any vacancy arises in the membership of the trust, the same shall be filled up by selecting the male member from a respective family of the member on whose death, resignation etc., the vacancy arose. Further, he would contend that as per Rule 3(2) of the trust deed, the selection shall be in the case of K.C.Jeyadhas from K.C.Jeyadhas and Lilly Thankam family, in the case of Babudhas from K.C.Babudhas and BharathyBai family, in the case of K.C.Monydhas from K.C.Monydhas and Pappa Prema Kumari family, in the case of K.C.Jeyachandradhas from K.C.Jeyachandradhas and Vilayabai family, in the case of K.C.Mohandhas from K.C.Mohandhas and Edna Vimala Esebel family and in the case of B.I.Selvakumar from B.I.Selvakumar and Mercy bai family.

13.Therefore, the learned Senior Counsel would contend that in the present case, the petitioners are from K.C.Babudhas and Bharathybai family. The said K.C.Babudhas had two wives. One is BharathyBai and another one is Nirmala Kumari. As per the trust deed, the trustees can be nominated only from K.C.Babudhas and



Bharathybai family alone, as male heir of the K.C.Babudhas and Bharathybai family. The petitioners are the legal heirs of K.C.Babudhas and Bharathybai family, whereas the respondent K.C.Arul Dhas is the legal heir of K.C.Babudhas and Nirmala Kumari family. As per the trust deed, only the legal heirs from K.C.Babudhas and Bharathybai family can acquire the trusteeship. Further he would contend that the said Rules 3(2) and 3(3) of the trust deed cannot be amended by virtue of the Will of any of the trustees. Even the author of the trust deed cannot change the basic structure of the trust.

14.Further, the learned Senior Counsel would refer Section 3(3) of the trust deed and submit that if there are more persons than one competent to be the members of the trust, they can be nominated as members of the trust one by one in turn in every cycle of five years as per the Will executed by the trustee concerned. In the present case, a trustee can execute the Will to the extent if there are more than one male member, the line of male members can be determined by the trustee by virtue of the Will from the family of K.C.Babudhas and Bharathybai family alone. Therefore, in the present case, the said K.C.Babudhas can execute a Will to the extent the line of heirs in order to take charge as a trustee in the trust by way of rotation only from K.C.Babudhas and Bharathybai family alone and beyond that he cannot create any Will.

15.In the present case, K.C.Babu Dhas executed a registered Will dated 19.12.2012. By virtue of the said Will, he has changed the line of heirs for the purpose of appointment of trustees by way of rotation. Further, by virtue of the said Will, he has given all the rights to manage the affairs of the trust etc., According to the learned Senior Counsel, first of all he cannot nominate in the manner stated in the Will, as per Rule 3(3) of the trust deed. The said K.C.Babudhas can nominate the line of legal heirs of the male members from Bharathybai family and not from Nirmala Kumari family, which is totally against the provisions of trust deed. Hence, any nomination by virtue of the Will is totally null and void and cannot be accepted and based on the trust deed only, the petitioners can be nominated as successor of the deceased K.C.Babudhas. Therefore, the petitioners only can be impleaded as legal heirs of the deceased. Since the present suit was filed not for any of the properties of the deceased K.C.Babudhas, but with regard to the appointment of managing trustee and for other relief against the registered trust. By virtue of the trust deed after the demise, all the rights have been provided including trusteeship only to the K.C.Babudhas and Bharathybai family. Therefore, the Court has erroneously dismissed the petition filed by the petitioners and allowed the application filed by the respondent, which is totally illegal and hence, the orders of the Court below are liable to be set aside.

16. Further, the learned Senior Counsel would contend that the provisions set out in the trust deed shall not be altered



and changed by anyone including the author of the trust deed. In this regard he referred the following Judgments:-

- (i). *In Siddhan Lal v. Gauri Shankari* (40 Ind Cas 165);
- (ii). *In Bindraban v. Sri Godamji Maharani Birajman Mandir Sri Rangji Maharaj* (AIR 1937 AII 394);
- (iii). *In Madhuban Das, Baba v. Avadh Behari Das, Baba* (1939 (15) ILR (Luck) 303);
- (iv). *In Sankatha Pandey v. Brij Mohan Pande* (1958 ALL 371); and
- (v). *In Nallasivan Pillai v. Ganapathi Mudaliar* (AIR 1940 Mad 633).

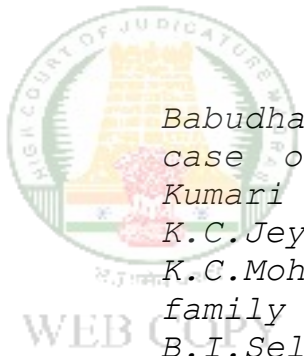
17. On the other hand, the learned Senior Counsel Mr. Isaac Mohanlal, appearing for the first respondent would contend that in the present case, the Court below has rightly allowed the application of the respondent and there is no need for any interference by this court in the order passed by the Court below. He would further contend that as per the Rule 3(3) of the trust deed, the deceased K.C. Babudhas executed a registered Will dated 19.12.2012. As per the said Will, the line of trusteeship has been described and had been stated in the Will as K.C. Arul dhas will occupy the trusteeship after the demise of K.C. Babudhas and after Aruldhas only, the petitioners herein will have their turn by way of rotation for appointment as trusteeship. He would further submit that Rule 3(3) of the trust deed clearly states that empowering the trustee to nominate the line of heirs for the trusteeship after the demise of the trustee. So based on the powers available by virtue of Rule 3(3) of the trust deed alone, K.C. Babudhas created the trust deed and registered the same on 19.12.2012 and by virtue of the said trust deed only, K.C. Aruldhas has the right to acquire the trusteeship and therefore, the Court below has rightly interpreted the trustee deed and allowed the application in I.A.No. 103 of 2016 in O.S.No.115 of 2014 filed by the respondent to implead himself as second defendant in O.S.No.115 of 2014.

18. The learned Senior Counsel would further contend that after the demise of K.C. Babudhas, the trust had amended the trust deed by virtue of supplementary trust deed, dated 28.01.2016. He would refer the amended Rule 3 of the trust deed, which reads as follows:-

**"3.Membership of the Trust:-**

1. The Managing Trustee and the other 5 (five) Trustees are the members of the Trust. The Membership of the Trust shall not exceed six in any event.

2. If any vacancy arises in the membership of the Trust by reason of death or resignation of any member or by automatic cession of membership on account of insanity or incapacity such vacancies shall be filled up selecting a male member from the respective family of that member on whose death, resignation etc., the vacancy arose. The selection shall be in the case of K.C. Jeyadhas from K.C. Jeyadhas, and Lilly Thankam family, in the case of



Babudhas from K.C.Babudhas and BharathyBai family, in the case of K.C.Monydhas from K.C.Monydhas and Pappa Prema Kumari family, in the case of K.C.Jeyachandradhas from K.C.Jeyachandradhas and Vilayabai family, in the case of K.C.Mohandhas from K.C.Mohandhas and Edna Vimala Esebel family and in the case of B.I.Selvakumar from B.I.Selvakumar and Mercy bai family. If there are more male heirs than one in a family, that family can select any one of them to fill the vacancy. If there is no male heir in a family the female heir can be selected. If the person selected to fill the vacancy is a minor, he can be represented by guardian till he / she attains majority.

3.If in one family there are more persons than one competent to be members of the trust, they can be enrolled as member of the trust one by one in turn in every cycle of five years as per the Will executed by the Trustee concerned. In this behalf each trustee shall have right to nominate his successor through a registered Will. Under any instances there cannot more than one member in the trust from one family at a time.

Note:-

(a).deleted the (i) male

(b).deleted all the words bracketed (ii, iii, iv, v, vi, vii, viii)

(c).Inserted the words (ix & x) or otherwise.

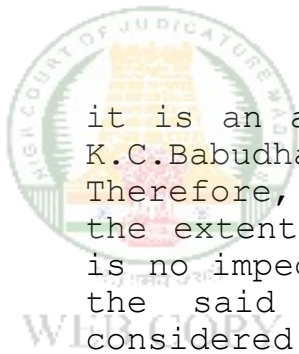
4.Every member of the trust shall have right to verify and scrutiny the records kept in the office of the trust, if he / she so desires.

5.(Qualified member of the trust who is working in the educational Institutions shall be preferred to be appointed as the Headmaster of the school concerned to the exclusion of others).

6.(Members of the trust family shall be preferred for appointment in the vacancies arising in the Institutions).

Note:- (a).deleted clauses 5 and 6 in entirety."

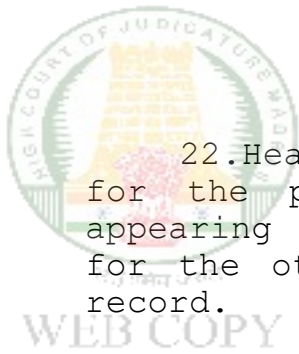
19.By referring the said amended clause, the learned Senior Counsel would contend that the original trust deed dated 20.02.2006 has been amended by virtue of the supplementary trust deed dated 28.01.2016. By virtue of the amendment, the Rule 3(3) of the original trust deed has been amended and in the place of words K.C.Babudhass and Bharathybai Family, the words Bharathybai family got removed and therefore, in terms of Will dated 19.12.2012 and by virtue of the amended trust deed dated 28.01.2016, the nomination of K.C.Arulldhas as trustee by K.C.Babudhas is a valid one and K.C.Babudhas is a competent person to nominate the said K.C.Arulldhas and there is no need to nominate only from Bharathybai family, since



it is an admitted fact that K.C.Aruldas also is the first son of K.C.Babudhas from the first family from Nirmala Kumari family. Therefore, he contended that since the trust deed also amended to the extent of removing the words Bharathybai family, now there is no impediment to implement the Will dated 19.12.2012 and nominate the said K.C.Aruldas. Therefore, all these facts have well considered by the Court below and allowed the said Aruldas to be impleaded as second plaintiff to conduct the case in O.S.No.115 of 2014.

20. On the other hand, in reply to the contentions of the learned Senior Counsel appearing for the respondent, the learned Senior Counsel Mr.M.Vallinayagam, appearing for the petitioners would contend that once the trust is created by virtue of the deed and the basic structure cannot be changed even by the author of the trust unless otherwise specifically any provision for the modification. In the present case, there is no provision for the purpose of changing the family. Admittedly, the said K.C.Babudhas got two families viz., Bharathibai family and Nirmala Kumari family and the intention of the author for creating the trust only to include the Bharathibai family and not the Nirmala Kumari family. The author of the trust deed very consciously created the trust and mentioned that K.C.Babudhas and Bharathibai family. But with the *mala fide* intention, the said trust deed was amended by virtue of the supplementary trust deed, dated 28.01.2016 which is totally contrary to the intention of creation of Trust. Rule 3(3) of the trust deed is the basic structure of the trust and once the trust is created, even the author cannot alter and in the present case, only the trustees have altered the original trust deed, which is totally against the interest of the settlor. Therefore, he would contend that the said amendment will not have any sanctity in the eye of law. In the present case, the said K.C.Babudhas passed away on 22.11.2015 and the moment he passed away, the trusteeship by virtue of the original trust deed have been devolved. Once the right has been devolved in favour of the petitioners, it cannot be taken away by way of subsequent amendment giving retrospective effect. Therefore, he contended that at any cost, the rights of the petitioners cannot be denied by virtue of the illegal amendment and the said amendment will not have no sanctity in the eye of law. Therefore, he submitted that the orders of the Courts below are totally illegal and the same are liable to be set aside.

21. The learned counsel appearing for the other respondents also reiterated the submissions of the learned Senior Counsel appearing for the first respondent and submitted that in terms of the Will executed by K.C.Babudhas and based on the amended trust deed, dated 28.01.2016, the said K.C.Aruldas was appointed as managing trustee by the trustees and he only got right to be appointed as trustee in terms of the Will and therefore, the orders of the Courts below are just and fair and do not require any inference and prayed for



22.Heard Mr.M.Vallinayagam, learned Senior Counsel appearing for the petitioners; Mr.Isaac Mohanlal, learned Senior counsel appearing for the first respondent; the learned counsel appearing for the other respondents and perused the materials available on record.

23.In the present case, the main issues to be determined are as follows:-

(i).Whether the original trust deed can be altered by virtue of the Will by the trustee, if so, to what extent he can alter the trust deed by virtue of the Will? and

(ii).Whether the trustees can amend the trust deed, if so, to what extent?

**Point Nos.(i) and (ii):**

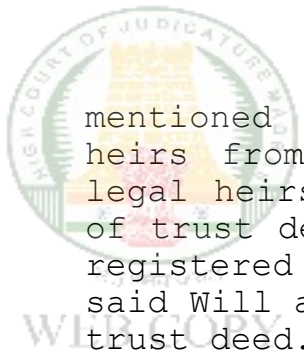
24.As far as these issues are concerned, the trust deed was originally executed by K.C.Jeyadhas by virtue of the registered trust deed dated 20.02.2006 in the name and style of 'K.C.Chelliah Memorial Education Trust, Yettacode'. As per the trust deed, the following persons viz., (1) K.C.Babudhass; (2) K.C.Monydhass; (3) K.C.Jeyachandradhass; (4) K.C.Mohandhas and (5) B.I.Selvakumar, S/o.K.C.Bakthadhass, have been nominated as trustees of the trust.

25.In terms of Rule 3(2) of the trust deed, if any vacancies arise in the membership of the trust, the same shall be filled up by selecting the male member from a respective family of the member on whose death, resignation etc., the vacancy arose. Further, the selection shall be in the case of K.C.Jeyadhas from K.C.Jeyadhas and Lilly Thankam family, in the case of Babudhas from K.C.Babudhas and Bharathybai family etc. If there are more male heirs than one in a family, that family can select any one of them to fill up the vacancy. If there is no male member in the family, the femal member can be selected.

26.Rule 3(3) of the trust deed states that if in one family there are more persons, they can be nominated as members of the trust one by one in turn in every cycle of five years as per the Will executed by the trustee concerned.

27.Based on the provision of Rule 3(3) of the trust deed, K.C.Babudhas created a Will dated 19.12.2012 and the same was registered. As per the said Will he has nominated K.C.Arulldhas as his successor and K.C.Arulldhas is not from the family of K.C.Babudhas and Bharathybai family and he is from K.C.Babudhas and Nirmala Kumari family.

28.In the present case, the family mentioned in the trust deed with respect to K.C.Babudhas and Bharathybai family only and the



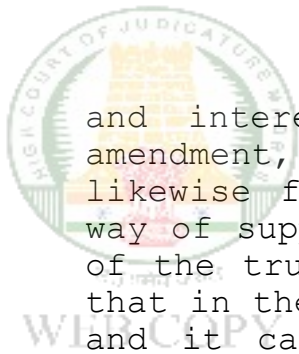
mentioned the family particulars also. The petitioners are the heirs from Bharathybai family and therefore, admittedly they are legal heirs for the purpose of nomination of the trustees in terms of trust deed. However, in the present case, K.C.Babudhas created a registered Will dated 19.12.2012 and the respondents referred the said Will and the said Will was created in terms of Rule 3(3) of the trust deed.

29.No doubt, K.C.Babudhas can create the Will in terms of Rule 3(3) of the trust deed. But in terms of whatever the Will he is creating, that should be only in accordance with the provisions of the trust deed. If anything beyond the scope of the trust deed, the said averments in the Will need not be considered and the same is null and void and the same will not be binding on the trustees of the trust. On the perusal of the Will of K.C.Babudhas, it appears that he has created and nominated K.C.Aruldas as his successor to occupy the trusteeship, he is from K.C.Babudhas and Nirmala Kumari family. But as per the Will, he can nominate only K.C.Babudhas and Bharathibai family. As on the date of execution of the Will, there is no amendment to the trust deed and therefore, K.C.Babudhas have no *locus standi* to settle the trusteeship and the management of Trust in favour of K.C.Aruldas and the same is beyond the scope of powers given to the trustees in terms of Rule 3(3) of the trust deed. The family mentioned in Rules 3(2) and 3(3) of the trust deed are with regard to K.C.Babudhas is concerned, it is only K.C.Babudhas and Bharathybai family as on the execution of the trust deed. If anything beyond the K.C.Babudhas and Bharathybai family, the same will not bind the trustees of the trust and any amendment was made, that will not have any sanctity and the trustees also cannot have any power to alter the trust beyond the rights provided in the trust deed.

30.Therefore, the original Trust deed can be altered to the extent provided in the Trust deed. However, the basic structure of the Trust deed cannot be altered and the basic structure can be ascertained after thorough examination of the Trust deed on case to case basis. But in the present case, Rules 3(2) and 3(3) of the Trust deed is concerned, this Court is of the view that they are the basic structure of the trust, which cannot be altered even by the author.

31.When such being the case, no alteration can be made on the basis structure of the trust, only to the extent permitted in the trust deed alone can be altered. Further, if anything provided in the trust deed for the devolution of the trusteeship to the trustees in the trust deed itself, to that extent, the trust deed can be altered by virtue of the Will.

32.In the present case, the trustees of the trust have done great grave to the author of the trust by amending the basic structure of the trust deed which is totally against the conscience



and interest of the creator of the trust. By virtue of the amendment, the trustees have removed the words Bharathybai family, likewise for the other trustees also. Therefore, the amendment by way of supplementary trust deed is not in accordance the provisions of the trust and the same need not be given effect. Even assuming that in the case on hand, if at all if the amendment is given effect and it cannot be retrospective effect as on 22.11.2015 that is immediately after the demise of K.C.Babudhas, the trusteeship of K.C.Babudhas automatically devolved upon the first male member of Bharathybai family. Once the devolution is made and once the rights are vested, it cannot be taken away. The succession cannot be held in abeyance.

33.In the instant case, the amendment was made as if the succession was kept in abeyance, because the succession was effected on 22.11.2015 and the amendment was made on 28.01.2016. The line of devolution cannot be altered unless otherwise right is reserved, either to the author or to the trustees. In the present case for the purpose of changing the family particulars in the original trust deed no right was provided in the trust deed and to that extent, the amendment is invalid. Even assuming for the argument sake, the respondent can question about the succession due to the reason of the execution of the Will by the author of the Trust, due to the invalidity of the Will created by K.C.Babudhas, dated 19.12.2012, the succession automatically devolved against the petitioners and once the right has been devolved, it cannot be revoked by subsequent amendment by giving retrospective effect. Therefore, this Court is of the view that once the rights are vested, it cannot be taken away. In the present case, rights have already been vested in favour of the petitioners. Hence, the said right cannot be taken away.

34.In view of the foregoing discussions, this Court is of the opinion that;

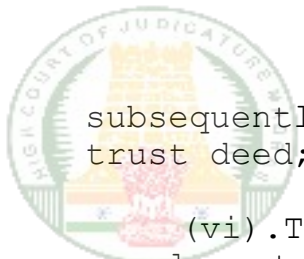
(i).Only the said K.C.Babudhas and Bharathybai family members alone can be nominated as trustees of the Trust;

(ii).In case of more than one male members, the trustee can nominate by virtue of the Will. But in the present case, the nomination was invalid. Therefore, the senior most male member of K.C.Babudhas and Bharathybai family alone can be nominated as trustees of the trust;

(iii).The execution of the Will by K.C.Babudhas dated 19.12.2012 with regard to the administration and nomination of the trustee will not have any sanctity in the eye of law, since the same is against the provisions of the trust deed, dated 20.02.2006;

(iv).The said K.C.Babudhas died on 22.11.2015. Therefore, the trusteeship automatically devolved in favour of the senior most male member of Bharathybai family, that is the petitioners herein;

<https://hcservices.ecourts.gov.in/hcservices> the right was devolved and the same cannot be



subsequently revoked by virtue of any amendment, to the original trust deed;

(vi).The amendment made on 28.01.2016, by virtue of supplementary trust deed is beyond the scope of the trust deed and therefore, the amendment will not have any sanctity in the eye of law.

Accordingly, the point Nos.(i) and (ii) are answered in favour of the petitioners.

35.In the result, the Civil Revision Petitions are allowed. The orders of the Court below, dated 10.08.2017, passed in I.A.Nos.102 and 103 of 2016 in O.S.No.115 of 2014 by the learned District Munsif, Padmanabhapuram, are hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS )

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To

1.The Principal District Munsif,  
Padmanabhapuram.

2.The District Educational Officer,  
Thuckalay, Thuckalay Village,  
Kalkulam Taluk, Kanyakumari District.

3.The Chief Educational Officer,  
Kanyakumari District, Nagercoil - 1.

4.The Director of School Education,  
College Road, DPI Campus,  
Chennai - 6.

+2 CC to MR.B.CHRISTHOPER, Advocate SR-102891,102892

+1 CC to MR.ANANTH C.RAJESH, Advocate ( SR-102893[F] dated  
02/12/2019 )

+2 CC to MR.S.C.HEROLD SINGH, Advocate SR-102941,102942

+1 CC to MR.D.NALLATHAMBI, Advocate ( SR-103192[F] dated  
03/12/2019 )

**Order made in  
C.R.P(MD)Nos.1768 and 1769 of 2017  
29.11.2019**

MK (05.12.2019) 13P 11C

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