M.K. Rappai & Ors vs John And Ors on 28 August, 1969

Equivalent citations: AIRONLINE 1969 SC 26

PETITIONER:
M.K. RAPPAI & ORS.

Vs.

RESPONDENT:
JOHN AND ORS.

DATE OF JUDGMENT:
28/08/1969

BENCH:

ACT:
Practice and Procedure-Suit for appointment of trustees, filed without complying with provisions of s. 92, Civil Procedure Code-Right declared, to be appointed as trustees when properly framed suit under section filed-Propriety-Declaration, if barred by s. 42, Specific Relief Act (1 of 1877) or s. 34 of Specific Relief Act (47 of 1963).

HEADNOTE:
By a deed of settlement, the settlor appointed besides himself, the father of the first plaintiff, the father of the second plaintiff, and defendants 1 to 3 and 10 and 11, as. trustees of an Educational and Charitable Trust. On the resignation of the fathers of the two plaintiffs, the remaining trustees appointed defendants 4 to 9 as trustees. The plaintiffs flied a suit making allegations against defendants 1 to 9 and claimed that they should be appointed as trustees. The High Court, in 'appeal, gave a declaration to the effect that the plaintiffs were; next in the line of succession, that they were entitled to claim appointment as trustees, but that such appointment could be made only in a properly framed suit after complying with the requirements of s. 92, Civil Procedure Code. The plaintiffs thereupon filed a fresh suit under s. 92 , C.P.C. Meanwhile, the defendants in the ,earlier suit filed an appeal against the judgment of the High Court, to this Court.

HELD: The suit was for appointment of the plaintiffs as trustees and fell within the provisions of s. 92 , C.P.C. Therefore, the judgment of the High Court giving the plaintiffs the right to be appointed as trustees, when the provisions of the section were not complied with, should be set aside. [127 H; 128 E]

(a) If the appointment fell within the vice of s. 92 any decision giving the plaintiffs the right to be appointed will be prejudging the question and would be an impediment as far as the defendants are concerned, in questioning, in the second suit, the right of the plaintiffs to be appointed as trustees. [128 A--B]

(b) If the right to be appointed as trustees were to be granted 10 the plaintiffs in the absence of compliance with the provisions of the section, it would amount to an indirect way of giving what was directly prohibited. [128 B]

(c) If the declaration were 'allowed to stand it would operate as res judicata and it would not be open to the defendants to question it in the subsequent proceedings. flied for the same relief after compliance with the section. [128 B--C]

(d) A hare declaration of the right without consequential relief will be within the mischief of s. 42 of the Specific Relief Act, 1877 or s. 34 of the Specific Relief Act, 1963. [128 D--E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1787 of 1966. Appeal from the judgment and decree dated May 18, 1964 of the Kerala High Court in Appeal Suit No. 591 of 1963.

D. Narsaraju and A. S. Nambiar, for the appellants. W.S. Badingay, R. Mahalingier and Ganpat Rai, for respondents Nos. 1 and 2.

The Judgment of the Court was delivered by Ray, J. This is an appeal from the judgment dated 18 May, 1964 of the High Court of Kerala allowing the appeal in part and allowing declaration to the effect that the plaintiffs are next in the line of succession to V.L. Lazar and T.V. John respectively and that they are entitled to claim an appointment as trustees. The High Court, however, concluded by saying that such appointment could be made in a properly framed suit under section 92 of the Code of Civil Procedure.

Counsel for the appellants contended that the High Court was in error in making the declaration particularly when the High Court said that such appointment could be made only in a properly framed suit under section 92 of the Code. In order to appreciate the matters in controversy it is necessary to refer to a few facts and the frame of the suit. The plaintiffs filed this suit in 1961 for a declaration that defendants numbered 4 to 9 were "trespassers" on the trust and that all acts and proceedings of defendants numbered 1 to 9 done since the resignation of T.V. John and V.L. Lazar in respect of the administration of the trust are invalid and void; that the plaintiffs be appointed as trustees; that defendants numbered 10 to 11 be declared to be, and to have always been, lawful trustees and for injunction restraining defendants numbered 4 to 9 from interfering with the trust; that an enquiry be made into their administration and accounts, recovery of properties and funds misused, wasted, disbursed or appropriated, and that defendant numbered 1 to 3 be declared to be

unfit to continue as trustees.

There was a deed of settlement dated 20 December, 1953 executed by a Christian T.V. Kochuvareed called "Thattil Kochuvareed Educational and Charitable Trust". Apart from the settlor, V.L. Lazar father of the first plaintiff and T.V. John father of the second plaintiff and defendants numbered 1 to 3, 10 and 11 were trustees. On 27 May, 1957 V.L. Lazar resigned from the trusteeship. On 12 March, 1960 T.V. John followed suit. The settlor and the rest of the trustees appointed six more trustees being defendants numbered 4 to 9 inclusive. The settlor Kochuvareed died on 26 July, 1961.

On 28 November, 1961 respondents numbered 1 and 2 namely, John son of V.L. Lazar and Varghese son of T.V. John the plaintiffs filed suit O.S. No. 115 of 1961 claiming, inter alia, that the plaintiffs be appointed as trustees. At the trial two preliminary issues were framed:

> Whether the suit was maintainable due to want of compliance with section 92 of the Code of Civil Procedure and whether the Court had jurisdiction to try this suit relating to trust. The trial Court came to the conclusion that the suit was within the mischief of non-compliance with the provisions of section 92 of the Code of Civil Procedure. The trial Court on 12 March, 1962 dismissed the suit and held that the suit had to be instituted after obtaining sanction under section 92 of the Code. The plaintiffs filed an appeal. On appeal the High Court on 20 August, 1962 allowed the appeal in part and set aside the dismissal of the suit in so far as it related to prayer 'e' and remanded the suit to the trial Court for trial in respect of that claim.
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> The trial Court on remand by judgment dated 23 August, 1963 held that the suit as flamed was maintainable and the plaintiffs were entitled to be declared as rightful trustees but the second plaintiff would have to exercise rights as trustee only on attaining majority.
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> Prayer 'e' in the plaint was as follows :--
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> "That plaintiffs be appointed to their rightful place as trustees and the second plaintiff being a minor now, be permitted to exercise his rights and safeguard his interests until he attains majority, through his 'Next Friend, namely his father".

The appellants, viz., defendants numbered 4 to 9 preferred an appeal. The High Court on 18 May, 1964 allowed the appeal in part and altered the declaration to the effect that the plaintiffs were next in the line of succession and that they were entitled to claim appointment as trustees, but such appointment could be only in a properly framed suit.

Counsel for the appellants contended that prayer 'e' was within the mischief of section 92 of the Code of Civil Procedure. It was further said that the plaintiffs (respondents 1 and 2) filed a fresh suit O.S. No. 1 of 1965 in the District Court, Trichur under section 92 of the Code of Civil Procedure praying, inter alia, for reliefs of removal of defendants numbered 4 to 9 and appointment of the plaintiffs as trustees in place of their respective fathers who resigned from such office and for other

reliefs. Counsel for the appellants contended that the finding in the present appeal that the plaintiffs were entitled to a declaration for appointment would constitute res judicata unless the same finding was set aside and the matter was kept entirely open in the new suit filed by respondents 1 and 2.

Counsel for the respondents contended that the decision of the High Court could be upheld because all that it said was that the plaintiffs were entitled to a right and the question of appointment would be canvassed in the suit. This contention is unacceptable because a suit for a bare declaration of right without further relief for possession and other reliefs as the facts and circumstances would require is not supportable.

The provisions of section 92 of the Code of Civil Procedure indicate, inter alia, that a suit for appointment of new trustees is competent only after compliance with the provisions of section 92 of the Code. The plaintiffs, namely, respondents 1 and 2 in the present case, alleged that defendants numbered 4 to 9 were strangers and "trespassers" in relation to the trust, and that the other defendants illegally introduced defendants numbered 4 to 9 into the Board of Trustees. The plaintiffs further alleged that defendants numbered 1 to 9 were guilty of waste and misappropriation. The plaintiffs further alleged that they had exclusive right to be appointed trustees. Section 92 of the Code of Civil Procedure prohibits a plaintiff from obtaining relief of appointment of new trustees without the compliance with the provision of the said section of the Code. The only question is whether prayer 'e' in the plaint can be said to be one for appointment of new trustees. The plaintiffs asked for appointment. It was said by counsel for the respondents that the plaintiffs under the deed of trust could be appointed trustees. Reliance was placed on clause (6) of the deed of trust which, inter alia, stated that in the case of a vacancy, the remaining trustees were to appoint a new trustee. It, therefore, follows that even under clause (6) of the deed of trust it would be an appointment of new trustees. The trustees in the present case did not appoint new trustees. The plaintiffs, therefore, came to court. The reason why the plaintiffs sought the aid of the Court is the appointment of trustees. It is only because the other trustees did not appoint a new trustee that the plaintiffs took recourse to the institution of the suit for the appointment of trustees. Further, unless the defendants are removed there cannot be an appointment of new trustees. We are, therefore, of opion that prayer 'e' in the present case, viz. the plaintiffs be appointed as trustees falls within the provisions of section 92 of the Code.

If as we held that the appointment of new trustees falls within section 92 of the Code can it yet be said that the plaintiffs will be entitled to a bare declaration of their right to be appointed. In the first place, it will be granting them the right to be appointed which itself is the foundation of appointment. If the appointment fails within the vice of section 92 any decision giving them the right "to be appointed will be prejudging the question and will be an impediment as far as the defendants are concerned in questioning the right of the plaintiffs to be appointed as trustees. Secondly, it is well settled that if any matter is directly prohibited, the same cannot be achieved indirectly. The appointment of new trustees is prohibited' in the absence of the compliance with the provisions of section 92 of the Code. If a right is granted to the plaintiffs to be appointed as trustees it will amount to an indirect way of giving the plaintiffs the relief of the right to be appointed. It will be particularly so because the right will be res-inclusa and will, therefore, be res judicata. The right will not be open to be questioned in subsequent proceedings. Thirdly, if the appointment of new

trustees cannot be proceeded with in the absence of compliance with the provisions of section 92 of the Code and when a suit has been instituted by the plaintiffs for the self-same reliefs after compliance with section 92 of the Code it is all the more necessary that the entire question of appointment which presupposes as its foundation the right to be appointed should be gone into the newly instituted suit in 1965 to which reference is made earlier. Fourthly, a bare declaration of right will be within the mischief of section 42 of the Specific Relief Act, 1877 and section 34 of the Specific Relief Act, 1963. We are, therefore, of opinion that the judgment of the High Court giving the plaintiffs the right to be appointed trustees should be set aside. It is made clear that contentions of the rival parties in the newly instituted suit are left open. The finding of the High Court and the:

> declaration granted by the High Court are both set aside. The suit is, therefore, dismissed.
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> For these reasons, the appeal is accepted and is allowed. The appellants will be entitled to costs.

V.P.S. Appeal allowed.