



A.Nos.1129 & 1130 of 2023 in
C.S.No.536 of 2009

R.N.MANJULA,J.

These applications have been filed to substitute the applicants as the plaintiffs in the suit in the place of Late Mr.D.Varadarajulu and Late Mr.T.Chakravarthi.

2. The applicants are the third parties. The applicant in A.No.1129 of 2023 is the Chartered Accountant by profession. The first plaintiff was the father's friend of the applicant and he passed away on 05.01.2012. Along with D.Varadarajulu, the applicant has also been appointed as one of the executors in the Will of M.Venugopal Reddy.

3. The suit has been filed by the deceased plaintiffs D.Varadarajulu, T. Chakrvarthi and R.Parthasarathy (Plaintiffs 1 to 3) against Lakshmikanthamma and R.Mohan for removal of the defendants from the office of the trustees of Thiruneelakandar Trust; for appointment of second and third plaintiffs as co-trustees of the Trust; for a declaration that the first plaintiff is a life trustee; to hand over the



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possession of trust properties to the plaintiffs and direct the defendants to account for the earnings of the Trust that have been misappropriated and pay the same to the Trust.

4. Though the first plaintiff died on 05.01.2012, the other two plaintiffs continued to conduct the case. The first plaintiff by a Will dated 04.08.2010 had appointed the applicant as the successor to the office held by him in the Thiruneelakandar Trust. The applicant was contacted by V.K.Murthy and was informed of the Will in the month of June, 2022. Hence, the applicant in A.No.1129 of 2023 has to be impleaded as a plaintiff in view of the death of the first plaintiff.

5. The applicant in A.No.1130 of 2023 is a businessman and he is involved in several charitable activities. It is submitted by the applicant that the Court has passed an *ex parte* decree on 11.12.2019 by upholding the appointment of the plaintiffs as the Trustees of the trust; later on 24.08.2020, the Board of trustees passed a resolution appointing the applicant, Mr.R.Hariharan and Mrs.G.Aswini as trustees to the Trust.



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The second plaintiff who acted as a trustee and with whom he had acquaintance, died on 19.11.2021; on 21.01.2022, the *exparte* order was set aside and the suit was restored to file; the applicant after having been appointed as a trustee, acquainted himself with the issues and affairs concerning the suit and the Trust; hence the applicant in A.No.1130 of 2023 is the competent person to be substituted as a plaintiff; no prejudice would be caused to the respondents in allowing the above application.

6. The respondents have filed counter by stating that *vide* letter dated 24.12.2005 D.Varadarajulu had appointed T.Chakaravarthi and R.Parthasarathy as trustees only for a period of five years; hence, on the date of passing resolution on 24.08.2020 the said D.Chakaravarthi and R.Parthasarathy were not the trustees of Thiruneelakandar Trust to get appointed as trustees; when the original leave to sue order was passed on 22.08.2008, one R.Parthasarathy and T.Chakaravarthi were the trustees of the Trust and subsequently, their term expired; therefore, they have no right to convene trust meeting to appoint trustees; the applicants are not interested in the Trust and their appointment is illegal; they filed these



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applications to substitute themselves as plaintiffs only with some ulterior motive.

7. When the applications were taken up, the learned counsel for the applicants submitted that in view of the death of the first plaintiff and also considering the fact that the applicants have been approved as the trustees of the Trust, they have to be substituted as plaintiffs. The same was resisted by the learned counsel for the respondents / defendants by stating that on the date when the permission was obtained under Section 92 CPC for filing the suit, the applicants were not the trustees and hence, they cannot be inducted directly without getting any prior permission under Section 92 CPC and that the resolution passed for appointment of the applicants as the trustees itself is not valid and the trustees whose terms got expired had convened the meeting which is illegal.

8. At the time when the suit was filed, the three plaintiffs who were the trustees of the Trust were permitted to file the suit on behalf of the Trust. The first plaintiff and the second plaintiff had died. By virtue of a



resolution passed in the Trust when some of the trustees were alive, the applicants were approved as trustees. The third plaintiff alone is the living trustee who is conducting the suit on behalf of the Trust. Permission has already been granted for filing the suit on behalf of the Trust, taking into consideration of the public nature of the Trust. Even though the trustees who had obtained permission are no more, the permission granted is valid and is in force. The permission was granted to save the interest of the Trust and not the interest of the individual trustees. Hence the respondents cannot raise objection on the ground that on the date of obtaining permission, the proposed applicants were not the trustees.

9. Since the applicants have been approved as the trustees of the Trust, it is right for them to state that they are the interested parties in the affairs of the Trust. Since these are only the applications to substitute the applicants as plaintiffs in the place of the deceased plaintiffs 1 and 2, the validity of the resolution passed in the Trust or any other contentious matters involving the suit cannot be dealt now. However, it is open to the



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respondents to file an additional written statement and raise their objections as to the validity of the resolution passed for appointing the applicants as the trustees or any other contentions in this regard.

10. With these observations, these applications are allowed. The learned counsel for the applicants is directed to carryout the necessary amendments and file the amended copy of the plaint.

30.03.2023

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