

A.No.5902 of 2016
in
C.S.No.576 of 1949

P.T.ASHA, J.,

This application in a scheme suit has been filed for modifying the terms of succession of the office of the trusteeship in terms of the compromise decree dated 07.07.1953 made in the above suit. The brief facts preceeding the filing of the above application are as follows:

2. One Oletti Guruvajamma had found a charitable trust under an indenture dated 07.11.1919. Under the settlement deed dated 07.01.1920, she had appointed on Chanduluru Guruviah Chetty as a trustee to administer the Trust. He, while in administration, appointed one Chanduluru Kanniah Chetty as trustee under a Will dated 14.07.1938. After his death the said Chanduluru Kanniah Chetty administered the trust.

3. The Trust property consisted of house and building situate at No.23, Reddy Raman Street, Chennai 600 079. Disputes had arisen with regard to the administration of the Trust between Chanduluru Kanniah Chetty and one O.Sreeramulu Chetty and suit C.S.No.567 of 1949 came to be filed in this Court seeking the removal of the said Chanduluru Kanniah Chetty from trusteeship, directing him to render accounts for the period during which he was in management and to appoint the plaintiffs as trustees of the suit trust.

4. The parties had entered into a compromise and a compromise memo dated 06.07.1953 was entered into between the plaintiffs and the defendant. Pursuant to this compromise, a scheme decree was passed by this Court on 07.07.1953. Under the compromise decree the vacancies in the office of the trusteeship was to be filled up in the manner elucidated therein.

5. The applicant would submit that under this compromise his father was also recognized as trustee representing the Chanduluru family. He was managing the trust along with Olleti Sreeramalu Chetty belonging to the Olleti family. The applicant's father and the said Sreeramalu Chetty were recognized as joint trustees of the Oleti Guruvajamma Charitable Trust.

6. After the death of Olleti Sreeramalu Chetty, one Munirathnam representing that family succeeded as joint trustee in keeping with the terms of the decree in O.S.No.567 of 1949. He was managing the trust along with the applicant's father. The applicant's father C.Anjaneyalu Chetty died on 25.06.2005 leaving behind the applicant and his brothers, C.A.Venkatesan, C.A.parthasarathy and C.A.Mohanavel as the surviving male members. The other male members of the family consented to the applicant succeeding the office of the trusteeship.

7. The applicant would submit that after he had taken over as a joint trustee he found that Munirathnam was not cooperating with him in the running of the Trust and he was not producing the accounts relating to the Trust. This prompted the applicant to issue lawyer's notice to which there was a reply. The said Munirathnam had mismanaged the income of the trust by appointing his daughter, the respondent herein as office staff of the trust and the said Munirathnam with active connivance with his daughter siphoned off the funds of the trust. In fact, even earlier, disputes had arisen between the applicant's father and the said Munirathnam which led to the freezing of the bank accounts of the trust. Despite this, the said Munirathnam had clandestinely opened another account to which the income of the trust is being credited and for which accounts have not been provided.

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8. After the applicant's taking over also, he found out that the original lessees had assigned the lease in favour of the Trust

which in turn has assigned the lease in favour of one S.Samanthkam, all of which had the blessings of Munirathnam Chetty. The Trust was also not performing the charitable obligations envisaged under the trust deed and the Will of the founder. Thereafter, Munirathnam Chetty died without making any nominations and as he had no male issues the branch of the Oletti family had fallen vacant. Therefore, the applicant had come forward with the instant application seeking modification of the terms of the original decree for the benefit of the trust.

9. Heard Ms.G.Sumitra, learned counsel for the applicant.

10. The issue involved in this application revolves around the compromise decree in C.S.No.567 of 1949 dated 07.07.1953 and particularly clause 4 of the decree which reads as follows:

"4) That the 1st plaintiff and the said C.Anjaneyalu Chetty shall be Trustee for their respective lives and that if by death or otherwise any vacancy arises, the vacancy shall be filled up in the

following manner.

a) That if the vacancy relates to the office of Trusteeship held by the 1st plaintiff, the 1st plaintiff shall be entitled to nominate during his life time, if he intends to retire, any member of Oletti family, preference however being given to the 2nd plaintiff herein at that time if he is alive and if such vacancy arises by the death of the 1st plaintiff, the 2nd plaintiff, if he is alive by then, or any respectable member of the Oletti family as far as possible residing at Madras shall be substituted as Trustee in the place of the 1st plaintiff ;

b) That if the vacancy arises by the retirement or resignation of C.Anjaneyalu Chetty, such vacancy shall be filled up by nomination duly effected by C.Anjaneyalu Chetty of any Vysya gentlemen residing at Madras, in his place, and that if such vacancy be caused by the death of C.Anjaneyalu Chetty, such vacancy shall be filled up by any respectable gentlemen belonging to the Chanduluru famliy and as far as possible a resident of Madras.

c) That in case the office of the Trusteeship for the trust, as aforesaid, falls vacant by reason of no nomination having been

effected as aforesaid by either the 1st plaintiff or C.Anjaneyalu Chetty or by reason of any suitable person not being available to take up the office of the said Trusteeship in accordance with the conditions aforesaid, then it shall be competent to any person affected to move this court for suitable directions to fill up Such vacancies.”

11. From a reading of the decree which is based on the compromise decree it is evident that the parties had intended the trusteeship to revolve around the two families, namely, Oletti family and the Chanduluru family. The said clause would contemplate that in case an office of the trusteeship falls vacant and no nomination has been made by the Oletti family or by the Chanduluru family and there is no suitable person available to take over the office of the trusteeship then any person who is affected by this vacancy can move the Court for suitable direction. The respondents though served had not chosen to enter appearance or contest the application.

12. Since there is no successor, as contemplated in clause 4 (a) to succeed to the trusteeship it is open to the trustees to nominate any male member from the Vysya community to be appointed as trustee along with the applicant who belongs to Chanduluru family. The terms of the decree is modified in respect of Clause 4 (a), to read that since there is no member of Oletti family available to be substituted as trustee, this branch shall be represented by any male member of the Vysya Community who shall be nominated by the applicant in consultation with the other male members of the Chanduluru family. In case, there is a claim from any male members of the Oletti family, then automatically the said person should be considered for nomination as a trustee. The decree is modified to this extent.

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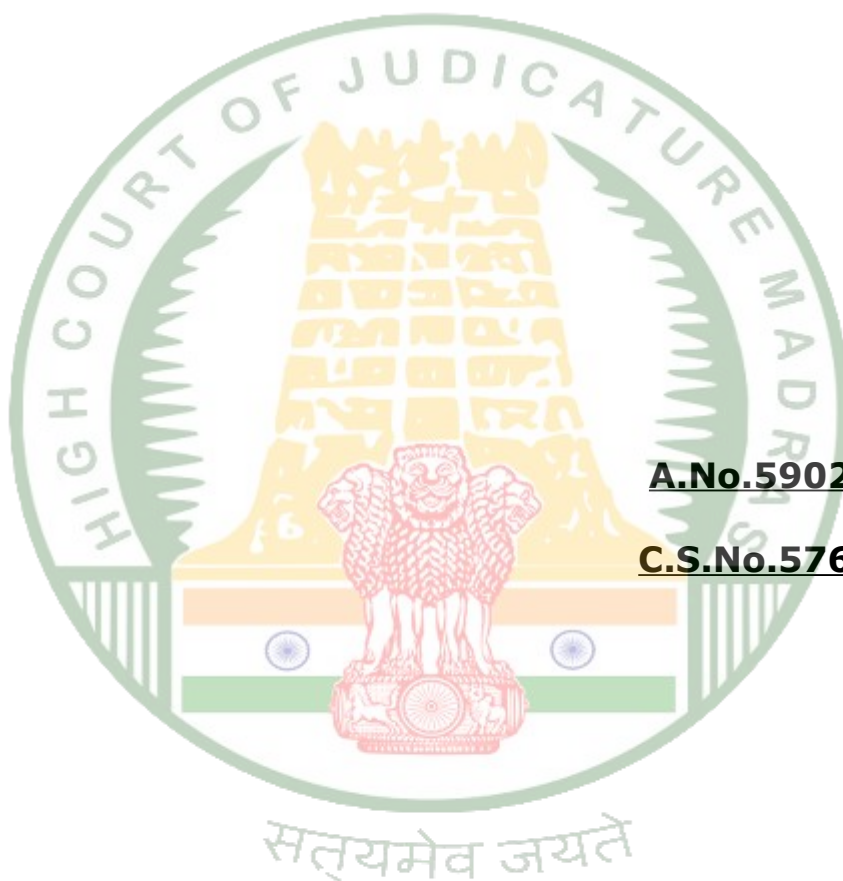
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