



S.A.No.169 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 27.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Second Appeal No.169 of 2001

and

C.M.P. Nos. 10765 of 2002, 1294 & 16224 of 2003,
19086 of 2017 and 11209 of 2022,

Nehru Educational Society,
Madras, 19, represented by
its Correspondent Mohan Gopal,
No.3, Anna Street, T.S.R.Nagar,
Tiruvottiyur, Chennai - 19.

.. Appellant/Plaintiff

Versus

I.T.C.Employees' Union,
Reg.No.1852, Madras - 19
rep.by its General Secretary
No.334, T.H.Road, Tiruvottiyur, Madras - 19.

.. Respondent/Defendant

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.01.2000 passed in A.S.No.70 of 1998, on the file of the learned Subordinate Judge, Ponneri, confirming the judgment and decree dated 30.07.1998 in O.S.No.1110 of 1997 on the file of District Munsiff, Tiruvottiyur.



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For Appellant : Mr. R. Krishnasamy
For Respondent : Mr. C.K. Chandrasekhar

JUDGMENT

The unsuccessful plaintiff in O.S. No. 110 of 1997 has filed this Second Appeal challenging the judgment and decree dated 24.01.2000 passed in A.S.No.70 of 1998 on the file of the learned Subordinate Judge, Ponneri, confirming the judgment and decree dated 30.06.1998 made in O.S.No.1110 of 1997 on the file of District Munsif, Thiruvottriur.

2. The case of the plaintiff was that the defendant is a registered employees union. The defendant started a school in Thiruvottriur, Madras in the year 1969 with the object of imparting higher standard of education in English and vernacular medium for the children of the employees of the I.T.C. Limited, Thiruvottriur, including retired and deceased employees. However, the defendant-Union could not run the school and therefore, in the year 1976, they have handed over the management of the school to the plaintiff society, which was independently formed by the defendant Union. The Plaintiff,



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which is a society registered under the Societies Registration Act in No.108 of 1978, taken up the school with a condition that two of the members of the defendant union have to hold membership in the plaintiff society. Accordingly, the members of the defendant union joined as members in the plaintiff society which was also recognised in the general body of the plaintiff society on 02.07.1989. On fulfilment of such condition, the plaintiff society has been running the school without any complaint, whatsoever. At the time when the plaintiff took over the school, the school was imparting education to students upto V Standard. Subsequently, the school was developed into a higher secondary school and now at the time of institution of the suit, there were 1200 children studying there. At this stage, on 10.12.1989, the defendant union attempted to interfere with the management of the plaintiff society, particularly the school run by them, on the ground that they are going to form a Trust and the Trust will take charge of the plaintiff society. As per the bye-laws of the plaintiff society, the defendant union has got right only to depute two members of the union as members in the plaintiff society. However, after the school has earned reputation, the defendant is taking a hostile attitude to take over the management of the school and causing interference. The plaintiff inferred that the defendant is causing interference and attempting to form a trust to run the school. In this context, the defendant union appears to



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have conducted a secret ballot on 15.12.1989 for creation of a separate Trust superseding the earlier bye-laws so as to interfere with the management of the school. Therefore, the plaintiff has filed the suit for a declaration to declare that the defendant Union has got no right or power to form a Trust for the purpose of managing the plaintiff society, which is a registered society under the Societies Registration Act 27 of 1975 and for a consequential permanent injunction restraining the defendant union or their men or servants from in any manner interfering with the management of the society.

3. The case of the defendant was that the continuance of the management of the school by the plaintiff will be detrimental to the interest of the school. The plaintiff society was formed only for the purpose of convenience and for getting affiliation to the school. During the year 1976, the then General Secretary of the Defendant Union with an ulterior motive to get control of the property belonging to the union, formed a society and registered it under the Societies Registration Act, for managing the school. The then Secretary did so without informing the union or without getting necessary sanction from the Executive Committee of the defendant union. The defendant union has not passed any resolution by convening the general body meeting for taking over the school by the plaintiff and therefore,



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the taking over of the management of the school is unauthorised. Even the election of Mr. Madana Gopal, then Secretary as Correspondent of the school was not even disclosed to the defendant. The development of the school and reputation earned by the school is not attributable towards the plaintiff society but due to the continuous financial support in the form of donations extended by the defendant union. The attempt to take over the management from the plaintiff society was taken by the defendant union after due deliberations and consultations with the correspondent of the plaintiff society. On 08.07.1989, the President of the Defendant Union wrote a letter to Mr. Mohan Gopal requesting to participate in the discussion for constituting a committee to create a separate trust to manage the affairs of the plaintiff society. On 10.08.1989, the President of the defendant union again wrote a letter to the plaintiff society requesting them to send a list of persons for discussions. Accordingly, on 31.08.1989, the plaintiff sent a list of persons and on 05.09.1989 a joint meeting of the defendant union and plaintiff society was convened in which it was agreed to form a separate trust. Therefore, the plaintiff is estopped from contending contra. On 06.09.1989, a letter was sent to the plaintiff society to finalise the formalities for creation of a trust. On 09.12.1989, a joint meeting of the the co-ordinators of the plaintiff society and defendant union was convened in which the formation of bye-laws, auditing



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etc., was discussed. Subsequently, on 10.12.1989, a meeting was held during which the plaintiff, supported by other members, demanded the conduct of a secret ballot for formation of a Trust to manage the affairs of the plaintiff society. On 12.12.1989, the defendant appointed three members to conduct the election. On 13.12.1989, the plaintiff submitted a representation requesting the election of the officers to ensure free and fair election. On 15.12.1989, a secret ballot was conducted in which majority of the members voted in favour of creating a trust. The correspondent of the plaintiff society also participated in the secret ballot on 15.12.1989. The plaintiff, having lost the secret ballot, has come forward with the present suit, by suppressing the above facts. The defendant union therefore prayed for dismissal of the suit.

4. Before the trial Court, the plaintiff/appellant examined himself as P.W.1 and marked Exs.P1. On behalf of the defendant/respondent, one Mr.S.Palani was examined as D.W.1 and Exs.B1 to B10 were marked.

5. After hearing both the parties, the trial Court came to the conclusion that the plaintiff is not entitled the relief sought for. The Trial Court, by placing reliance on Ex.B1, concluded that the attempt to create a separate trust was taken after much deliberations and such a decision was



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taken only with the consent and knowledge of the plaintiff society. The Trial Court also concluded that the defendant union has every right to form a separate trust for the purpose of running the school and to enhance the standard of education. Therefore, the trial court concluded that the plaintiff has no right to seek for a declaration to declare that the defendant Union has no right or power to form a Trust for the purpose of managing the plaintiff society.

6. Aggrieved by the judgment and decree dated 30.07.1998 passed in O.S. No. 1110 of 1997, the plaintiff preferred an appeal in A.S. No. 70 of 1998. The Appellate Court, on perusal of the oral and documentary evidence, held that when the defendant society has got a right to handover the management of the school to the plaintiff society during 1976, equally, it has got a right to take back the administration of the school. The appellate Court also reasoned that even though the plaintiff-society has contended that as per the bye laws, the defendant has right only to induct two of their members in the plaintiff society, the plaintiff did not even produce the copy of the bye law. It was further held that as per Ex.B1, on 25.01.1995 itself the Nehru Matriculation Higher Secondary School has been handed over to ITC Educational Trust and it was also signed by Mohan Gopal, General Secretary



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of the Plaintiff. Even in the resignation letter dated 01.06.1990 of Mr. Mohan Gopal, he has categorically admitted that the administration of the school has been taken over by ITC Educational Trust. To fortify such conclusion, the Appellate Court also placed reliance on Ex.B10 dated 20.12.1995. Thus, the appellate Court categorically concluded that the management of the school has been taken over by the society formed by the defendant union from the year 1995 and dismissed the appeal filed by the appellant.

7. Aggrieved by the judgment and decree passed by the courts below, the plaintiff/appellant has preferred the present Second Appeal. This Court, at the time of admission of this appeal on 28.06.2022 framed the following substantial questions of law:-

"(i) Having come to a conclusion that the plaintiff - appellant is in administration of the school, the Courts below without deciding the above factor simply dismissed the suit on the ground that the defendant has got every right to form a trust, is not against law?

(ii) The learned Lower Appellant Court has not decided the issue whether the defendant has got any right to form a trust?

(iii) The learned Appellate Judge has not given any finding whether an independent society can interfere with the affairs of another society?"



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8. The learned counsel for the appellant submitted that at the time of filing the suit, the plaintiff society was in the administration of the school. When this second appeal was listed for admission, this Court granted an order of injunction restraining the respondent union from interfering with the management and administration of the appellant society. Even the respondent has filed a petition for vacating the interim stay, but the interim order was made absolute and the vacate stay petition was dismissed.

9. The learned counsel for the appellant submits that the trial court as well as the appellate Court relied on Ex.B1 and rendered a finding as if the management and administration of the appellant society was already handed over to a Trust already formed by the respondent Union. Such a finding given by the courts below is contrary to facts. Ex.B1 is a Circular which refers to a Trust namely ITC Educational Trust, which is formulated by the ITC Company only. It is only based on the alleged handing over of the management and administration of the appellant Trust, the courts below dismissed the suit filed by the appellant. At the time when the suit was filed the appellant society was functioning. Even at the time when the first appeal was filed as also the second appeal before this Court, the appellant society was functioning. This



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Court, at the time of hearing the vacate stay petition, constituted and appointed a five member committee consisting of five members, two members to be nominated by the appellant, two by the respondent union and the committee to be headed by the Inspector of Matriculation Schools. The Committee constituted by this Court was administering the suit school till today. When the Inspector of Matriculation Schools retired, the Joint Director of School Education namely Mr. Rajendran was allowed to function as the head of the five member committee. Mr. Rajendran also retired and presently, there is no one to head the committee. The repeated requests made by the appellant to replace the official of the Education Department did not evoke any response. Even the respondent's union did not evince any interest to run the school. At this stage, the teachers who are working in the school have formed and registered a society namely Nehru School Teacher's Welfare Association and got due recognition from the educational authorities and it is they who have been running the school till today. Further, the Respondent Union have also filed another suit in O.S. No. 3 of 2001 on the file of District Munsif Court, Thiruvottriyur against the appellant praying to declare that they are entitled to be in management and administration of Nehru Matriculation and Higher Secondary School, Anna Street, TSR Nagar, Thiruvottiyur and also for consequential permanent injunction restraining the appellant from interfering



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with the management and administration of Nehru Matriculation and Higher Secondary School. In the suit, Nehru School Teacher's Welfare Association, who are running the appellant School, have filed I.A. No. 5 of 2021 to get themselves impleaded as a party and the suit is still pending. Thus, as on today, neither the appellant nor the respondent is running the school. However, at the time when the suit was filed, it was the appellant who was running the school and therefore, the judgment and decree of the courts below has to be set aside.

10. The learned counsel for the appellant further submitted that during the pendency of the second appeal, there was a dispute between the Management of the ITC and the workers and indulged in acts of violence and caused damages to the properties of the school, which resulted in the management of ITC dismissing 55 employees who indulged in such acts. Thereafter, negotiation took place with individual workers and 18 (1) settlement was entered into in which it was specifically agreed that the workers of ITC should not contest this second appeal before this Court. The dispute was accordingly referred to the Industrial Tribunal and an award was passed in I.D. No. 40 of 2021 based on the 18 (1) settlement. Therefore, by advertng to the above events that had taken place subsequent to the filing of



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the present suit, the learned counsel for the appellant prayed for allowing this appeal.

11. Mr. C.K. Chandrasekar, learned counsel for the respondent submits that the courts below have dismissed the suit filed by the appellant on the basis of the evidence adduced by the parties. It is contended that a specific finding has been rendered by the courts below that the attempt to create a separate trust was taken after much deliberations with the consent and knowledge of the plaintiff society. The courts below also specifically rendered a finding that the defendant union is not precluded from constituting a separate committee and it has got every right to do so keeping in view the larger interest of the students and to enhance the standard of education. The first appellate Court rightly held that when the defendant society has a right to handover the administration and management of the school, equally, it has got a right to take back the administration of the school. A specific finding was given by the first appellate Court that as per Ex.B1 the Nehru Matriculation Higher Secondary School has been handed over to ITC Educational Trust as early as on 25.01.1995 and it was also acknowledged by Mohan Gopal, General Secretary of the Plaintiff. The appellate Court also rendered a specific finding that in the resignation letter dated 01.06.1990 of Mr. Mohan Gopal, he



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has categorically admitted that the handing over the administration of the school to ITC Educational Trust. Thus, it would be evident that the appellant is no longer in management of the school. In any event, there is no substantial question of law arise for consideration in this appeal and the grounds urged by the appellant are factual in nature. While so, the learned counsel for the respondent prayed for dismissal of the second appeal and thereby dismissing the present appeal.

12. Admittedly, the school in dispute started in the year 1969 by the defendant/ respondent with the object of imparting education to the children of the employees of the I.T.C. Limited, Thiruvottiur, including retired and deceased employees. It is also admitted that from the year 1973, the defendant/respondent could not run the school and therefore, the administration of the school was handed over to the plaintiff. It is also an admitted fact that the plaintiff has been running the school till the suit was instituted. It is also admitted by the plaintiff that as per the bye-laws of the plaintiff society, the defendant union has got right to depute two members of the union as members in the plaintiff society. Thus, with the two members of the defendant society on Board, the plaintiff has been running the school.

When the defendant society has a right to handover the administration of the



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school to the plaintiff, equally, they have a right to take back the administration of the school and that is the reason why, throughout, two members of the defendant society were on board of the plaintiff society. In other words, the members of the defendant society had taken part in the administration of the school even after handing over the administration of the school to the plaintiff. In any event, the school was formed by the defendant union for the welfare of the children of the employees of the I.T.C. Limited, Thiruvottiyur, including retired and deceased employees and it was not established by the plaintiff. At no stage the plaintiff can state anything about the defendant union by alleging that if they are allowed to run the work so far put in by the plaintiff to uplift the standard of education will be affected. Therefore, this court is of the view that the defendant has every right to take back the administration of the school from the plaintiff, for any reason, whatsoever. The defendant is entitled to form the trust for administering the school and such right of the defendant cannot be curtailed by this Court at the instance of the plaintiff since the plaintiff was only running the administration of the school after it was handed over to them by the defendant. In such circumstances, the plaintiff cannot ask for any relief to restrain the defendant to form any trust. Both the Courts have categorically concluded that the defendant is entitled to run the trust and management of the school and such a



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conclusion arrived at based on Ex.B1 needs no interference by this Court.

Accordingly, the substantial questions of law nos.1 and 2 are answered.

13. As far as the third substantial question of law is concerned, it need not be answered by this Court in this appeal. This is more so that the question of law Nos. 1 and 2 are answered against the appellant. In any event, for consideration of this question of law, the by laws of the defendant society gives a fitting answer. As per the bye laws, the defendant society has an independent right to administer the school which was handed over to the plaintiff for some time. As per the bye laws there is no prohibition for the defendant society to reclaim the administration of the school from the plaintiff. It is also to be mentioned that considering this aspect only this Court appointed a committee on 31.07.2002 and the committee was administering the school until the Inspector of Matriculation Schools, who was the head of the five member committee, retired. It is also stated that now, after the retirement of the head of the committee, the committee is not functioning. Therefore, it is proper for the defendant society to appoint fresh members for administering the school and to achieve the objects and purpose for which the school was established. Accordingly, the third substantial question of law is also answered.



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14. In the light of the above discussion, this Second Appeal is dismissed confirming the decree and judgment passed by the lower appellate Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No
Internet : Yes/No



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To

1.The Subordinate Judge,
Ponneri

2.The District Munsiff,
Tiruvottiyur.



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KRISHNAN RAMASAMY, J.,

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