

A.No.1193 of 2021
in
CS.D.No.29638 of 2021
V.PARTHIBAN,J.

This application has been filed under Section 92 of C.P.C. seeking leave of this Court to sue the 3rd respondent, Public Charitable Trust.

2. According to the applicants, the 3rd respondent Trust was established by the paternal uncle of his grandfather late. Shri.C.Murugappa Chettiar vide Last Will and Testament dated 20.11.1922. The said Murugappa Chettiar bequeathed three properties belonging to him to be utilised for performing certain charities to the general public and appointed the applicants' grandfather Mr.C.K.Samarapuri Chettiar as a Trustee of the 3rd respondent/defendant Trust.

3. After the demise of the said Shri.Murugappa Chettiar, the applicants' grandfather has become the sole executor and O.P.No.213 of 1923 was filed before this Court for grant of probate. Thereafter, the Trust was administered by the applicants' grandfather until 1946. The applicants' grandfather, during his time executed a Deed of Trust dated 17.09.1946

registered as Document No.2961 of 1946 and made provisions in the Trust Deed for his three sons to continue to carry out the objects of the Trust and administer the same. Three sons were (1) C.S.Ramasamy Chettiar, (2) C.S.Thirunavukarasu Chettiar and (3) C.S.Sundaram Chettiar. As per the arrangements in the Trust Deed, each of the sons will hold the office in succession for a period of two years, starting from C.S.Ramasamy Chettiar followed by C.S.Thirunavukarasu Chettiar and C.S.Sundaram Chettiar.

4. As per the above arrangement, the Trustees were administering the trust by rotation every two years among them. While so, C.S.Ramasamy Chettiar died on 21.07.1978 leaving behind three sons. The youngest trustee, Shri.C.Sundaram, died issueless on 24.07.1978. After the death of these two persons, there were only two surviving branches for administering the Trust, one from the legal heirs of C.S.Ramasamy Chettiar and another from C.S.Thirunavukarasu Chettiar. There was some dispute in regard to the administration of the Trust in rotation at a particular point of time in 1986 and the parties were constrained to approach this Court by filing a suit in C.S.No.253 of 1986 seeking opinion of this Court under Section 34 of the

Indian Trusts Act,1882. This Court passed an exparte decree on 30.11.2009. However, the same came to be restored subsequently and ultimately, during the pendency of the suit, a Memorandum of Compromise was arrived at among the parties and the same was reduced into writing on 30.03.2012. This Court, had recorded the Memorandum of Compromise dated 30.03.2012 and disposed of the Suit on the same day. The Memorandum of Compromise entered into between the parties as recorded by the Court is extracted hereunder.

A memo of compromise dated 30.03.2012 signed by the parties and their respective counsel has been produced today with a request to record the memo of compromise and pass a decree in terms of the same. The contents of the memo of compromise reads as follows:

"1. The compromise and decree being passed based on this joint memo of compromise shall be read along with the Trust Deed dated 17.09.1946 registered as Doc.No.2961 of 1946 on the file of the District Registrar, Madras-Chingleput.

2. The surviving parent branches of

Trustees are C.S.Ramaswamy Chettiar and C.S.Thirunavukarasu Chettiar in view of the demise of C.S.Sundaram Chettiar without any male legal heirs, in fact issueless.

3. Each branch shall be entitled to hold the office of Trustee once in every 2 years. Commencing from 01.04.2012 ending 31.03.2014, the defendant shall hold office as Trustee and carry out all the objects of the Trust. From 01.04.2014 to 31.03.2016 the plaintiff shall hold the office and carry out the objects of the Trust. Similarly, every two years, the office of the Trustee shall be held alternative by the plaintiff and the defendant.

4. Clause 5 & 6 of the Trust Deed are clarified to mean and include. In the event of the unfortunate demise of either of them, the surviving eldest male lineal descendant, be it son or grand son through son etc., shall be entitled to continue to hold for the remaining period or hold the office for fresh period of 2 years, as the case may be.

5. The parties shall bear their respective costs.

6. A decree may be passed in the above suit and this Joint Memo of Compromise shall form part and parcel of the said decree."

5. Despite the above terms of compromise, there appeared to be some dispute by passage of time as to who is to administer the Trust in the present rotation and some allegations have also been made regarding improper administration of the Trust, by the applicants herein. The 1st applicant claiming to be the grandson of Shri.C.K.Samarapuri Chettiar ,who was the sole executor of the Will and Testament dated 20.11.1922 and had been administering the Trust from 1922 to 1946, has come with this Suit, questioning the administration of the Trust by the present trustees.

6. The averments in the affidavit filed in support of the application, question the very entitlement of the present trustees to administer the trust, besides pointing mal-administration and mis- management of the Trust, by them.

7. The learned Counsel Mr.Harishankar, for the applicants

submitted that a scheme is to be framed for proper administration of the trust as the administration of the Trust is to be carried out in rotation among the surviving male heirs of the original trustees. The compromise memo filed which was made as part of the judgment in C.S.No.253/1986 dated 30.03.2012 has failed to resolve the dispute among the parties due to efflux of time and also the parties at the helm today is not adhering to the terms of the compromise strictly.

8. At this, the learned Counsel, Mr. C.Jagadish, for the 1st and 3rd respondents/defendants 1 and 3 and the learned counsel, Mr.S.Karthick, for the 2nd respondent, strongly objected to the application being filed under Section 92 of C.P.C. According to them, it is a minor dispute regarding who is to succeed to the trust in rotation in terms of the compromise dated 30.03.2012 and it can be solved by mutual agreement. According to the learned counsels, the substantial portion of the plaint did not contain any allegation of mal-administration and the dispute is rather confined only to the administration of the trust in rotation. Therefore, invocation of Section 92 is not at all called for. In any case, the learned counsel fairly submitted

that if certain clarifications are issued by this Court, particularly, with reference to Clauses 4, 5 and 6 of the Trust Deed dated 17.09.1946, the matter may likely to be resolved.

9. At this, the learned counsel Mr.Harishankar would submit that the Court may frame an equitable and reasonable scheme for succession to the trust in rotation by the surviving male heirs in terms of the Trust Deed dated 17.09.1946 after the grant of leave in this application and by calling the parties for settlement.

10. This Court, without going into the nitty-gritty of allegations in regard to the mal-administration and mis-management of the Trust, however, is inclined to order this leave petition only for the purpose of resolving the issue towards clarification of the three clauses namely, Clauses 4 to 6 in the Trust Deed dated 17.09.1946. This Court is also on a *prima facie* consideration that the dispute is only in regard to succession to the office of the trusteeship in rotation substantively and this Court may not go into the other allegations or controversies whether the Trust is being

properly administered or mismanaged. In the larger interest of the Trust, traversing beyond the partisan interest of the trustees and to give a quietus to the limited controversy, paving way for smooth succession to the trusteeship in rotation, leave is granted.

11. It is recorded herein that the counsels representing all the parties have agreed that the area of 'lis' is to be narrowed down and confined only to Clauses 4, 5 and 6 of the Trust Deed dated 17.09.1946, which clauses speak about succession to trusteeship every two years.

Registry is is directed to number the suit immediately, if it is in order and post the C.S. for hearing on 01.10.2021.

23.09.2021

vsi

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