PETITIONER:
M. V. RAMASUBBIER AND OTHERS

Vs.

RESPONDENT:
MANICKA NARASIMHACHARI AND OTHERS

DATE OF JUDGMENT30/01/1979

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
KAILASAM, P.S.

CITATION:
1979 AIR 671 1979 SCR (2)1177
1979 SCC (2) 65

ACT:
Trust Act-Ss. 49, 51 and 52-Scope of-Managing Trustee purchased property for the trust sold it to his son for lesses price than offered by others-Sale it valid-Duty of trustee.

HEADNOTE:
Plaintiffs and defendants were descendants of a common ancestor who was the founder of a trust. Defendant no. 1, at the relevant time, was the managing trustee of the trust. On partition and sale of family properties a house, which was the suit property, was purchased for the trust. Soon thereafter defendant no. 1 sold it to his son. Before the sale, however, the tenant of the house who was a man of substance, offered a much higher price than what was paid by the son but the defendant sold it to his son.

In the plaintiffs' suit challenging sale of the trust property to the managing trustee's son for a lesser consideration the defendant claimed that the property had to be sold because his son who was the owner of adjacent property raised a dispute claiming easementary rights over the property.

The suit was decreed by the trial court but on appeal the High Court held that the consideration was adequate and fair, that the sale was bona fide and that no ulterior motive could be attributed to the defendant no 1 in the sale. The High Court, therefore, dismissed the suit.

Allowing appeal,
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HELD: (a) The sale had to be viewed with suspicion The High Court committed an error of law in ignoring important aspects of law which had direct bearing on the controversy before it. [1181A]

(b) It is well recognised that a person in a fiduciary position like a trustee is not entitled to make a profit for himself or a member of his family. He is not allowed to put himself in a position in which a conflict may arise between his duty as a trustee and his personal interest. [1180E]

(c) The control of the trustee's discretionary power prescribed by s. 49 of the Trusts Act and the prohibition contained in s. 51 that the trustee may not use or deal with the trust property for his own profit or for any other

purpose unconnected with the trust and the equally important prohibition in s. 52 that the trustee may not directly or indirectly buy the trust property on his own account or as an agent for a third person, cast a heavy responsibility upon him in the matter of discharge of his duties as trustee. The rule prescribed by these sections cannot be evaded by making a sale in the name of the trustee's partner or son, for that would, in fact and substance, indirectly benefit the trustee. [1180F-G]

(d) Where a trustee makes the sale of a property belonging to the trust, without any compelling reason in favour of his son, without obtaining the
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permission of the court concerned, it is the duty of the court to examine whether the trustee has acted reasonably and in good faith or whether he has committed a breach of the trust by benefiting himself from the transaction in an indirect manner. [1180H]

(i) In the instant case defendant no. 1 was the trustee of the property. It was his duty to be faithful to the trust and execute it with reasonable diligence in the manner in which an ordinary prudent man of business would conduct his own affairs. He could not occasion any loss to the trust and it was his duty to sell the property, if that was so necessary to sell, to the best advantage of the trust. [1181D]

(ii) The High Court was wrong in blaming the plaintiffs that they had brought the suit on account of personal grouse and spite. Assuming that they were so actuated, their action was eminently for the advantage of the trust created by their ancestor in which they had a substantial and direct interest. [1181D]

(iii) Defendant no. 1 was not able to explain how the sale was beneficial to the trust. Income by way of rent which the property was fetching was far more than interest which the sale proceeds fetched when they were invested in fixed deposits in a Bank. He was therefore unable to explain how he acted as a man of ordinary prudence in slashing down the income of the trust by making the sale. [1181G]

(iv) When defendant no. 1 sold the trust property to his son at a lesser price than was otherwise available, he did not act in accordance with law in the discharge of his fiduciary relationship with the trust. He sold the property to his son in disregard of his statutory duty which no man of ordinary prudence would have done. [1182C]

(v) Assuming that defendant no. 1 made a gesture of goodwill in favour of the trust when he allowed the sale of the family property to the trust, he could not possibly absolve himself from what he did in selling it off to his son at a lesser price than was offered by another reason. [1182F]

(vi) Assuming that there was some difficulty in respect of rights of easement between the trust and the defendant's son who was the immediate neighbour of the property, that could have been a lever in the hands of the trustee to make a bargain for higher consideration from his son who was equally interested in the property. A man of prudence would not have sold his property for a considerably lesser amount than that offered to him by another person and agreed to sell it just because a co-sharer was causing trouble and offering a few lesser price. [1183A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1584 of 1969.

Appeal from the Judgment and. Decree dated 20-2-1969 of the Madras High Court in Appeal No. 104 of 1963.

G. L. Sanghi and Vineet Kumar for the Appellants.

Vepa P. Sarathy and Mrs. S. Gopalakrishnan for Respondent No. 1.

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K. Jayaram for Respondents 2-5.

The Judgment of the Court was delivered by

SHINGHAL, J.-This appeal by a certificate of the Madras High Court is directed against its judgment and decree dated February 20, 1969.

One Manikka Sankaranarayana Iyer, father of defendants 1 and 3 and grandfather of plaintiffs 1 to 5 and defendants 2, 4 and 5 and father-in-law of plaintiff No. 6 constituted an Annadanam Trust and he and his sons executed a registered deed of settlement for that purpose on June 3, 1908. By that document Sankaranarayana Iyer became the first trustee for life, and it was provided that after him the senior-most member would be the trustee, by turns. Sankaranarayana died and defendant No. 1 became the managing trustee of the trust. There was a suit for partition of the family properties including house No. 48A, and it was settled by a compromise under which a preliminary decree dated September 12, 1956 was drawn up for the sale of the properties amongst the members of the family. Defendant No. 1 purchased the suit property for Rs. 21,500/- for the aforesaid trust on April 19, 1959. A final decree was drawn up on November 29, 1959 in which house No. 48A was shown as the property of the trust. Defendant No. 1 however sold that property soon after, to his son defendant No. 2 on July 14, 1960, for Rs. 25,000/- under sale deed Ex. B. 13. Chithambaram Chettiar (P.W. 2), who was a tenant of that property from 1949 onwards, came to know of the intended sale and sent a registered notice to defendant No. 1 on July 21, 1960, offering to purchase it for Rs. 35,000/-. Defendant No. 1 however went ahead with the sale of the property to his son and registered the sale deed on July 22, 1960. The plaintiffs thereupon filed the present suit on September 15, 1960, challenging that sale and asking for its restoration to the trust. The defendants resisted the claim in the suit on the ground that the sale price was fair and adequate and that the sale had to be made because of the disputes which had arisen between the second defendant as the owner of the adjacent house and the trust in regard to the easementary rights of drainage, light and air etc. The suit was decreed by the Subordinate Judge of Madurai on September 10, 1962. The High Court of Madras however allowed the appeal against that judgment and decree and dismissed the suit with costs of both the courts holding that Rs. 25,000/- was "quite adequate and fair" price for the suit property and that defendant No. 1 acted with "perfect bona fides and no ulterior motive can be attributed to him." That is why the plaintiffs have come up in appeal to this Court.

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It is not indispute before us that the Indian Trusts Act, 1882, hereinafter referred to as the Act, applied to the trust in question and that it was necessary for the plaintiffs to prove that defendant No. 1 did not exercise his discretionary power of selling the suit property "reasonably and in good faith" and that he indirectly purchased it for himself, in the name of his son (defendant No. 2), within the meaning of section 49 and 52 of the Act.

There is some controversy on the question whether

defendant No. 1 made an outright purchase of the suit property for and on behalf of the trust for Rs. 21,500/- on April 19, 1959, or whether he intended to purchase it for himself and then decided to pass it on to the trust, for defendants have led their evidence to show that the property was allowed to be sold for Rs. 21,500/-, which was less than its market value, as it was meant for use by the trust and that defendant No. 1 was not acting honestly when he palmed of the property to his son soon after by the aforesaid sale deed Ex. B. 13 dated July 14, 1960. The fact however remains that defendant No. 1 was the trustee of the property, and it was his duty to be faithful to the trust and to execute it with reasonable diligence in the manner an ordinary prudent man of business would conduct his own affairs. He could not therefore occasion any loss to the trust and it was his duty to sell the property, if at all that was necessary, to best advantage. It has in fact been well recognised as an inflexible rule that a person in a fiduciary position like a trustee is not entitled to make a profit for himself or a member of his family. It can also not be gainsaid that he is not allowed to put himself in any such position in which a conflict may arise between his duty and personal interest, and so the control of the trustee's discretionary power prescribed by section 49 of the Act and the prohibition contained in section 51 that the trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust, and the equally important prohibition in section 52 that the trustee may not, directly or indirectly, buy the trust property on his own account or as an agent for a third person, cast a heavy responsibility upon him in the matter of discharge of his duties as the trustee. It does not require much argument to proceed to the inevitable further conclusion that the rule prescribed by the aforesaid sections of the Act cannot be evaded by making a sale in the name of the trustee's partner or son, for that would. in fact and substance, indirectly benefit the trustee. Where therefore a trustee makes the sale of a property belonging to the trust, without any compelling reason, in favour of his son, without obtaining the permission of the court concerned, it is the duty of the court, in which the sale is challenged, to examine whether
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the trustee has acted reasonably and in good faith or whether he has committed a breach of the trust by benefitting himself from the transaction in an indirect manner. The sale in question has therefore to be viewed with suspicion and the High Court committed an error of law in ignoring this important aspect of the law although it had a direct bearing on the controversy before it.

The High Court in fact proceeded to examine the case on the assumption that the plaintiffs had instituted the suit not so much out of a genuine desire to redress any wrong done to the trust, as out of "ulterior motives and ill-will against the first and second defendants." This shows that instead of examining the case according to the criterian mentioned above, the High Court based its decision on an extraneous consideration and blamed the plaintiffs for raising the suit on account of "personal grouse" and "personal spite". We have not been referred to any evidence which could justify the High Court's view that there was any such grouse or spite. But even if it were assumed for the sake of argument that the plaintiffs had any such motive for raising the suit, the fact remains that their action was eminently one for the advantage of the trust which had been created by their ancestor and in which they had a

substantial and a direct interest.

Some important facts stand out from the evidence on the record which are directly in point. The suit property belonged to the family which had created the trust. It was purchased by defendant No. 1, in his capacity as the trustee of the Annandanam Trust for Rs. 21,500/- on April 19, 1959, at a family sale. It appears from the statement of defendant No. 2 that the property was capable of, or could fetch a rent of about Rs. 190/- per mensem, amounting to Rs. 2,280/- per annum. It has also been admitted that the sum of Rs. 25,000/- was not utilised by the trustee (defendant No. 1) for purchasing any other better property, but was invested in fixed deposit with a bank at 3 1/2 per cent interest per annum. That could yield an income of only Rs. 875/- per annum. The trust therefore lost heavily in the bargain. What is worse, defendant No. 1 has not been able to explain how the sale could be said to be beneficial to the trust and how he could possibly contend that he acted as a man of ordinary prudence in slashing down the income of the trust by making the sale.

The further fact that stands out from the evidence on the record is that when Chithambaram Chettiar (P.W. 2), who was a tenant in the suit property from 1949 onwards, learnt about the intended sale,

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he sent a notice to defendants Nos. 1 and 3 offering to purchase it for Rs. 35,000/-. That notice was issued on July 21, 1960. The receipt of the notice has been admitted by defendant No. 1 in his statement in the trial court, and he has further admitted that Chithambaram Chettiar offered to purchase the property for Rs. 35,000/- and that he sold it to his son for Rs. 25,000/- without even informing him that he had received the offer of Rs. 35,000/-. Defendant No. 1 in fact proceeded to register the sale deed of the property in favour of his son, the second defendant, on July 22, 1960. It is therefore quite clear that he did not care to act in accordance with the law in the discharge of his fiduciary relationship with the trust and executed the sale deed in his son's favour in disregard of his statutory duty, for no man of ordinary prudence would possibly have sold his property for Rs. 25,000/- when he had an offer of Rs. 35,000/-. That offer could not be said to be from a man of no substance because Chithambaram Chettiar (P.W. 2) who made it, was known to the defendants and he has stated that he was a man of means and was worth rupees four lakhs. It may be that the son-in-law of plaintiff No. 2 was employed in his shop, but that could not detract from the basic fact that a much higher offer had been made by a man of substance.

Instead of examining the appeal with due regard to the above mentioned evidence, the High Court was obsessed by a consideration of the evidence which had been led for the purpose of showing that while defendant No. 1 had purchased the property for himself on April 19, 1959, for Rs. 21,500/-, he gave up that advantage in favour of the trust. The evidence on the point is not unequivocal, for it may well be that defendant No. 1 did not want to obtain a sale deed in his own name for other reasons, but even if it were assumed that he made a gesture of goodwill in favour of the trust on April 19, 1959, he could not possibly absolve himself from what he did in selling it off, after it had become the property of the trust, to his own son a few months thereafter for Rs. 25,000/- when he had a genuine offer of Rs. 35,000/-.

Another consideration which prevailed with the High

Court in setting aside the finding of fact of the trial court was that, according to it, the evidence on the record showed that some difficulties had cropped up after the property had been purchased as his son, defendant No. 2, began to "give trouble" and that he resolved that trouble on the advice of his family lawyer Shri V. Rajagopala Iyengar (D. W. 3) by selling the property to his son. This view was obviously incorrect, for even it were assumed that there was some
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difficulty in respect of some common rights of easement, that could well have been a lever in the hands of the trustee to make a bargain for Rs. 35,000/- or more with his son who was equally interested in those easementary rights. A man of prudence would not have sold his property for a considerably lesser amount than that offered to him by another person and agreed to sell it just because a co-sharer in the easementary right was causing trouble and was offering a far lesser price.

We have gone through the statement of V. Rajagopala Iyengar (D.W. 3) on whose advice defendant No. 1 claims to have sold the property for Rs. 25,000/-. He has admitted in his statement that he had not even seen the suit property, and he knew nothing about the so called trouble in regard to the easementary rights between defendant No. 1 and his son. On the other hand, we find that he was indebted to the family of defendants Nos. 1 and 2 and he did not even care to ascertain what rent the suit property was fetching when he advised its sale for Rs. 25,000/- to the son of defendant No. 1. The High Court therefore did not even read the evidence correctly while placing reliance on his testimony.

For the reasons mentioned above, we have no doubt that the High Court did not examine the controversy in its proper legal perspective and with due regard to the salient facts which had been established by the evidence on the record and it was not therefore justified in setting aside the finding of the trial court.

The appeal is allowed. The impugned judgment and decree of the High Court are set aside and the decree of the trial court is restored with costs throughout.

P.B.R. Appeal allowed.
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