

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8895 OF 2012

Principal Secretary,
Government of Karnataka and Another ... Appellants

Versus

Ragini Narayan and Another ... Respondents

J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against judgment and order dated 24.03.2010, passed by the High Court of Karnataka at Bangalore in R.F.A. No. 788 of 2009 (DEC-INJ), whereby said Court has dismissed the appeal. The appeal before the High Court had arisen out of the decree passed by the XXVII Additional City Civil Judge, Bangalore, in O.S. No. 2680 of

2000, whereby the suit seeking declaration that the plaintiff is Donor Trustee, was decreed by the trial court in her favour.

2. Brief facts of the case are that the plaintiff (Respondent No. 1 herein) Ragini Narayan filed a suit for declaration that after death of her husband, she is the Donor Trustee of B.M. Sreenivasaiah Educational Trust, Bangalore (for short "BMS Trust"). It is not disputed that late Shri B.M. Sreenivasaiah, a philanthropist, started BMS College of Engineering in the year 1946. After his death it was his son B.S. Narayan, who was running the institution. In 1957, the institution was transferred to BMS Trust by B.S. Narayan (since died). The then Government of Mysore (now Government of Karnataka) extended financial assistance to the Trust to clear its encumbrances, and agreed to establish the BMS College for Women by the Trust. It is stated that the appellant/ Government of Karnataka gave grant-in-aid for the three colleges run by the Trust.

3. The plaintiff's case is that she is legally wedded wife of B.S. Narayan (the original Donor Trustee) as she got married

to him on 21.05.1984, after he divorced his first wife, namely, Smt. Minnie Narayan. It is pleaded that the plaintiff continued to live as his wife till his death on 23.08.1995. It is further pleaded that vide Trust Deed dated 02.12.1957, Dharmaprakasha Rajakaryasakta B.M. Sreenivasaiah Educational Trust was created by B.S. Narayan, his mother and step mother by transferring properties worth Rs.5000 crores. The Council of Trustees consisted of five members (trustees) with B.S. Narayan as a Donor Trustee. In terms of the Trust Deed B.S. Narayan and all his successors had the right to appoint three of the trustees while the remaining one trustee was to be appointed/nominated by the Government of Karnataka (defendant No 2/appellant herein).

4. The Council of Trustees in the presence of the then Chief Minister, in its meeting dated 12.10.1978 resolved to amend the Trust Deed allowing B.S. Narayan to nominate any person as Donor Trustee for life time and also provided for succession to the Donor Trustee. The State Government (appellant) approved said amendment vide communication dated

25.09.1979 and supplementary Trust Deed was executed on 25.06.1981, but the amendment regarding succession to the Donor Trusteeship was not carried out.

5. Dispute starts from the year 1994. On 10.12.1994 in another meeting of Council of Trustees, a resolution was passed to amend the Trust Deed to give effect to the succession to Donor Trusteeship, with certain changes from the earlier resolution mentioned in preceding para. In the light of the amendment made in 1994, a Deed dated 30.01.1995 was registered providing that after the life time of B.S. Narayan, his senior most lineal descendant or a member of his family, nominated by him or his wife, shall be the Donor Trustee. It is pleaded by the plaintiff that B.S. Narayan, exercising powers under clause IV(iv) of the Trust Deed, vide document dated 16.01.1995, nominated the plaintiff to be the Donor Trustee in his place with effect from 16.01.1995. The plaintiff has further pleaded that B.S. Narayan never revoked said delegation till his death. The document dated 30.01.1995

further provided that after death of B. S. Narayan his wife shall be the Donor Trustee under the Trust Deed.

6. Admittedly, B.S. Narayan died on 23.08.1995 in Workhardt Hospital where he was undergoing treatment for cancer of colon. B.S. Narayan died issueless leaving behind his mother Smt. Laxmamma and the plaintiff. Claiming herself to be the Donor Trustee after the death of her husband, the plaintiff wrote letter dated 28.08.1995 to Shri Y. Ramachandra, Chairman of the Trust. Prof. P.V. Bhandari, who was the Government nominee/trustee, forwarded the letter of the plaintiff to the Government. Vide letter dated 30.09.1995, the plaintiff sought cooperation of the State Government in discharging functions by her as a Donor Trustee. However, there was no response from the Government and in the meanwhile Y. Ramachandra, Chairman of the Trust appears to have written a letter dated 15.09.1995 requesting the State Government to take over the Trust. It appears that the appellants appointed M.R.

Sreenivasa Murthy (respondent No. 2 herein) as Donor Trustee vide communication dated 07.11.1995.

7. Communication dated 07.11.1995, issued on behalf of the appellants appointing Respondent No. 2 as Donor Trustee, was challenged by the plaintiff Ragini Narayan in Writ Petition No. 40933 of 1995 which was disposed of by the High Court leaving the plaintiff to avail the remedy available before the Civil Court, and a Committee of Chairman and Trustees appointed by the court was directed to manage the affairs of the Trust, in the meantime. Consequently the suit was filed.

8. Apart from the appellants, Respondent No. 2 (defendant No. 3 before the civil court) contested the suit. He filed his separate written statement. The pleas taken by him are in substance the same as raised by the appellants (defendant Nos. 1 and 2). It is pleaded by the defendants that under proviso to clause VI (xii) of the Trust Deed approval of the State Government was necessary for any amendment in the Trust Deed. It is further pleaded that as per original clause (IV)(1) B.S. Narayan, the designated original Donor Trustee

was to hold the office during his life time, whereafter his senior most lineal descendants were to succeed as Donor Trustee. And in absence of any lineal descendant trustee, the nominee of State Government was to act as Donor Trustee. The case of the defendants is that the State Government had given its approval to the amendment dated 12.10.1978 in respect of para IV(iv) of the Trust Deed which was incorporated in the supplementary Trust Deed dated 25.06.1981. It is further stated that insofar as proposed amendment to clause (IV)(1) is concerned, since B.S. Narayan himself withheld nomination of his first wife Minnie Narayan as Donor Trustee after his death, as such, said amendment did not form part of the supplementary Trust Deed dated 25.06.1981. It is stated on behalf of the appellants and Respondent No. 2 that the Council of Trustees had no authority to amend the original Trust Deed without the consent of the Government of Karnataka. As such, the amendment dated 10.12.1994 registered on 30.01.1995 relied on behalf of the plaintiff, being without the approval of the State Government, is inoperative.

Even otherwise as per the amendment of 1995, the power to delegate the powers of Donor Trustee was to be exercised for a limited period i.e. during life time of B.S. Narayan, and the plaintiff as the wife of B.S. Narayan has no right to continue as Donor Trustee after the death of her husband.

9. The trial court, as well as the High Court, has decided the issue as to the validity of marriage of the plaintiff with B.S. Narayan in her favour. Both the courts have also found that B.S. Narayan had an authority to nominate his wife, and that the delegation of powers of Donor Trustee in favour of the plaintiff suffers from no illegality. The High Court has upheld the decree passed by the trial court in favour of the plaintiff. Hence this appeal through special leave.

10. Before further discussion, we think it necessary to reproduce relevant paras from the original Trust Deed 02.12.1957: -

“IV(i) The management of “THE TRUST” shall vest in “THE COUNCIL OF TRUSTEES” consisting of five members. Sri B.S. Narayan “DONOR” hereto during his life time shall be a member of the council of trustees; and after him the

successive senior most lineal descendant of the said donor (1) shall be one such trustee and shall have the powers and rights of donor "1" under these paras. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of this deed, including powers of appointment of trustees under this deed, shall vest with the Government of Mysore."

....

"IV(iv) For the purposes of sub para (i) of clause IV supra Donor (1) shall have the power of nominating in his place or any person for such period or periods as may be specified or for the life time of such member, to exercise all or any of the powers vested in Donor (1) under this deed as may be delegated and such nominee shall subject to the foregoing be deemed to be donor (1) within the meaning of the Deed."

....

"VI(xii) Notwithstanding anything contained in these presents "The Trustees" shall have power to alter, amend or to add to any of the clauses of this document consistent with the objects and purposes of "The Trust". "The Trustees" shall have power to negotiate, conclude and effectuate such agreements with Government State or Union, local bodies or other authorities or bodies for purposes of obtaining financial and/or technical aid in any form as they deem fit on such conditions as may appear fit to them, for furtherance of the purposes of the institutions created under

“The Trust” and for that purpose shall have power to include or to co-opt further trustee or trustees; to cede or curtail or transfer all or any such power to any government of body, as may be found fit and proper and to effect such alterations in the clauses of this deed, not inconsistent with the objects and purposes of “The Trust” as in their opinion may appear necessary and desirable.

Provided that any resolution of “The Trustees” touching the alteration of this deed or amending of any of its clauses shall not be operative unless concurred to by donor “1” and approved by the Government of Mysore.”

(emphasis supplied)

11. Now, we come to the relevant amendments in the Trust Deed, including the one dated 10.12.1994 relied by the plaintiff but disputed by the appellants and Respondent No. 2. The table showing clause (IV) (i) as it existed in original deed, the one after 1978 amendment, and disputed amendment of 1994 (registered on 30.01.1995) are shown below:

ORIGINAL DEED DATED 2/12/57	AMENDMENTS APPROVED IN 1978	AMENDMENT REGISTERED ON 30/01/1995
The management of “THE TRUST” shall vest in the “COUNCIL OF TRUSTEES” consisting of five	The management of “THE TRUST” shall vest in the “COUNCIL of TRUSTEES”	The management of “THE TRUST” shall vest in the “COUNCIL of TRUSTEES” consisting of five

members. Sri B.S. Narayan "DONOR" hereto during his life time shall be a member of the Council of Trustees; and after him the successive senior-most lineal descendant of the said donor (1) shall be one such trustee and shall have the powers and rights of donor (1) under these presents. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of this deed, including powers of appointment of trustees under this deed, shall vest with the Government of Mysore.	consisting of five members. Sri B.S. Narayan "DONOR" hereto during his life time shall be a member of the Council of Trustees and after him, his wife Minnie Narayan and there-after the successive senior-most lineal descendant of the said donor (1) or a member of the family nominated by donor (1) <u>or his wife</u> shall be one such trustee and shall have the powers and rights of donor (1) under these presents. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of this deed, including powers of appointment of trustees under this deed, shall vest with the Government of Mysore.	members. Sri B.S. Narayan "DONOR" hereto during his life time shall be a member and thereafter the successive senior-most lineal descendant of the said donor (1) or a member of the family nominated by donor (1) <u>or his wife</u> shall be one such trustee and shall have the powers and rights of donor (1) under these presents. If this mode of succession fails all the powers exercisable by the Donor (1) under terms of deed, including powers of appointment of trustees under this deed, shall vest with the Government of Karnataka.
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(emphasis supplied)

12. It is clear from the record that in the year 1957 B.S. Narayan was a bachelor. Later he got married to Minnie

Narayan before 1978 amendment, and divorced her in 1982. There is concurrent finding of fact that B.S. Narayan got remarried in 1984 to plaintiff Ragini Narayan. It is also relevant to mention here, that there is no dispute that amendments mooted by B.S. Narayan in 1978 were approved by the State Government (appellant No.2) vide communication dated 25.09.1979. It is argued by Shri K. K. Venugopal, Senior Advocate appearing on behalf of the appellants and Shri S. Ganesh, Senior Advocate for respondent no.2 that since there was no approval of the State Government to the amendment of 1994, as such it cannot be said that such an amendment was operative, or that B.S. Narayan could have acted under the amended para (IV)(i) of the Deed to nominate the plaintiff (Ragini Narayan) as a Donor Trustee. It is further submitted that without the aid of Resolution dated 10.12.1994 read with delegation of power made by B.S. Narayan in favour of the plaintiff, she has no entitlement to discharge functions of the Donor Trustee. It is contended that the Deed of Nomination dated 16.01.1995 in favour of Ragini Narayan,

allegedly executed by B.S. Narayan is not a valid document. It is pointed out that the amended deed based on Resolution dated 10.12.1994 was not registered, by the date 16.01.1995 as the registration is said to have been done only on 30.01.1995. As such, delegation of power in favour of plaintiff on 16.01.1995 is not valid. It is vehemently argued that since the amendment registered on 30.01.1995 was a non-starter as such the same was non-effective. Ragini Narayan, after the death of B.S. Narayan could not have nominated herself as a Donor Trustee.

13. In reply to above, Shri C.A. Sundaram, learned senior counsel appearing for the plaintiff – Respondent no.1, pointed out that under Section 47 of the Registration Act, 1908, the document registered on a subsequent date relates to the date of execution. It is further submitted that since the date of Resolution was 10.12.1994, as such there was no impediment on the part of B.S. Narayan to exercise his powers under the amended Para IV(i).

14. Section 47 of Registration Act, 1908 reads as under:

“47. Time from which registered document operates. – A registered document shall operate from the time which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration”

In view of the above provision of law, we are in agreement with the submission of learned counsel for the Respondent no.1 that the document registered on a subsequent date, operates from the date of execution, not from the date of registration.

15. However, what is more required to be examined in the present case is as to whether Resolution for amendment dated 10.12.1994 had its approval from the State Government or not. We have already quoted proviso to Para VI (xii) of the original Trust Deed which requires that any alteration of the deed or amendment therein would require concurrence of Donor Trustee and that of the State Government.

16. Though on behalf of the appellants and the Respondent no.2, it is contended that the State Government had not given any approval to the amendment relied upon on behalf of the

plaintiff, but certain documents on record clearly show that there was approval of the State Government to the disputed amendment of 1994. One of such documents (dated 13.8.1995) is Annexure A-7 filed by the Respondent No.2 with the additional documents, which is copy of the 'Deed of Appointment' of the Government of Karnataka as successor Donor Trustee of executant B.S. Narayan. In our opinion, the appellants cannot approbate and reprobate at the same time. On one hand they rely on this document to nominate M.R. Srinivasa Murthy, and appoint him as Donor Trustee, and on the other hand, they are not ready to accept the approval of State Government to the Amendment Deed registered on 30.01.1995 on the basis of which the executant has exercised the powers in nominating the Donor Trustee. Para 2 of Annexure A-7 i.e. 'Deed of Appointment' dated 13.08.1995 executed by B.S. Narayan reads as under:

“.....WHEREAS the above executant is the Donor Trustee of a Registered Educational Trust, created under document dated 02.12.1957 and registered as Document No.2944/57-58 in Book I, Volume 48, pages 10

to 35, registered in the Office of the Sub-Registrar, Bangalore City South, and WHEREAS the above document created the B.M.S. Educational Trust, which document was subsequently amended once by registered document No. 498/81-82 dated 25.06.1981 and further amended by a second document dated 30.01.1995 and registered as document No.531/94-95, after following the formalities required in regard to amendment, which included the approval of the Government of the State of Karnataka and”

(emphasis supplied)

17. Another important document which throws light on this point is Annexure P-7 dated 7.11.1995 which is copy of the letter issued by the Government of Karnataka to the Member Secretary of B.M.S. Trust, Bangalore appointing M.R. Srinivasa Murthy, IAS, as Donor Trustee. Said document is reproduced below:

“GOVERNMENT OF KARNATAKA
Karnataka Government Secretariat,
Sachivalaya-II,
Bangalore, Dated: November 07, 1995

From:

The Principal Secretary to Govt. of Karnataka,
Education Department, Bangalore.

To

The Member Secretary,
B.M. Srinivasaiah Educational Trust,

Bangalore.

Sir

Sub: Acceptance of appointment as a Donor Trustee by the Government of Karnataka for B.M. Srinivasaiah Educational Trust.

Ref: 1. Letter from Sri Y. Ramachandra, Chairman of the Trust, dtd.15.09.1995
2. Deed of Appointment dtd. 13.08.95 executed by the late Donor Trustee Sri B.S. Narayan.

....

With reference to the above mentioned Communication/documents, the Government of Karnataka has accepted the nomination as the Donor-Trustee of B.M. Srinivasaiah Educational Trust and is assuming the role of Donor-Trustee with immediate effect. Sri M.R. Sreenivasa Murthy, IAS, is hereby appointed to function as Donor-Trustee on behalf of the Government of Karnataka with immediate effect.

Please extend all co-operation to him and assist him in the discharge of his functions.

Yours faithfully,

Sd/-

(U.P. SHARMA)

PRINCIPAL SECRETARY TO GOVERNMENT
EDUCATION DEPARTMENT.”

18. From the above mentioned letter, it is clear that Deed of Appointment dated 13.08.1995 was referred by the State Government, and it cannot be said that the State Government had not approved the Resolution dated 10.12.1994 on the

basis of which Deed of Amendment was registered on 30.01.1995. That being so, now we have to examine whether it is the plaintiff who was validly nominated Donor Trustee or the State Government? From the para (IV)(i) of the original Trust Deed dated 02.12.1957, it is clear that B.S. Narayan was to continue as Donor Trustee during his life time whereafter he was to be succeeded by his lineal descendant, and if the mode of succession fails then, power of the appointment of the Trust Deed was to vest with the State Government. Amendment of 1978 as shown in the chart quoted earlier, makes it clear that name of Minnie Narayan was added in para (IV)(i) as nominee to succeed from B.S. Narayan, and thereafter senior most of the lineal descendant, and if the mode of succession fail, the powers were to be exercised by the State Government. It appears that after Minnie Narayan was divorced by B.S. Narayan, and he (B.S. Narayan) got married to Ragini Narayan (plaintiff) whereafter further amendment was proposed and passed through Resolution dated 10.12.1994 (as mentioned in amended deed registered on

30.01.1995) and by this amendment i.e. of 1994 name of Minnie Narayan was deleted, and it was mentioned that after the life time of B.S. Narayan, his senior most lineal descendant or a member of his family or his wife was to succeed, and if mode of succession fails, then powers of Donor Trustee were to be exercised by the State Government.

19. There is concurrent finding of fact of the courts below that Ragini Narayan was the wife of B.S. Narayan Donor Trustee, at the time of his death, as such it cannot be said that mode of succession mentioned in para (IV)(i) failed. Whether it is amendment of 1978 or 1995 the expression "or his wife" is there. In our opinion the words-‘or his wife’ in the amendment of 1978 to which the appellants admittedly approved refer to wife of the Donor Trustee. Same expression is retained in the 30.01.1995 amendment. The amendment of 1978 was, admittedly, approved by the State of Karnataka. Insofar as the amendment of 1994 is concerned, we have already held that by virtue of Ex.A-7 dated 13.8.1995, the recital contained therein and in view of the letter of the State

Government dated 7.11.1995 the consent of the State Government to the amendment of 1994 can be readily inferred. Therefore, we do not find any error in the impugned order passed by the High Court. However, we clarify that any nominee appointed by the State Government as Trustee will be entitled to function as ordinary trustee in the Council of Trustees as provided in the Trust Deed but not as the Donor Trustee till the succession as mentioned in the Trust Deed (as amended) fails.

20. For the reasons as discussed above, the appeal is dismissed.

.....J.
[Ranjan Gogoi]

JUDGMENT

New Delhi;
September 20, 2016.

.....J.
[Prafulla C. Pant]