



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.02.2021

Pronounced on: 04.03.2021

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

A.S.No.978 of 2020
and
C.M.P.No.13851 of 2020

1.M/s.P.S.Govindaswamy Naidu & Sons' Charities
represented by its Managing Trustee
Mr.L.Gopalakrishnan,
Post Box No.1609,
Peelamedu, coimbatore-641 004.

2.Mr.L.Gopalakrishnan,

3.G.R.Karthikeyan,

4.D.Lakshminarayanawamy,

5.R.Krishnamoorthy,

6.Koneru Satyanarayan,

7.V.Lakshminarayanawamy,

8.J.Anand,

.. Appellants

/versus/

1.V.Prakash @ G.N.V.Prakash.
S/o.Late G.V.Venkatapathy.

2.G.Rangaswamy,

.. Respondents

PRAYER:

Appeal Suit is filed under Section 96 of C.P.C against the judgment and decree made in O.S.No.160 of 2018 dated 12.10.2020, on the file of the Principal District Judge, Coimbatore.



WEB COPY

For Appellants : Mr.G.Masilamani, Sr.C. for
Mr.R.Bharanidharan

For Respondents: Mr.Satish Parasaran, Sr.C. for
Mr.R.Parthasarathy for R1

Mr.R.Bharath Kumar for R2

J U D G M E N T

This Appeal Suit is filed against the judgment and decree passed by the trial Court in a suit filed for declaration and consequential injunction.

2. The background facts of the case is that M/s.P.S.Govindaswamy Naidu & Sons' Charities is a public Trust nearly 100 years old. It is running several charitable and education institutes. The Trust was initially administered based on the Trust deed dated 25.01.1926. To improve the efficiency, the General body of the Trust resolved to get legal opinion and frame a scheme for the Management. Accordingly, the Court of Subordinate Judge at Coimbatore on 29.02.1936 framed scheme of administration pursuant to the decree passed in suit in O.S.No.145 of 1935. As per the scheme, the Trust shall be administered by the Board of Trustees comprising of 9 Trustees under two categories. Out of nine Trustees 4 shall be from the family of founder called as Founder Trustees. The qualification for the Trusteeship is listed under chapter IV (B). While the term of office for other Trustees shall be five years, whereas, for the Founder Trustee, he shall hold office till his life. The point in dispute is one of the qualification prescribed for Trustee that he should reside in the Madras presidency.

3. In the year 1938, one of the Founder Trustee by name Mr.Narayanaswamy Naidu died leaving behind his two sons viz., G.N.Venkatapathy and V.Rajan. The said Venkatapathy took the office of Founder Trustee and held the Trusteeship till his demise in the year 1994. On his demise Rajan held the office till 2012. On 25.04.2012, Rajan submitted a letter of resignation from the office of Founder Trustee and also placed the candidature of his son by name Naren Rajan to be elected as a Founder Trustee. As per the scheme of administration, the male members of the Founder Trustee family has to nominate one among them for the post of Trusteeship representing their family. When Rajan proposed the candidature of his son Naren Rajan, dispute arose whether Rajan after his resignation have any right to nominate or vote in the selection process of the hereditary Trustee of his branch. This issue was subject matter of



O.S.No.631 of 2012 filed by Rajan and his son Naren Rajan against the Trust and Trustees including V.Prakash @ G.N.V.Prakash, who was the probable candidate to represent the family of Narayanasamy Naidu for the Trusteeship.

WEB COPY

4. In the said suit, the trial Court held that Rajan has lost his right to vote and therefore, he cannot nominate his successor, when there is only two eligible candidate one V.Prakash and another Naren Rajan. Without advertting to the issue of qualification criteria where they reside, the District Court directed the other Founder Trustees to choose one among these two candidates in view of the dead lock. This judgment was challenged before the High Court in A.S.No.178 of 2013. Meanwhile pending disposal of the appeal, V.Prakash/plaintiff on 18.04.2013 was unanimously nominated as Founder Trustee to represent Narayanaswamy Naidu branch. The High Court by order dated 30.06.2014, set aside the judgment and decree of the trial Court and held that in view of tendering resignation, Rajan has lost right to contest for the office of Founder Trustee, but had not lost his right to vote. In the said scenario, with three voters and two candidates, Naren Rajan son of Rajan was selected for the Trusteeship to represent Narayanaswamy Naidu branch of family.

5. The order of the High Court passed in A.S.No.178 of 2013 was challenged by V.Prakash before the Hon'ble Supreme Court. However the said SLP(C).No.26503 of 2014 was dismissed. On 21.05.2015, Naren Rajan died and vacancy again arose in the office of Founder Trustee to represent Narayanaswamy Naidu branch. There were only two adult male members in the Narayanaswamy Naidu branch namely Mr.Rajan son of Narayanaswamy and V.Prakash, the grand son of Narayanaswamy born through G.N.Venkatapathy. Since it was already held by the Hon'ble High Court in A.S.No.178 of 2013 that Rajan is prohibited to hold the office of Founder Trustee and disqualified, the only male member being V.Prakash, through e-mail he offered to be nominated as Founder Trustee. His name was not considered by the Board of Trustees. Hence, V.Prakash filed a suit in O.S.No.1225 of 2015, on the file of the Principal District Munsif, Coimbatore seeking relief of injunction restraining the Board of Trustees from holding any meeting or transact any business without notice to him. A counter suit was filed by one G.Rangasamy in O.S.No.1952 of 2015 seeking injunction against the defendants from filling up vacancies in the Trust board. Their suit was later withdrawn. Meanwhile, Rajan who was appointed as a Founder Trustee representing Narayanaswamy Naidu family, continue to hold the office as Founder Trustee till his death on 21.06.2017. On the death of Rajan, Prakash being the sole surviving adult male member in the branch of Narayanaswamy Naidu claimed right to the Founder Trustee and addressed a letter to the Trust and others



on 30.06.2017 that he is willing to serve as Founder Trustee in the vacancy created on the demise of Mr.Rajan.

6. In view of the contentions raised by Rajan in the earlier round of litigation namely O.S.No.631 of 2012 regarding the residential status, the Trust members sought clarification from Prakash, whether he incur any disqualification to hold the post of the Founder Trustee. To which Prakash answered in negative referring the judgment rendered by the High Court in A.S.No.178 of 2013. Since there was no response from the Trust, a detailed representation was given by Prakash to consider his request for appointing him as a Founder Trustee. The Trust had negatived his request on the ground that a Founder Trustee must be permanently residing in Madras Presidency as per the scheme of administration, Prakash being a green card holder and resident of USA, not qualified to hold the post of Hereditary Trustee in the PSG Trust. In the said circumstances, the suit in appeal came to be filed for the following relief:-

"13.1. Declaring that pursuant to Chapter-IV Clause-iv (c) (i) of the Scheme of Administration governing the 1st defendant Trust and as the sole surviving adult male member of the PSG Narayanaswamy Naidu Branch of the family, the plaintiff is entitled to be recognized as the Founder Trustee of the 1st Defendant Trust, in the vacancy caused by the demise of Mr.V.Rajan.

13.2. Consequent to declaration sought for in Prayer 13.1 herein above, granting Permanent Injunction restraining the Defendants from in any manner, interfering with the right of the Plaintiff as a Founder Trustee of the 1st Defendant Trust and in his performing his role, responsibilities and duties as a Founder Trustee of the 1st Defendant Trust.

13.3. Declaring that all the Meetings of the Board of Trustees of the 1st Defendant Trust held after expiry of 60 days from the date of demise of the Mr.V.Rajan, without notice to the Plaintiff as a Founder Trustee and without allowing the participation of the Plaintiff as Founder Trustee are Null and Void, inoperative and incapable of being given effect to.

13.4. Consequent to the relief sought for in Prayer 13.3 herein above, granting



WEB COPY

Permanent Injunction restraining the 1st Defendant Trust from in any manner acting it is giving effect to any Resolution passed by the Board of Trustees of the 1st Defendant Trust after expiry of 60 days from the date of demise of Mr.V.Rajan, without notice to and without permitting participation of the Plaintiff at such meetings.

13.5. Consequent to the relief sought for in Prayer 13.3 herein above, granting Permanent Injunction restraining the Defendant Trust from concerning or holding any meeting of the Board of Trustees of the 1st Defendant Trust without notice to and without permitting participation of the Plaintiff as a Founder Trustee.

13.6. Directing the Defendants to pay the Plaintiff costs of the suit."

7. The defendant Nos.1, 2, 3 & 5 to 9 filed written statement with averment that, the suit is not maintainable and deserve to be rejected. The Board of Trustees in their meeting held on 27.07.2018, after scrutinising the documents furnished by the plaintiff on 28.04.2018 along with memo after due deliberations, resolved that the plaintiff does not possess the required qualification in accordance with the scheme to be appointed as Founder Trustee of the first defendant Trust. Referring the relevant provisions of the scheme of administration dealing with appointment, qualification of Trustees etc., under chapter IV, they contended that it is mandatory for a Hereditary Trustee under chapter IV (B) (a) (ii) to reside within Madras Presidency and clause (i) mandates he must be Hindu. In the earlier suit O.S.No.631 of 2012, though allegations of disqualification against Prakash for being a green card holder of USA and not a resident of India and the counter allegations against Naren Rajan on moral turpitude and criminal case were raised, the issue framed was dropped by consent and the case was decided on the other issue on the premise that both are qualified namely whether Rajan is eligible to vote after tendering resignation alone the issue taken for consideration. Therefore, finding in O.S.No.631 of 2012 or in A.S.No.178 of 2013, in the absence of any issues framed shall have no bearing in the decision taken by the Board of Trustees on 28.07.2017. His earlier appointment on 18.04.2013 based on his claim that he is residing in India will not be a bar for the Trustees to verify the said statement and disqualify him based on the records. The documents furnished by him such as Passport, Aadhar card, SB account certification and certificate from



Auditor are not satisfactory evidence to prove that he resides within the Madras Presidency. When the earlier suit was pending, the Board of Trustees resolved that V.Prakash did not possess the required qualification, therefore, cannot be appointed as Trustee. The extract of resolution dated 20.01.2018 also produced in that proceedings. The said resolution not been challenged till date by the plaintiff. Therefore, nothing survives in the suit. The plaintiff being a green card holder of USA not qualified to be a trustee. The scheme mandates that he must reside in Madras Presidency.

8. Based on the above said pleadings, the trial Court framed the following issues:

"1.Whether the plaintiff is having necessary qualification for the post of founder trustee of the 1st defendant, in terms of the scheme of administer of the 1st defendant?

2.Whether the averments of the defendant is that the plaintiff is disqualified from being appointed as a Founder Trustee of the 1st defendant as he is a Green Card Holder of the United States of America/a Permanent Resident of USA?

3.Whether the contentions of the defendant that the suit is laid on non existent provision in the scheme of administration dated 29.02.1936 in O.S.No.145/1935 framed by the Principal Subordinate Judge, Coimbatore, is correct or not?

4.Whether the plaintiff is estopped from contending that the Board of Trustee of the 1st defendant Trust is precluded from considering the qualifications and disqualifications in view of the Judgment in A.S.No.178 of 2013 dated 30.06.2014?

5.Whether the plaintiff by submitting the documents by his letter dated 22.11.2017/pre-suit period and also on 28.04.2018 by virtue of the consented order dated 27.04.2018 passed in I.A.No.272/2018 in O.S.No.160/2018 for examining his qualifications and disqualifications, submitted himself to and accepted the authority and jurisdiction of the Board of Trustees of the 1st defendant Trust to consider his qualifications?

6.Whether the contention of the defendant that the suit has become



WEB COPY

infructuous is correct or not?

7. Whether the plaintiff had cause of action to file the suit?

8. Whether the plaintiff is entitled to be recognized as the founder trustee of the 1st defendant trust in the vacancy caused by the demise of Mr.V.Rajan?

9. Whether the plaintiff is entitled to permanent injunction as prayed for?

10. Whether the plaintiff is entitled the relief of declaration, declaring that the meetings of the Board of Trustees of the 1st defendant, held after 60 days from the date of demise of Mr.V.Rajan, without notice, without participation of the plaintiff are null and void?

11. Consequent to the issue No.6, whether the plaintiff is entitled permanent injunction against the defendant trust?

12. What other relief are the parties entitled to?"

9. 49 exhibits marked on behalf of the plaintiff and he subjected himself for examination as PW.1. On behalf of the defendants, 3 documents were marked. The Immigration and Nationality Act, Green Card Rules and Regulations of USA were marked as Ex.X1. The trial Court taking note of the fact that the plaintiff Prakash possess Aadhar card, Pan card, bank account all proves the factum of his citizenship and the resident. The green card issued by USA is only a privilege granted to him to reside permanently in USA owing to marriage to a USA citizen. Earlier, he was appointed as Founder Trustee knowing fully well he is holder of green card, therefore, the Board of Trustee cannot disqualify him from holding the post on the ground he does not reside in Madras Presidency.

10. Referring Ex.A19 to Ex.A36, which are the documents in connection with the earlier suit O.S.No.631 of 2012 and the Indian Passport, Aadhar card and bank statement the trial Court concluded that, when the appointment of the plaintiff as Founder Trustee was affirmed in the earlier judicial proceedings, the defendant cannot raise objection regarding his residential status later. Hence, held that holding green card of USA is only a privilege and it will not automatically dis-entitled the plaintiff's citizenship of India and therefore, there is no bar for holding Trusteeship.

11. The judgment of the trial Court is extensively assailed by the appellant, it includes citing wrong and non-existing provision of the scheme of administration, to hold the



plaintiff is qualified for the Trusteeship.

12. The point for consideration in the appeal is whether the plaintiff proved before the Trial Court he resides within the Madras Presidency, to be qualified for the post of Trusteeship in the Appellant Trust?

13. "Madras Presidency" when the scheme framed in the year 1936, during the British India period included most of the present South India states and part of Orissa. After Independence and the limitation of states on linguistic lines City of Coimbatore where the appellant trust located fall under the "State of Tamil Nadu" formerly known as "Madras State".

14. Be that as it may, the issue is narrowed down whether a green card holder of USA will fall under the meaning of a person resides in Madras Presidency. Though this issue was framed in the earlier round of litigation (i.e) O.S.No.631 of 2012, the said issue was deleted and not adverted leaving the issue open, therefore any observation and finding in the earlier litigation made, it was not on a issue framed. The Trial Court in O.S.No.631 of 2012 expressly made clear it will not advert to this issue. So, whether the plaintiff resides in Madras Presidency in the present suit will not be hit by Section 11 of C.P.C This Court is of the view that the earlier appointment of the plaintiff as Founder Trustee was also done in the midst of litigation and there was no opportunity for the parties to prove either way whether holding the green card will disqualify a person therefore, the principle of estoppel also cannot be applied in this case. This Court wants to make clear that the suit ought not to have been decided on the point res judicata or estoppel. Settling the legal objections regarding the maintainability of the suit as above, the point of qualification as per scheme now tested in the right of evidence placed.

15. The learned senior counsel appearing for the appellant/Trust strenuously contended that in legal parlance the terms reside, resident and or domicile, have different connotation and one cannot be substitute with another. Grammatically also, the word 'resides' is in present continuous. So past or future intention is of no use. Unless a person lives within the Madras Presidency, he will not be qualified to hold the post of Trustee. When the scheme of administration under chapter IV (B) (a) (ii) specifically states that to hold the post of Trusteeship, one of the qualification "he resides in the Madras Presidency". One may have several residence within the Madras Presidency and elsewhere. Possessing residence will not mean he resides in it. The clause, 'should reside in the Madras Presidency' have specific connotation and reasoning. The appellant Trust with extensive activity in the field of



education and charity need the direct supervision and control of the Trustee. That is the reason why it is expected that the trustee to live within Madras Presidency.

16. The Trial Court decree which declared the plaintiff entitled to hold the post of founder Trustee pursuant to Chapter-IV clause 4 (c) (i) of the scheme itself is an relief under a non existing clause and in spite of pointing out this in the written statement, the plaintiff has not amended the prayer. When the prayer itself is for a non existing relief, the Court below ought not to have negatived the defendants plea on the ground that it is a typographical error.

17. Per contra, the learned counsel appearing for the respondent would submit that doctrine of res judicata is applicable even against the co-defendants. The meaning of expression "resides" being explained by the Hon'ble Supreme Court in Mst Jagir Kaur Vs. Jaswant Singh reported in AIR 1953 SC 1521 as below:

"7. In Sampooranam v. N. Sundaresan [(1952) 2 MLJ 573] it was held that the word "resides" implied something more than a brief visit but not such continuity as to amount to a domicile. In Khairunissa v. Bashir Ahmed [(1929) ILR 53 Bom 781] on a consideration of the relevant authorities, it was pointed out that a casual or a flying visit to a place was excluded from the scope of the word "resides". A full Bench of the Allahabad High Court, in Flowers v. Flowers [(1910) ILR 32 All 203] expressed the view that a mere casual residence in a place for a temporary purpose with no intention of remaining was not covered by the word "resides". In Balakrishna v. Sakuntala Bai [AIR 1942 Mad 666] it was held that the expression "reside" implied something more than "stay" and implied some intention to remain at a place and not merely to pay it a casual visit. In Charan Das v. Surasti Bai [AIR 1940 Lah 449] it was held that the sole test on the question of residence was whether a party had animus manendi, or an intention to stay for an indefinite period, at one place; and if he had such an intention then alone could he be said to "reside" there."



WEB COPY

"8. The decisions on the subject are legion and it would be futile to survey the entire field. Generally stated no decision goes so far as to hold that "resides" in the sub-Section means only domicile in the technical sense of that word. There is also a broad unanimity that it means something more than a flying visit to or a casual stay in a particular place. They agree that there shall be animus manendi or an intention to stay for a period, the length of the period depending upon the circumstances of each case. Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases there on, we would define the word "resides" thus: a person resides in a place if he through choice makes it his abode permanently or even temporarily; whether a person has chosen to make a particular place his abode depends upon the facts of each case. Some illustrations may make our meaning clear: (1) A, living in a village, goes to a nearby town B to attend a marriage or to make purchases and stays there in a hotel for a day or two. (2) A, a tourist, goes from place to place during his peregrinations and stays for a few days in each of the places he visits. (3) A, a resident of a village, who is suffering from a chronic disease, goes along with his wife to a town for medical treatment, takes a house and lives there for about 6 months. (4) A, a permanent resident of a town, goes to a city for higher education, takes a house and lives there, alone or with his wife, to complete his studies. In the first two cases, A makes only a flying visit and he has no intention to live either permanently or temporarily in the places he visits. It cannot, therefore, be said that he "resides" in the 'places' he visits. In the last two illustrations, though A has a permanent house elsewhere, he has a clear intention or animus manendi to make the places where he has gone for medical relief in one and studies in the other, his temporary abode or residence. In the last two cases it can be said that though he is not a domicile of those places; he "resides"



in those places."

18. Referring the judgment of lord Denning, the learned counsel for the respondent would say that a person may have two residence and it all depends on animus to stay. Regarding the wrong provision of law mentioned in the relief, the learned counsel relying upon the judgment of the Hon'ble Supreme Court in Pruthvirahsinh V. Jayesh kumar reported in 2019 9 SCC 533 claims that quoting wrong provision is not fatal if powers to pass orders is available with Court. Emphasising that during the earlier round of litigation, the Board of Trustee in view of the dead lock were asked to elect any one among the two descendants of Narayanasamy Naidu. At that time, the very same Board of Trustee elected Prakash the plaintiff as Founder Trustee. Therefore, the 1st defendant is estopped by conduct. In support of the above submissions, the learned Senior counsel for the respondent rely upon the judgment of the Hon'ble Supreme Court rendered in B.L.Sreedhar Vs. K.M.Munireddy reported in 2003 (2) SCC 355 and in Sumudra Vijayam Chettiar Vs. Srinivasa Alwar reported in 1956 (69) LW 62.

19. The plaintiff is holding a green card which say he is a permanent residence of USA. He is also holding the Aadhar card issued by the Government of India to presume that he is residing in the address shown in the Aadhar card. He is an income tax assessee having property to show he earn taxable income in India and he is also an income tax assessee in USA admittedly. The plaintiff have bank account in India, property in India, some of them are residential building. The short but sharp question placed before this Court is that whether all these documents will prove that he lives in Madras Presidency to satisfy the term 'resides'. For that purpose, the plaintiff relies upon the certificate issued by its Auditor, whether the certificate will have any evidentiary value to rely upon is a secondary question, but having produced by the plaintiff itself it can be taken as admission on the part of the plaintiff. Ex.A24, a letter given by the Chartered Accountant on 12.02.2018, certifies,

"As on this date, beginning from 01.04.2017, Mr.Prakash has been in India, for a period or periods in all for 112 days, and his stay in India, out of four years preceding the year 31.03.2018 has exceeded for a period or periods amounting in all to Three Hundred and Sixty Five days or more as per Section 6(1)(c) of the Income Tax Act, 1961, as tabulated herein below:
And from 01.04.2017 to 12.02.2018, 112 days immediately four preceding years.



WEB COPY

31.03.2017	103 days
31.03.2016	156 days
31.03.2015	236 days
31.03.2014	184 days
Total	679 days

His residential status for the financial year 31.03.2017 to 31.03.2018 is that of a 'Resident' under the Income Tax Act, 1961"

Similar letter dated 07.01.2019 marked as Ex.A.25, he has certified as below:

"As on this date, beginning from 01.04.2018, Mr.V.Prakash has been in India, for a period or in all for 141 days, and his stay in India, out of four years preceding the year 31.03.2019 has exceeded for a period or periods amounting in all to Three Hundred and Sixty Five days or more as per Section 6(1)(c) of the Income Tax Act, 1961, as tabulated herein below:

And from 01.04.2018 to 07.01.2019, 141 days immediately four preceding years.

31.03.2018	159 days
31.03.2017	103 days
31.03.2016	156 days
31.03.2015	236 days
Total	654 days

His residential status for the financial year 01.04.2018 to 31.03.2019 to 31.03.2018 is that of a 'Resident' under the Income Tax Act, 1961"

20. These two exhibits Ex.A.24 and Ex.A.25 are produced by the plaintiff to show he was in India for 979 days in total between 31.03.2014 to 07.01.2019. This certificate does not discloses out of 979 days in 7 years, how may days he was within Madras Presidency.

21. Going by his own admission in the cross examination, he has deposed that in the year 2010 itself he shifted to India permanently. Whereas, Ex.A.24 and Ex.A.25 for the period 2014 to 2019, he had not been in India for more than half the period. It is not that he should not go abroad and he should always stay within the Presidency of Madras, when the qualification had been prescribed though a century old unless



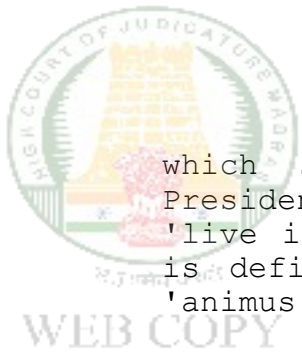
until it is amended, the spirit the of provision should be respected. The plaintiff who claims Trusteeship have miserable failed to place evidence that he live in Madras Presidency and he continue to have the animus to reside in Madras Presidency.

WEB COPY

22. The plaintiff still holds his green card, most of the time he was not staying in India even according to his own evidence. Based on his conduct of attending the board meeting earlier, when he was holding the Trusteeship will though give an impression that he will be physically available when the meeting is conducted, but as said in the Supreme Court judgment and relied by the plaintiff counsel, the animus of the person to reside in India is important and only the animus has to be looked into. Here is the case where the plaintiff say he has shifted to India from U.S.A permanently and reside in India since 2010, but his own evidence indicates that only less than 50% of the period he was in India and he holds green card, which show he is a permanent resident of USA. He has not given up his green card. His animus to be a resident of U.S.A is made explicit. In the cross examination, he has asserted that he has no intention to give up his green card. His admission on oath as well as his conduct does not show that he neither on fact resides within Madras Presidency nor have any animus to live within Madras Presidency. Animus of a person can be inferred only by the conduct. Nobody can say the plaintiff should not have the green card or have a business in foreign country and account in a foreign country, but when he wish to hold the Trusteeship of a Trust, which mandates that the trustee must reside within Madras Presidency and if he is not able to satisfactorily prove that he resides within Madras Presidency, it is not obligatory on the part of the other Trustees to induct him to the Trust, contrary to the provision of the scheme of administration.

23. The Court below had given a very wide interpretation for the word "resides" and also taking note of the current scenario and technology development had thought fit to express his opinion how the word 'resides' should be understood. If the Trustees or any beneficiaries or the Court which framed the scheme view that the said terms 'resides' has become out dated and to be amended then it has to be done as per procedure laid under law. Until such amendment is carried out in the scheme of administration, the provisions of the scheme cannot be tinkered to suit any individual. Change or amendment cannot be done in a collateral proceedings without resorting to amendment to the scheme.

24. Any terms found in the written document not in contrary to law to be understood the way it is stated and not to be supplemented unless there is ambiguity. Here is a clause



which says the Founder Trustee must reside within Madras Presidency. The word 'resides' as per Oxford dictionary, means 'live in a particular place'. The word to be understood as it is defined and cannot be substituted with the word 'stay' or 'animus to reside' or domicile or citizenship.

25. The Trial Court Judge has thought that in view of scientific advancement the word reside should not be given the meaning how it was understood 100 years ago. I fear, few years later, some other Judges may think the restricting the post of Trusteeship to male member is against gender Justice so it should be read as female also since in general clauses Act he includes she, men includes women so male includes female. This may be the opinion of the Judges, but the persons who manage the Trust should come forward to amend the clause, if they feel it is out dated or not convenient. Without appropriate amendment to the clause in the scheme of administration which is the out come of the scheme framed under a Court decree, the terms to the scheme cannot be manipulated.

26. The learned counsel appearing for the respondent/plaintiff would seriously contend that the respondent/plaintiff is a resident of India as defined under income tax Act and he has all animus to stay in India permanently. Though such statement is made in the course of arguments, evidence placed by respondent/plaintiff does not support the said statement. As pointed out earlier, the respondent/plaintiff had stayed in India less than 50 % and his intention to live in Madras Presidency permanently is not fortified by his conduct. His statement on oath that from 2010 he is permanently residing in India is also falsified by its own document Ex.A.24 and Ex.A.25.

27. It is correct that the Trustee have wrongly understood the term reside as a permanent resident, but the evidence before the Court placed by the respondent/plaintiff does not satisfy the definition of resides as intended by the framers of the scheme.

28. Going by the literal meaning of the word 'resides' as of now, the records produced and relied by the respondent/plaintiff is inadequate to qualify him as a person who resides in Madras Presidency. However, not a disqualification it is always open to the respondent/plaintiff to place before the Board of Trustees, records to show he resides within Madras Presidency and qualified to hold the trusteeship.

29. For the said reasons, this Court finds that the trial Court judgment holding that the plaintiff/respondent



resides within Madras Presidency and qualified to hold the post of Trustee is contrary to his own admission and other evidence, hence liable to be set aside. Accordingly, this Appeal Suit is Allowed. The trial Court judgment is set aside. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpl

To:-

1.The Principal District Judge,
Coimbatore.

2.The Section Officer,
V.R.Section, High Court, Madras.

+lcc to Mr.R.Karthikeyan, Advocate, S.R.No.13585

+lcc to Mr.R.Bharath Kumar, Advocate, S.R.No.14255

A.S.No.978 of 2020
and C.M.P.No.13851 of 2020

SS(CO)
CB(13/09/2021)