



A.Nos.1945 of 2023& 7302/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.04.2023
Pronounced on	30.06.2023

CORAM

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

Application No.1945 of 2023
in TOS.No.23 of 2003
and
Application No.7302 of 2018
in TOS.No.36 of 2006

Application No.1945 of 2023
in TOS.No.23 of 2003

In the matter of the Indian Succession
Act XXXIX of 1925
And
In the matter of the Last Will and
Testament of Sadhu A.N.Sarkar-
Deceased.

Abraham Samarendranath Sirkar ... Applicant
/ Defendant in A.No.1945/2023
... Applicant
/ Plaintiff in A.No.7302/2018

Vs.

Sadhu A.N. Sirkar Foundation,
Rep. by its Board of Trustee
E.Nandakumar ... Respondent/Plaintiff in A.No.1945/2023
... Respondent/Defendant in A.No.1945/2023



Prayer in Application No.1945/2023:- Application filed under Order XIV Rule 8 of O.S. Rules read with Order VII Rule 11 CPC and Section 236 of the Indian Succession Act, to reject the Plaint in TOS.No.23 of 2003.

Prayer in Application No.7302 of 2018:- Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, to restore for disposal on merits TOS.No.36 of 2016 closed under the Terms of Compromise recorded by Order of this Court dated 27.08.2007 in TOS.No.23 of 2003.

In both applications,

For Applicant : Mr.T.M.Hariharan

For Respondent : Mr.M.S.Mani, Senior Advocate
for M/s.C.Jagadish

COMMON ORDER

The Application in 1945 of 2023 has been filed by the applicant to reject the Plaint in TOS.No.23 of 2003 and another Application in 7302 of 2018 has been filed to restore TOS.No.36 of 2016 which has been closed in terms of compromise recorded by the Court in TOS.No.23 of 2003 dated 27.08.2007.



2.Heard Mr.T.M.Hariharan, learned counsel appearing for the applicant and Mr.M.S.Mani, learned Senior Advocate for M/s.C.Jagadish for the respondent.

3. The averments of both the applications in brief:

3.1. The applicant is the defendant in TOS.No.23 of 2023. The respondent is the plaintiff, who has filed the suit for grant of Letters of Administration with a certified copy of the Will said to have been executed by the Plaintiff's father, Amarendranath Sirkar, dated 30.06.2000. The plaintiff is the sole legatee under the Will dated 09.03.2002. Originally, the plaintiff and the defendant had entered into a compromise on 13.09.2007 and an Application was filed by the third parties to claim rights in some of the properties. An order was passed on 02.03.2017 in Application No.2608 of 2012 for setting aside the compromise and revoke the Letters of Administration. Hence, the plaintiff has the duty to prove the genuineness of the Will. But the testamentary suit filed by the plaintiff itself is not maintainable and is liable to be rejected. The plaintiff is an association of individuals by name 'Sadhu A.N.Sircar Foundation' and under Section 236 of the Indian Succession Act, Letters of Administration cannot be granted to

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the respondent. Hence, the suit filed by the respondent / plaintiff should be dismissed.

3.2. The applicant is the plaintiff in TOS.No.36/2006 and son of the testator of Amarendranath Sirkar who executed a Will dated 19/3/2002. As per the said Will, the father had bequeathed the compensation payable in LAOP.No.4 of 1992 on the file of the Sub Court Vellore [renumbered as LAOP. No.955/2013 on the file of Special Court for LAOP cases, Vellore and disposed on 30.11.2016] in respect of the acquisition of his lands measuring an extent of 11.05 Acres in Survey Numbers.13, 14, 15 and 16 in Dharapadavedu Village in Katpadi Taluk. The applicant has filed an Original Petition in OP.No.1/2004 on the file the District Court, Vellore for grant of Letters of Administration in his favour in pursuant of his father's Will dated 09.03.2002. The respondent has filed another OP.No.94/2003 before this Court for grant of Letters of Administration by producing a certified copy of the Will dated 30.6.2000 of the father of the applicant. It is claimed by the respondent that in the said Will the testator had his access including the compensation amount to be paid to the above mentioned LAOP in favour of the respondent Trust. On the caveat petition filed by the applicant, the said OP.No.94/2003 was converted into TOS.No.23/2003.



The other OP filed by the applicant in 1/2004 claimed to be transferred to this Court and renumbered as TOS.No.36 of 2006 and to be tried along with TOS.No.23 of 2003.

3.3. During the proceedings, the applicant and the respondent entered into a joint compromise on 16.07.2007 and the said compromise was recorded on 13.09.2007 and in pursuant to the said compromise, TOS.No.23 of 2003 was also disposed. The application in A.No.2608 of 2012 was latter filed by the two applicants namely M.Vijayalakshmi and G. Bakiyalakshmi for revocation of Letters of Administration given to the 1st respondent in A.No.2608/2012, by alleging that the compromise itself is fraudulent.

3.4. It is further contended that the testator A.N.Sircar had already sold Item No.1 of the schedule of the properties in the Will to the above persons through three sale deeds dated 14.12.2001, to the applicants and one Venkatesan. After the death of Venkatesan, his share was inherited by his mother Vijayalakshmi. In TOS.No.23/2003 also the said fact was admitted, hence by virtue of order dated 2/3/2017 the said application in 2608/2012 was allowed and the Letters of Administration granted in favour of the respondent was revoked. The Letters of Administration granted in respect of both the Wills dated 9/3/2002 and 30/6/2002. In the said order the



compromise dated 16.07.2007 does not survive. Hence, TOS.No.36/2006 should be restored for getting it disposed on merits.

4. The counter affidavit filed by the respondent is in brief:

The respondent is the managing trustee of the plaintiff's trust with effect from 24.04.2002. The Plaintiff trust is a juridical person/institution in the eyes of the law and it is capable of holding properties. The defendant has filed this application just to drag the trial. The objection raised by the applicant is not seen in the written statement filed by him. The present application has been filed by the applicant just in order to add strength to the Testamentary Suit in TOS.No.36 of 2006 filed by the applicant on a fabricated unregistered Will. The respondent/ plaintiff is a charitable trust, which is very much an institution and a person in the eye of law. The plaintiff, in his capacity as a managing trustee is authorised to attend all legal proceedings and he is also authorised to appoint new trustees as per the trust deed. Two new trustees have been appointed in place of two trustees who died already. There is no cordial relationship between the founder cum Testator or his son, who is the defendant herein. Section 236 read with Section 213 of the Indian Succession Act of 1925, would clearly

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show the plaintiff's eligibility to file the suit.

4.1. The counter in TOS.No.36/2006 is not filed by the respondent.

5. The sole contention of the applicant is that the suit itself is not maintainable and no Letters of Administration can be granted in favour of the trust and it is barred under Section 236 of the Indian Succession Act-1925. Reliance was placed by the applicant on the judgement of the Hon'ble Supreme Court held in the case of *Illachi Devi (dead) by Lrs. And others Vs. Jain Society, Protection of Orphans India and others* reported in **(2003) 8 Supreme Court Cases 413.**

6. Mr.M.S.Mani, learned Senior Advocate for M/s.C.Jagadish for the respondent/plaintiff submitted that a Trust is a very much juridical person in the eyes of the law. According to Article 300-A of the Constitution of India a Trust is entitled to hold properties. It is always open to appoint anyone or more number of the trustees to manage the affairs and properties of the trust. Hence there is no bar for the plaintiff to file a Testamentary Suit for granting Letters of Administration.



6.1. In support of his above contention the following judgements have been cited:

Sl. No	Citations submitted by the respondent/plaintiff's counsel	Reported in
1		
1	Ganga Sahai-Vs. Bhart Bhan & Others	AIR-1950 Allahabad 196
2	Ganga Sahai-Vs. Bhart Bhan & Others	AIR-1950 Allahabad 480
3	Inder Chand Nayyar-Vs.Sarvadeshik Arya Pardinithi Sabha & another	AIR-1977 Delhi-34
4	Illachi Devi (Dead) by Lrs && Others Vs. Jain Society Protection of Orphans India & Others	(2003) 8 Supreme Court Cases 413
5	Abraham Memorial Educational Trust & 7 others Vs.C.Suresh Babu	(2012) 5 CTC-203
6	Swamy Ayyappan Educational Trust. Reptd by its Trustee Vs. Deputy Superintendent of Police Vigilance Anti Corruption	Web copy of common orders in WP.No.24785 of 2022, High Court, Madras

7. The applicant is the plaintiff in TOS.No.36 of 2006 and the defendant in TOS.No.23 of 2003 filed by the respondent. For the sake of convenient discussion the applicant is referred as applicant /defendant. Since the evidence is being let in TOS.No.23 of 2003 the applicant is described as applicant /defendant.

8. Before adverting into the merits of the contentions of the respective parties, it is imperative to look into the provisions of Section 236 of the Indian Succession Act. Section 236 of the Indian Succession Act-1925



speaks about to whom the administration may not be granted and it reads as follows:

"Section 236 in The Indian Succession Act, 1925

236. To whom administration may not be granted.—Letters of administration cannot be granted to any person who is a minor or is of unsound mind, **1[nor to any association of individuals unless it is a company which satisfies the conditions prescribed by rules to be made 2[by notification in the Official Gazette,] by the 3[State Government] in this behalf]."**

9. According to the above provision, Letters of Administration cannot be granted to the following categories of persons:

- 1. who is a minor or a person of unsound mind and*
- 2. to any association of individuals, unless it is a company that satisfies the conditions prescribed by rules to be made by notification in the official gazette by the government.*

10. The two suits have been filed by the respondent/plaintiff who is a Trust represented through its managing trustee. Hence, the ineligibility attached to a minor or person of unsound mind does not arise in this case. However, the applicant/defendant attempts to invoke the other category,



which is 'association of individuals'.

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11. Section 236 of the Indian Succession Act-1925 stipulates that letters of administration cannot be granted to any association of individuals unless it is a company. It is due to the responsibility and accountability with which the executor has to administer the property subject to the conditions laid down in the Letter of Administration. And the Will of the Testator has to be executed in accordance with his wishes. If more than one person is given with the Letter of Administration, it is not be possible to administer the property in a manner expected by the testator and each individual in the association would have his own whims or choices either to administer or not to administer the property and that will not serve the purpose of appointing executors.

12. The applicant/defendant had relied on the judgement of the Hon'ble Supreme Court held in the case of ***Illachi Devi (dead) by Lrs. And others Vs. Jain Society, Protection of Orphans India and others*** reported in **(2003) 8 Supreme Court Cases 413**. The above judgement deals with the eligibility of a society to get a Letter of Administration.



13. The Hon'ble Apex Court held in the above judgement that though letters of administration cannot be granted in favour of a society in view of Section 236 of the Indian Succession Act-1925, the same can be granted in favour of a '*person*' authorised by the society either in terms of the statute itself or a resolution adopted in this regard by the society and such person is answerable to the Court. With the grant of Letters of Administration, the person nominated by the society can carry out the wishes of the testator for the benefit of the society. The above case has arisen from a situation where a Will was executed in favour of a society formed for the protection of orphans.

14. The judgement has dealt with various judgements and the conflicts of opinions. However, by considering the entitlement of a society to own properties and also that the Will in question was executed in favour of the society, the Court thought it fit to strike a balance and held that the Letter of Administration or probate can be granted in favour of a person nominated by the society for the said purpose, although the same cannot be given in favour of the society, which is an association of individuals. In fact the Hon'ble Supreme Court recorded the necessity to call for an amendment



to meet the growing needs of the country in the field of law applicable to Wills.

15. But the case in hand is connected to a Trust not an association. An argument was made before this Court in the case of **Abraham Memorial Educational Trust & 7 others Vs. C.Suresh Babu** [reported in **2012 SCC OnLine Mad 2986**], that when a trust is not a person, it cannot be punished for an offence under Sec.138 of the Negotiable Instruments Act-1881. After an elaborate discussion and by appreciating various legal aspects, it is held in the said case that the Trust is very much a person, irrespective of the number of trustees, and that it is a company in terms of Section 141 of the Negotiable Instruments Act-1881 and so, every trustee who was in charge of the Trust for the day-to-day affairs of the Trust is punishable for the offence under Section 138 of the Negotiable Instruments Act 1881.

16. The word '*person*,' as defined under Section 11 of the Indian Penal Code, would include a company, an association of persons, or a body of persons, whether incorporated or not. However, Section 236 excludes



certain persons from the eligibility to get probate / letters of administration in view of Sections 223 and 236 of the Indian Succession Act. But the anomaly arises because of the entitlement of a juridical person like a trust or a company to own the property in its favour. When someone executes a Will by bequeathing his properties in favour of a society, company, or trust, there should not be any confusion in the manner in which the property has to be managed or who is answerable before the court for such administration after receiving the Letter of Administration.

17. As stated supra that the anomaly was reconciled by the courts in *Illachi Devi* (cited supra) that a person appointed by the society or a company can be eligible to receive the probate / Letters of Administration on behalf of the society. It is clarified that there need not be any doubt about the juristic nature of the trust as a person, and the said position is upheld in the case of **Abraham Memorial Educational Trust & 7 others Vs. C.Suresh Babu** [reported in 2012 SCC OnLine Mad 2986] by holding that by applying the doctrine of *ejusdem generis* and by going into the purpose and context while interpreting Section 11 of the Indian Penal Code and Sec.2 (42) of the General Clauses Act-1897 which define the term 'person',



it can be safely concluded that the Trust would also fall within the ambit of the definition of '*person*'.

18. With the light thrown from the above judgement, the issue raised in the present applications can be safely disposed. The respondent /plaintiff who represented the Trust has already given Ex. P6, which is a copy of the joint consent affidavit filed by the other trustees of the trust. So there need not be any difficulty for the Court to act in terms of Section 236 of the Indian Succession Act to avoid the issuance of Letters of Administration in favour of the association of a individual. On the other hand, the same can be given in favour of a single person who has been authorised by the trust, in the event of proving the genuineness of the Will.

19. The applicant, who relied on the decision of the Hon'ble Supreme Court in the case of *Illachi Devi* (cited supra) is aware of the legal position. Still, he had filed these applications for rejecting the plaint can only be conceived as a frivolous attempt to delay the proceedings. In fact, the earlier order dated 20.03.2023 made in the suit proceedings, it has been observed as below:



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“The learned counsel for the plaintiff in T.O.S No.36 of 2006 and the defendant in T.O.S. No.23 of 2003 submitted that he has filed a petition to reject the suit in TOS No.23 of 2003 and the same was returned and he is representing the same.

2. The learned counsel for the defendant in T.O.S.No.36 of 2006 and plaintiff in T.O.S.No.23 of 2003 submitted that in view of the simultaneous trial, evidence is being let in T.O.S.No.23 of 2003 and P.W.1 has been examined. Due to the non cross examination of P.W.1 on several hearings, the records have been sent back to Court.

3. On a perusal of records, it is seen that P.W.1 has been examined on 23.02.2022. The learned counsel for the plaintiff in TOS No.23 of 2003 expressed his concern that out of two attesting witnesses in the Will involved in T.O.S.No.23 of 2003, one witness died and he has to examine other witness.

4. In view of the unnecessary delay caused by the plaintiff in T.O.S No.36 of 2006, the defendant who is the plaintiff in other connected suit T.O.S. No.23 of 2003 got frustrated. As on today, there is no application for rejecting the plaint, is pending. Even if any such application is filed, it is needless to state that all those objections to maintain the plaint can be raised at the time of hearing the suit itself. Since the trial has already been commenced and witnesses are in the box, it is ideal for the defendant in T.O.S.No.23 of 2003 to extend his cooperation to cross examine P.W.1.

5. However, the learned counsel for the defendant (T.O.S.No.36 of 2006) submitted that if a date is fixed, P.W.1 will be cross examined conveniently.



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6. Considering the same, Registry is directed to list the matter before the Additional Master II on 03.04.2023. For any reason, the defendant in T.O.S.No.23 of 2003 does not cross examine P.W1 on the said date, the opportunity granted today will be forfeited.”

20. Having known the above order, the applicant has found the pleasure of filing these applications for the reasons best known to him. It is reiterated that there is no legal infirmity for the plaintiff to maintain the suit and that he is eligible to get the Letter of Administration in the event of proving the genuineness of the Will. So, the applicant /defendant has to cooperate for trial without adopting any further delaying tactics.

21. Since the Letters of Administration was granted in pursuant to the compromise dated 16.7.2007 and that has been already revoked, it goes without saying that TOS.No.23 of 2003 and TOS.No.36/2006 get restored consequently. The original petition filed by the applicant as plaintiff had been transferred and numbered as TOS.No.36/2006 and ordered to be tried along with TOS.No.23/2003. Only during the pendency of the said proceedings, both the Testamentary Original Suit got disposed in terms of the joint compromise memo. So, the revocation of Letters of Administration



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issued pursuant to the above said compromise would have its impact in TOS.No.36/2006 also. Equally for the said reason, TOS.No.36/2006 should also be tried along with TOS.23/2003.

22. In fact the endorsement of the Master's Court would show that a simultaneous trial should be done in both TOS.No.23/2003 and TOS.No.36/2006. PW.1 alone is examined in chief in TOS.23/2003 and it is pending for cross examination and so, it is not too late for trying TOS.No.36/2006 also simultaneously with TOS.No.23 of 2003. The respondent has no objection in restoring TOS.No.36/2006 and in fact, it is the natural consequences of revoking the Letters of Administration issued in pursuant to the above said compromise,

In the result, the **Application in 7302 of 2018 is allowed** and TOS 36/2006 is restored to be tried simultaneously along with TOS.No.23/2003 and the **Application in 1945 of 2023 is dismissed.**

30.06.2023

jrs



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Internet : Yes
Speaking/ Non-Speaking
Neutral: Yes



A.Nos.1945 of 2023& 7302/2018

R.N.MANJULA, J.
jrs

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in TOS.No.23 of 2003
and
Application No.7302 of 2018
in TOS.No.36 of 2006

30.06.2023