

O.S.A.No.208 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2025

CORAM :

**THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

O.S.A.No.208 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

... Appellants

Prayer: Appeal filed under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of Letters Patent against the order and decree dated 23.08.2023 made in O.P.No.108 of 2023 on the file of this Court.

For Appellant : Mr.Muralikumaran, Senior Counsel
for Mr.S.Sathish Rajan

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

Pundi Pattamal Srinivasa Iyengar Trust (in short 'Trust') had filed an Original Petition under Section 34 of the Indian Trusts Act, 1882



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praying that the trustees be permitted to sell the property at Old Survey No.2181, Re-Survey No.1459, bearing Door No.25, Thandavaraya Mudali Street, Triplicane, Chennai to an extent of 2386 sq.ft. (in short 'schedule property') and such that the Trust may utilise the sale proceeds for its welfare and for furtherance of its objects. The Original Petition had come to be dismissed on 23.08.2023, as against which, the present appeal has been filed.

2. Mr.Murali Kumaran, learned Senior Counsel appearing for Mr.S.Subramaniya, learned counsel on record for the appellant/Trust would assail the impugned order dated 23.08.23 and take us through several judgements to illustrate the proper position of law in regard to the procedure for permission for the sale of assets of trusts, both public and private charitable trusts.

3. The deed of the trust of petitioner has been placed before us, per which, the petitioner is a public trust. This becomes apparent from the objects extracted below:-

'3. The object for which the trust is established by the settler and the trustees who are the family members of the settler is a) to donate for various religious functions that will be carried out in the SRIVASHNAVA TEMPLES situated anywhere in India or abroad, b) To maintain,



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manage, improve, renovate, re-construct the immovable properties left behind by the testator of the aforesaid will.'

4. The legal position in regard to the procedure to be followed by a public trust in the disposal of its assets was first considered by three Hon'ble Judges of the Supreme Court in *Official Trustee Vs. Sachindra Nath Chatterjee and another*¹. The Supreme Court considered the question of which would be the appropriate forum to consider this issue and which Court would have proper jurisdiction to do so. The question that the Supreme Court posed for itself was '*what is meant by jurisdiction?*'

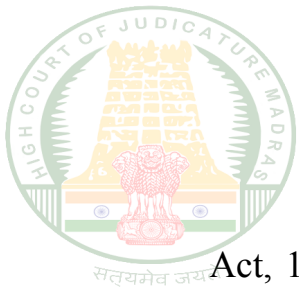
5. Referring to the decision of the Full Bench of the Calcutta High Court in *Hirday Nath Roy V. Ramachandra Barna Sarma*² and a decision of this Court in *Thulijaram V. Gopala*³, the Supreme Court concluded that before a Court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the suit brought before it, but also have the authority to pass the order sought for.

6. On the anvil of the concurrent decisions that the Court had rendered earlier, the Court concluded that Section 33 of the Indian Trusts

¹ AIR 1969 SC 823

² AIR 1921 Cal 34 (FB)

³ AIR 1918 Mad 1093



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Act, 1882 would not vest in the learned Judge the jurisdiction to dispose trust assets or to permit alternation of any of the terms in trust deed except as regards a) *Changes in the nature of an infant's property e.g. by directing investment of his personality in the purchase of freeholds; b) Allowing the trustees of settled property to enter into some business transaction which was not authorised by the settlement; c) Allowing maintenance out of income which the settler or testator directed to be accumulated; and d) Approving a compromise on behalf of infants and possible afterborn beneficiaries.*

7. Later decisions have refined and streamlined the propositions even further. In *Trustees of HEH the Nizam's Pilgrimage Money Trust, Hyderabad v. The Commissioner of Income Tax, Andhra Pradesh, Hyderabad*⁴, the question that arose related to the assessment of certain incomes of the Trust under the Wealth Tax Act, 1957 for assessment years 1974-75 and 1975-76.

8. The trust had made an application before the Chief Judge of the City Civil Court, Hyderabad seeking relief under Section 34 of the Indian Trusts Act for utilization of the income of the trust fund for various objects. Ultimately, the application filed under Section 34 was itself held

4 CDJ 2000 SC 264



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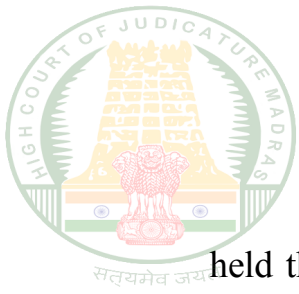
to be inappropriate for the reason that Section 34 would apply only to a private trust and the trust in that case was a public charitable and religious trust. So too in this case.

9. It is a position settled by several judgements, including the aforesaid two, that Section 34 would apply only in the case of a private trust and not to a trust with wide ranging public objects. A learned Judge of this Court in the case of *Swami Dayanandha Saraswathi Memorial Trust, Rep. by its Managing Trustee R.Kannan, No.38, II Floor, Venkata Krishna Road, R.A.Puram, Mandaveli, Chennai-600 028 v. Sri Ramachandra Educational Trust, Rep. by its Managing Trustee Mr.Kumbeswaran, Dharmaneethi Village, Ayarpadi Post, Nemili Taluk, Vellore District*⁵ considered a petition filed under Section 34 of the Indian Trusts Act seeking approval and takeover of the respondent trust.

10. The Court reiterated the position that the provision invoked does not apply to public charitable trusts, referring to the judgment in *Sheik Abdul Kayum V. Mulla Alibhai*⁶, which had held a contra view, which view was reversed in the case of the *Trustees of HEH the Nizam's Pilgrimage Money Trust, Hyderabad* (supra), where the Supreme Court

⁵ O.P.No.1086 of 2019 dated 26.05.2020

⁶ AIR 1963 SC 309



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held that Section 34 is a special provision and could not be applied as a general principle.

11. Reference was also made therein to the provisions of Section 7 of the Charitable and Religious Trusts Act, 1920 which also applies to public charitable trusts and is analogous, in a way, to Section 34 of the Indian Trusts Act, 1882.

12. The above decision, in the case of *Swami Dayanandha Saraswathi Memorial Trust*, has been confirmed by a Division Bench of this Court in *A.R.R.Charitable Trust, Rep. by its Founder Trustee Mr.B.Ramachandran, No.31-B, Jawaharlal Nehru Salai, Thirunagar, Vadapalani, Chennai-600 026*⁷. That Bench considered a reference from an order of a learned Judge of this Court, who had found inconsistencies between the ratio of decisions in *Swami Dayanandha Saraswathi Memorial Trust* (supra) and in *Kanchi Charity Trust, Represented by its Managing Trustee, Mrs.B.K.K.Pillai, Wife of Late Dr.R.K.Pillai, having Registered Office at No.43, Kannadasan Salai, T.Nagar, Chennai-17 and another v. Mrs.Vailankanni*⁸.

13. In the latter, the learned Judge had taken the view that both

⁷ O.P.Nos.211, 252 & 183 of 2023 dated 12.10.2023

⁸ A.No.3671 of 2021, dated 27.10.2021



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Section 34 of the Indian Trusts Act, 1882 and Section 7 of Charitable and Religious Trusts Act, 1920, were applicable, drawing support from the judgment of the Supreme Court in *Ghat Talab Kaulan Wala v. Gopal Dass Chela Surti Dass (Dead) By Legal Representative Ram Niwas*⁹.

14. The learned Judge had held that Section 92 of the CPC providing for a scheme suit cannot be invoked in the absence of an allegation of breach of trust. That conclusion was not accepted by the Division Bench in the case of *A.R.R.Charitable Trust* (supra) that held that the suit under Section 92 to sell the trust property would be maintainable under Section 92 (1)(f) of the CPC, concurring with the decision in *Swami Dayanandha Saraswathi Memorial Trust* (supra).

15. The prayer in the Original Petition was to permit the trustees of the appellant 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. Section 7 of the Charitable and Religious Trust Act, 1920 and Section 34 of the Indian Trusts Act 1882, which have both been extracted below, would apply only in the case of private trusts where the scope of enquiry would be summary.

Section 7 of the Charitable and Religious Trust Act.

⁹ (2020) 13 SCC 50



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1920:

Section 7 : Powers of trustee to apply for directions:

(1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

(2) The Court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the person interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.

Section 34 of the Indian Trusts Act 1882:

Section 34: Right to apply to Court for opinion in management of trust-property:- Any trustee may, without



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instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

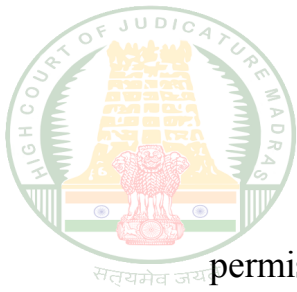
The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

16. The above provisions cannot be invoked in instances where amendment to the trust deeds are sought, or matters involving detailed enquiry and investigation arise, in which case, it would be appropriate for the trust to file a suit under Section 92 and proceed with the matter before the Civil Court. So too in the present case.

17. The learned Judge in the impugned order has proceeded to reject the original petition on several grounds and it appears that the question of maintainability had not come up for consideration. The learned Judge, thus, had had no occasion to go into the conspectus of the decisions brought to our notice.

18. In light of the aforesaid discussion, the original petition seeking



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permission to sell the trust property and utilise the sale proceeds is not liable to be considered under Section 34 of the Indian Trusts Act, 1882 and is held to be non-maintainable.

19. This Original Side Appeal stands disposed granting leave to the appellants, if they so desire, to approach the Civil Court by way of a suit under Section 92 of the CPC. No costs.

[A.S.M., J] [N.S., J]
18.07.2025

Index:Yes
Speaking order
Neutral Citation:Yes
sl

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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DR. ANITA SUMANTH.,J.
and
N.SENTHILKUMAR.,J.

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