# Abdul Sathar Haji Moosa Sait ... vs Commissioner Of Agricultural Income ... on 7 August, 1973

## Equivalent citations: AIR1974SC1795, [1973]91ITR5(SC), (1974)3SCC257

## Bench: H.R. Khanna, P. Jaganmohan Reddy

JUDGMENT

K.S. Hegde, J.

1. These are appeals by certificate. The only question for consideration in these appeals is whether a part of the trust crated by one Abdul Sathar Haji Moosa by his Will dated 25th day of Kanni, 1099 M. E. is a public charitable trust within the meaning of Section 4(b) of Kerala Agricultural Income-tax Act, 1950. The High Court came to the conclusion that half of the income of the properties mentioned in Schedule B to the Will as well as l/4th of the income of that property which is reserved for augmentation of the corpus did not constitute a public charitable trust. It is only this part of the High Court's Judgment that is under appeal.

2. According to the appellant the entire trust is a public charitable trust but the Revenue rejected that contention. The High Court came to the conclusion that the income of the property bequeathed under the Will had been divided into four parts. l/4th was exclusively reserved for public charitable purpose; 2/4ths was reserved for giving assistance to the poor relations of the testator and the remaining l/4th was earmarked for the purpose of augmenting the corpus. The High Court agreed with the assessee that the first l/4th should be considered as charitable trust, but it rejected the contention of the assessee in other respects. We are now to consider whether the High Court was justified in coming to that conclusion.

3. Paragraph 9 of the Will provides for the maintenance and clothing of the relations of the testator. It reads thus:

> Two out of the remaining three portions shall be apportioned and given for meeting the expenses required for providing food, clothing, etc., to Moosa, son of my deceased son Abdul Karim, to Moosa's sisters, to my daughters, to my descendants who are their sons and grandsons, if any of them is indigent and also to their dependants according to their status, and also for meeting the expenses for their education, according to requirements. But if the trustees are convinced that in case a lump sum not exceeding Rs. 5,000/- is paid to any one branch and that family would thereafter live prosperously they shall be so paid and such lump sum payment shall not be made to more than one branch in a year." In paragraph 12 of that Will it is stated:

> In the matter of paying maintenance as stated in paragraph 9 the trustees must evince special care on my grandson Moosa and the male issues following his male issues and the amounts to be paid to them shall be paid to each one of them correctly and at proper time according to their status, position of the family and necessity for meeting the expenses for food and clothing, etc., without depending upon others and without any difficulty and for meeting the amount sufficient for their education and marriage. In case my descendants become extinct at any period from that day the said two portions shall remain for the charitable purposes stated in paragraph 8 of the Will and shall be utilised as indicated in paragraph 32.
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> Paragraph 13 of the Will provides that the arrangements contemplated in paragraphs 9 and 12 will have to continue subject to the conditions mentioned therein. Paragraph 14 of the Will stipulates that the income of the properties purchased annually by utilising the 1/4th income earmarked for the purpose of investment should be added to the income of the B Schedule properties and should be divided into four equal parts every year and expended as stated in paragraph 8 of the Will.

4. Then we come to paragraph 32 of the Will which provides that if the purpose mentioned in paragraph 9 of the Will became impossible of performance then the 3/4ths of the income shall be expended as provided in paragraph 8 and the remaining l/4th shall be utilised for the purpose of augmentation of the corpus.

5. From the above provisions it is clear that the 3/4th of the income of the B Schedule properties was primarily earmarked for the benefit of near relations of the testator. Hence we are in agreement with the High Court, that this part of the bequest cannot be considered as a public charitable trust. The scope of a provision similar to the one we are considering came up for consideration before us in the Trustees of Gordhandas Govindram Family Trust, Bombay v. The C.I.T., Bombay. (Civil Appeals Nos. 2882-2883 of 1969), decided on 18 11-1972 (SO). Therein we have discussed the legal position. Following the ratio of that decision we dismiss these appeals with costs. One hearing fee.

6. Before concluding this Judgment, it. is necessary to mention that Mr. K.T. Harindranath, the learned Counsel for the Department, raised a preliminary objection to the effect that the High Court was not competent to grant certificate under Article 133 of the Constitution in this case, as the High Court had merely given an advisory opinion. This objection does not appear to have been taken in the High Court nor the learned Counsel for the Department had notified to the other side that he would be taking that objection at the hearing. We have not gone into that objection in view of the fact that on merits, we have not upheld the appellant's case.