IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.07.2023
Pronounced on	23.08.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Original Petition No.108 of 2023

M/s.Pundi Pattamal Srinivasa Iyengar Trust
represented by its Board of Trustees,
1.M.K.Muralidhar
2.M.Jayashree
3.M.Sandeep
4.G.Radha ... Petitioners/Trustees

Prayer:- Petition filed under Section 34 of the Indian Trust Act read with Order XXV Rule 4 of O.S. Rules, praying to permit the Trustees of the petitioner Trust to sell the property set out in the schedule for a sum of Rs.95,91,720/- and to utilise the sale proceeds for the welfare and betterment of the Trust.

For Petitioners : Mr.S.Sathish Rajan

ORDER

This Original Petition has been filed to grant permission to sell the Schedule mentioned property which is one of the property of the Trust set out in the schedule by the Petitioners/ Trustees and to utilize the sale proceedings for the welfare and betterment of the trust objects.

2. A trust by name *'Pundi Pattammal Srinivasa Iyengar Trust'* was created by the trustees who are the petitioners herein to manage the properties of one Sri P.V.Srinivasa Iyengar and to comply his intentions as per the Will dated 30/3/1967. The main object of the Trust is to donate the proceeds to various religious functions that will be carried out in the Sri Viashnava temples situated anywhere in India or abroad and to maintain the immovable properties left by Sri P.V.Srinivasa Iyengar.

2.1. As per clause 4 (g) of the Trust Deed, the trustees have got power to invest the Trust funds to acquire the movable and immovable properties, stocks, debentures or other such investments in the name of the Trust and sell the same as per the discretion of the majority of the trustees. The property detailed in the schedule is the property bequeathed by one late Sri P.V.Srinivasa Iyengar by virtue of his Will dated 30.03.1967. The said Sri

P.V.Srinivasa Iyengar died on 18.05.1968. This Court by its order dated 23.01.1970 made in OP.No.19 of 1970 was pleased to grant a probate of the above said Will in favour of one M.K.Gopala Iyengar, who is the father of the 1st petitioner herein. The building in the schedule mentioned properties is in old dilapidated condition and it does not derive any income. The trustees are in Bangalore and the petition mentioned property is situated in Chennai. The petitioners themselves as Trustees are not in the position to maintain the schedule mentioned properties. Hence the trustees thought it fit and desirable to alienate the schedule mentioned property and invest the sale proceeds to fulfil the object of the trustees. The value of the schedule mentioned property is Rs.95,91,720/- as per the Tamil Nadu Government Guideline Value. As of now there is no definite purchaser fixed for purchasing the property. However the petitioner will fix a prospective buyer, to buy the property. Hence this petition has been filed to grant permission to the trustees to sell the schedule mentioned properties for a sum of Rs.95,91,720/-.

Discussion

3.The 1st petitioner has been examined as PW.1 and Ex.P1 to Ex.P15 were marked.

4. The petition mentioned property was originally belonged to one Sri P.V.Srinivasa Iyengar. He had executed a Will dated 30.06.1967 in respect of the petitioner. In the Will one M.K.Gopala Iyengar, who is the father of the 1st petitioner and the brother of the wife of the testator had been appointed as an Executor. The recitals of the Will reads as under:

> ***"3.** I hereby appoint my wife's brother M.K.GOPALA IYENGAR, son of M.K.Srinivasachariar, now in South America, as Executor to this Will. After his duties as an Executor are over he shall be the trustee of my net estate. He shall spend the net income in the manner hereinafter appearing:*
>
> ***4.** After my death my Executor shall realise my out standings and out of the proceeds of my moveable properties, the expenses of taking out Probate of the Will herein and other costs of administration and payment of my debate, if any, shall be met. My Executor has a discretion to spend Rs. 1,000/- towards my funeral obsequies. The residue of my moveable properties and the two houses above mentioned shall be held in trust by my Executor for the purposes hereinafter mentioned. He, has no right to sell mortgage or make any other disposition of any of my immovable properties. He shall realise the rents of my immoveable properties and invest the balance of cash in his hands in proper Securities. "*

5. The testator had expressed in clear terms that the Executor / Trustee has no right to sell, mortgage or make any other disposition of his immovable properties comprised in the Will. The testator has further stated that the Executor should realize the rents of his immovable properties and invest the balance in cash in proper securities and the net income of the Trust should be spent for certain purposes and they have been stated in the Will as under: :

" The net income of the trust estate shall be spent as follows:

(1) A sum of Rs.100/- every year for the performance of Thirumanjanam Utsavam for the deity Sri Parthasarathy Swami in Sri Parthasarathy Swami Temple Triplicane on Rohini Nakshatram day in Purattasi month every year with Sakkarai Pongal Thaligai.

(2) A sum of Rs.100/- every year for the performance of Pavithrottsavam for the deity Sri Venugopalaswami in Sri Venugopalaswami Temple at Poondi Village, Wallajah Taluk, North Arcot District.

(3) A sum of Rs.600/- every year for the performance of the Pavithrothsavam of the Deity Sri Lakhmi Narasimha Swami. Navarathri Utsavam of Thayar and Karthigai Utsavam of Anjaneyar at Sholinghur.

(4) *A sum of Rs.400/- every year for the performance of Thathiyarathanam in Andavan Periya Ashramam, Srirangam, Tiruchirapalli, on the Mukkoti Dwadashi day every year.”*

6. The sums allocated in those days as per the above Will have become paltry sums today. The above Will had further set down that the father of the 1st petitioner would continue to act as Trustee till his life time and after his life time the trustee-ship would devolve upon the eldest male member of the executor's family.

7. This court by its order dated 29.01.1970 granted probate of the Will in favour of the petitioner's father M.K.Gopala Iyengar. Petitioner claims that the petition mentioned property is one of the immovable properties meant in the Will. After the demise of the petitioner's father M.K.Gopala Iyengar, the petitioner along with his wife, son and sister have created a trust by name *'M/s.Pundi Pattamal Srinivasa Iyengar Trust'*. The said Trust deed is marked as Ex.P5. The above Trust deed does not have any schedule of property which should be vested with the Trust.

8. The testator who is the original owner P.V.Srinivasa Iyengar in his Will has made it clear that the Executor /Trustee or his eldest male descendants do not have any right to alienate the petition mentioned property. In such case the petitioners cannot alienate or settle the petition mentioned property for a trust created by the petitioner and his family members on 16.12.2015. In fact the Will itself mentions that the father of the first petitioner could be the trustee for his properties.

9. As stated already Ex.P5 Trust deed dated 16.12.2015 does not have any property particulars. But in this petition the property schedule has been given as under:

'Schedule of property

All the piece and parcel of the Land and Building comprised in Old SurveyNo.2181, Re Survey No.1459, bearing Door No.25, Thandavaraya Mudali Street, Triplicane, Chennai to an extent of 2386 Sq.Ft. of Land with Building thereon bounded on the

North by	:	*Ganapathi Mudali Street*
South by	:	*Thandavaraya Mudali Street*
East by	:	*Survey No.1461 & 146*
West by	:	*Survey No.1458*

situated at within Registration District of Chennai Central and Sub Registration District of Triplicane.

10. In the Trust deed the trustees have reserved right upon themselves to sell, encumber or alienate the property with liberty to raise loan by giving the property as security. The testator has not intended that his property should be sold by any one. The executor can only carry out the limited functions listed by the testator from the income obtained from the property and he can not transfer or vest any interest in respect of the property in favour of any one.

11. It is understandable that the 1st petitioner who resides at Bangalore may not be in a position to manage the petition mentioned property. Since the first petitioner is not able to manage the properties and do the functions expected by the testator, he had chosen to create a trust and transfer the administration to the trustees appointed through the trust deed. Though it sounds to be practical, the law does not permit to do so. Further, persons who do not have any title for the property in question can not vest the property in favour of the trust created by them. Unless the trust created by the petitioners own the property in the schedule they can not transfer its title to any one else.

12. The one and only course open to the first petitioner is to transfer the asset to the Administrator-General by an instrument in writing under his hand and under gazette notification in accordance with Sec.22 of the

Administrator General Act. Sec.22 of the said Act prescribes as under:

Sec. 22. Transfer by private executor or administrator of interest under probate or letters.—

(1) Any private executor or administrator may, with the previous consent of the Administrator-General of the State in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the Official Gazette, transfer the assets of the estate, vested in him by virtue of such probate or letters to the Administrator-General by that name or any other sufficient description.

(2) As from the date of such transfer, the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts done before the date of such transfer, and the Administrator-General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer.

13. In case the Administrator General does not give his consent for getting the transfer of the property and its Administration upon him, then the property has to be treated as a heirless property. Even though the owner of the property had executed the Will on 30. 03.1967, the Will does not state anything about how the inheritance in respect of the property has to take place. In the said Will the first petitioner's father and after him his eldest male legal heir has been just given with the responsibility of administering the properties for the purpose of fulfilling certain objectives.

14. If the first petitioner is not able to continue the administration or the property itself has become dilapidated and lost its potential to rear any income, without considerable investment towards repair or reconstruction and the eldest male legal heirs of the executor also finds it not possible to do so, then the trust will come to a halt by itself and the property will become an abandoned property or a property left without any heir.

15. At the risk of repetition it is reiterated that the first petitioner's father or his eldest male legal heirs were not given with any absolute right to deal with the property. In fact the so called Will explicitly injuncts the first petitioner's father or his male legal heirs from assuming any right to sell or encumber the properties.

16. In such case, Sec.29 of the Hindu Succession Act read with Article 296 of Constitution of India can be invoked. Sec.29 speaks about *Escheat.* The provision of Sec.29 of the Hindu Succession Act reads as below:

> **Escheat**
> **Sec.29 of the Hidu Succession Act 1956**
>
> **Failure of heirs.-***If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the Government; and the Government shall take the property subject to all the obligations and liabilities to which an*

heir would have been subject.

17. Even though the testator had made a testamentary disposition, that is for the limited purpose of carrying out certain functions set out in the Will by appointing an Executor/Trustee and giving the right of inheritance of the trusteeship to the eldest male descendants of the Executor /Trustee. In the absence of any other trustee mentioned in the Will and the named trustee is incapable of managing and fulfilling the objects, the property has to be considered as a property falling under Escheat only. As per Article 296 of Constitution of India, property left without any legal heir to succeed would be vested in the State. So it is the Government which will exercise right over the properties of the owner, if it is abandoned due to the inability of the first petitioner or his male legal heirs. For the sake of completion Article 296 of the Constitution of India is reproduced herewith:

Article 296 of the Constitution Of India

296. Property accruing by escheat or lapse or as bona vacantia Subject as hereinafter provided any property in the territory of India which, if this Constitution had not come into operation, would have accrued to His Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union: Provided that any property which at the date when it would have so accrued to His Majesty or to the Ruler of an Indian State was in the possession or under the control of the Government of India or the Government of a State shall, according as *the purposes for which it was then used or held were purposes of the Union or a State, vest in the Union or in that State Explanation In the article, the expressions Ruler and Indian State have the same meanings as in Article 363.*

18. So in all probabilities neither the first petitioner nor any one else has got any right either in their individual capacity they assume upon themselves including the capacity of the Administrator to sell away the properties. The value fixed for the property also very meagre and it can not in any way match the market value of the property, which is situated in a potential area at Chennai. The permission sought by the first petitioner to sell the property is against the wishes of the testator and hence such a permission can not be granted.

In the result, this Original Petition stands **dismissed.**

23.08.2023

jrs

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking
Neutral : Yes /No

APPENDIX

Petitioner's Witness:

M.K.Muralidhar- PW.1

Exhibits	Documents
Ex.P1	The photocopy of the certificate of extract from the permanent land Register dated 27.02.1932 in the name of C.V.Ramasamy Mudaliar (compared with the original)
Ex.P2	The photocopy of the release deed dated 11.12.1953 in favour of C.Purushotham Mudaliar (compared with the original)
Ex.P3	The photocopy of the sale deed dated 11.12.1953 in favour of Mrs.P.V.Pattammal (compared with the original)
Ex.P4	The photocopy of the probate order dated 29.01.1970 in OP.No19 of 1970 passed by this High Court (compared with original)
Ex.P5	The photocopy of the Trust Deed dated 16.12.2015 (compared with the original)
Ex.P6	The online print out of certificate of extract from the permanent land Register dated 17.06.2022 in the name of the petitioner Trust.
Ex.P7	The photocopy of the Income Tax Return Statement for Assessment Year 2020-21 of the petitioner trust (compared with the original)
Ex.P8	The photocopy of the Income Tax Return statement of Assessment Year 2022-23 of the petitioner trust (compared with the original)
Ex.P9	The photocopy of the Income Tax Return Statement of Assessment Year 2022-23 of the petitioner Trust (compared with the original)
Ex.P10	The photocopy of the Board Resolution dated 19.11.2022 passed by the petitioner trust (compared with the original)
Ex.P11	The photocopy of the 1st petitioner's Aadhar Card (compared with the original)
Ex.P12	The photocopy of the Aadhar Card of the 2nd petitioner (compared with the original)
Ex.P13	The photocopy of the Aadhar Card of the 3rd petitioner (compared with

Exhibits	Documents
	the original)
Ex.P14	The photocopy of the Aadhar Card of the 4th petitioner (compared with the original)
Ex.P15	The copy of paper publication effected in one issue of Tamil daily 'Makkal Kural' dated 15.04.2023.
Ex.P16	The copy of paper publication effected in one issue of English daily 'Trinity Mirror' dated 15.04.2023.

23.08.2023

R.N.MANJULA, J.

jrs

Original Petition No.108 of 2023

23.08.2023