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N. S. RAJABATHAR MUDALIAR

v.

M. S. VADIVELU MUDALIAR & ORS.

September 9, 1969

B

[V. BHARGAVA, K. S. HEGDE AND A. N. RAY, JJ.]

Trust—Dominant purpose whether maintenance of family or charity—Construction of deed—Cy-pres doctrine—Applicability of.

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The great-grandfather of the appellant executed a trust-deed in respect of certain properties. The trustees were enjoined to apply the income of the trust towards charities as also for the benefit of the settlor and his family and descendants. The appellant filed a suit to enforce his rights under the trust and the trial court granted him maintenance to the extent of Rs. 50/- per mensem out of the trust properties instead of the sum of Rs. 10/- allowed under the trust deed. In appeal, however, the High Court dismissed the appellant's suit and reversed the order of the trial court granting him the said increased maintenance. In this Court the contentions of the appellant which fell for consideration were : (i) whether the dominant purpose of the trust was the maintenance of the settlor's family, the grant to the charities being only secondary; (ii) whether the *cy-pres* doctrine applied to the case, justifying the payment of maintenance money as decreed by the trial court to the appellant.

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HELD : (i) The provisions in the deed of trust and the direction to the trustees, first to accumulate the income after meeting the expenses of assessment, quit rent and maramath and the monthly and annual expenses and secondly to purchase properties therewith were to provide income only for the aforesaid charity. The words "for the aforesaid charity" were of important significance. The entire accumulation was for charity. The provisions regarding maintenance and education were subordinate to the provisions for meeting the expenses of the Utsavam to be celebrated in the specified Devasthanams. [303 E—F]

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Further the provisions regarding maintenance and education were to be at the sole discretion of the trustees who could stop the same. This power of the trustees was a complete negation of the appellant's contention that the intention of the settlor was that education and maintenance expenses were the dominant purpose of the settlement. The settlor could never have allowed his dominant intention to be repelled by a discretion conferred on the trustees to stop such expenses. [303 G—H]

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The tenor of the document thus pointed to the inescapable conclusion that the predominant and over-whelming intention of the settlor was to benefit the charities and provide for the same. [304 A]

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(ii) The *cy-pres* doctrine applies where a charitable trust is initially impossible or impracticable and the court applies the property *cy-pres*, viz., to some other charities as nearly as possible, resembling the original trust. In the present case, the maintenance and education expenses were neither charitable trust nor similar objects of charity and the High Court therefore rightly interfered with the trial court's order granting increased maintenance at Rs. 50/- per mensem to the appellant. [304 C—D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1796 of 1966.

Appeal from the judgment and order dated January 6, 1964 of the Madras High Court in O.S.A. No. 39 of 1961.

T. S. Sangameswaran and K. Jayaram, for the appellant.

A. K. Sen, M. S. Narasimhan and S. Balakrishnan, for respondents Nos. 1, 5, 6 and 7.

The Judgment of the Court was delivered by

Ray, J. This appeal is from the Judgment of the High Court at Madras dated 6 February, 1964 dismissing the appellant's suit.

The important question which falls for consideration is whether the deed of trust dated 1 January, 1908 created an absolute dedication to charity subject only to a charge for the payment of maintenance to the members of charge of the founder's family or whether the dominant intention of the founder was the maintenance of the family and the grant to the charities was secondary.

The trust deed was executed on 1 January 1908 by S. D. Mudaliar in favour of himself, A.P.M. Mudaliar, M.T.S. Mudaliar and C.V.S. Mudaliar. S. D. Mudaliar and his pre-deceased son D. S. Mudaliar's adopted son S. Mudaliar effected a deed of partition dated 25 November, 1907 in respect of the immovable and movable properties. By the said deed of partition S. D. Mudaliar the settlor of the deed of trust obtained the property forming the subject matter of the said trust deed. The founder dedicated the said property by the deed of trust to the trustees. The trustees were the settlor and the three other Mudaliars, viz., A. P. M. Mudaliar, M. T. S. Mudaliar and C. V. S. Mudaliar.

Broadly stated, the trust deed contained the following provisions. First, the trustees after excluding the tax and Maramath expenses, shall during the lifetime of the settlor pay him entire income for the purpose of discharging the debt of Rs. 3000/- mentioned in the deed of partition and for the maintenance of the settlor during his lifetime. Secondly, after the death of the settlor the balance of the debt that might be found due on the date after excluding the payments made by the settlor is to be paid to the creditors. Thirdly, after the settlor's lifetime a sum of Rs. 10/- per pensem would be paid out of the income to the settlor's daughter-in-law, namely, the appellant's grand-mother, viz., father's mother "for her lifetime, for her charity expenses". Fourthly, after the lifetime of the appellant's grand-mother the trustees are to pay a sum of Rs.10/- per mensem permanently to the appellant's adoptive father who was the adopted son of the

- A appellant's grand-mother and of the settlor's pre-deceased son and after the lifetime of the appellant's adoptive father "to his male descendants hereditarily". Fifthly, the settlor gave full power to the trustees after meeting the expenses of the Utsavam to be celebrated in Nungambakkam Devasthanams, and the trust expenses and the tax and maramath expenses to expand such sum
- B as they might deem proper to maintain and educate the male descendants of the settlor's pre-deceased adopted son. The settlor further provided that if the trustees were not willing they would stop such maintenance and education expenses. Sixthly, the trustees after the lifetime of the settlor would spend from and out of the aforesaid trust income in such manner as they might
- C deem proper and have the Vasantha Utsavam celebrated for a period of not less than three days during the Vasantha Utsavam which would be celebrated every year in the Temples of Sri Agastheeswarar and Venkatesa Perumal installed by the settlor's ancestors and enshrined in Nungambakkam. Finally, after the lifetime of the settlor the trustees were directed to accumulate the amount remaining out of the income from the property after excluding the assessment, quit rent and maramath and the monthly and annual expenses and purchase properties therewith and
- D provide the same as income for the aforesaid charity.

- In the background of these provisions, counsel for the appellant contended that the dominant intention was a provision by way of a settlement for the members of the family and that the charities were subsidiary purposes to the said deed of trust. The provisions or direction to the trustees first to accumulate the income after meeting the expenses of assessment, quit rent and maramath and the monthly and annual expenses and secondly to purchase properties therewith were to provide income only
- E for the aforesaid charity. The words "for the aforesaid charity" are of important significance. The entire accumulation was for the charity. The provisions regarding maintenance and education were subordinate to the provision for meeting the expenses of the Utsavam. The matter does not rest there. The provisions regarding maintenance and education were to be at the sole discretion of the trustees who could stop the same if the trustees
- F were not willing. This power of trustees to stop maintenance and education expenses is a complete negation of the appellant's contention that the intention of the settlor was that education and maintenance expenses were the dominant purpose of the settlement. The reason is obvious. The dominant object is never allowed by the settlor to be repelled by a discretion conferred on
- G the trustees to stop such expenses. This power to stop is consistent with the intention of the settlor to treat the education and maintenance expenses as secondary objects only after the primary purpose of the trust, namely, charities are fulfilled. The tenor
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of the document points to the inescapable conclusion that the pre-dominant and overwhelming intention of the settlor was to benefit the charities and provide for the same not only by making the expenses for the charities as the first and foremost direction but also by providing for accumulation of income and purchase of properties out of the said accumulated income only for the purpose of charities.

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A contention was raised by the appellant that the High Court should not have reversed the finding of the trial Court for the payment of maintenance of the appellant at Rs.50/- per mensem. The High Court came to the conclusion that there was no legal principle to sustain this increase in maintenance. In this Court the contention which was raised in the High Court was repeated, viz., that this was a case where the *cy-pres* doctrine would apply. The *cy-pres* doctrine applies where a charitable trust is initially impossible or impracticable and the Court applies the property *cy-pres*, viz., to some other charities as nearly as possible, resembling the original trust. In the present case, the maintenance and education expenses are neither charitable trusts nor similar objects of charity.

For these reasons, the appeal fails and is dismissed with costs. The appellant will pay the court fees.

G.C.

Appeal dismissed.