

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2019

Pronounced on : 12.05.2020

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

**A.No.8718 of 2018
and O.A.No.90 of 2019
in C.S.No.78 of 1968**

1. Dr.Thavamani
Former Principal & Secretary
Ethiraj College for Women,
Egmore, Chennai-8.
2. Dr.K.R.S.Girija Shyamsundar
Former Associate Professor &
Head of Department of Nutrition, Food
Service, Management & Dietetics,
Ethiraj College for Women,
Egmore, Chennai-8.
3. Dr.V.Kadambari
Former Associate Professor,
Department of English,
Ethiraj College for Women,
Egmore, Chennai-8.
4. Dr.Chitraa Venkataachalam
Former Associate Professor,
Department of English,

Ethiraj College for Women,
Egmore, Chennai-8.

..... Applicants in both
A.No.8718 of 2018 and
O.A.No.90 of 2019

-vs-

1. Mr.V.M.Muralidharan
The Chairman of the Ethiraj College Trust
Ethiraj College for Women,
Egmore, Chennai-8.
2. Mr.Nagarajan
Financial Trustee of Ethiraj College Trust,
Ethiraj College for Women,
Egmore, Chennai - 8.
3. Mrs.Chandra Devi Thanikachalam
Member of Ethiraj College Trust,
Ethiraj College for Women,
Egmore, Chennai - 8.
4. Dr.Vittal
Endocrinologist
Member of Ethiraj College Trust,
Ethiraj College for Women,
Egmore, Chennai - 8.
5. Mr.Sekar
Member of Ethiraj College Trust,
Chennai.
6. Prof.Dr.E.Murugan
Member Syndicate / University Representative,
Ethiraj College for Women,
Egmore, Chennai - 8.

7. Mrs.Bhuvaneswari
Principal In-Charge,
Ethiraj College for Women,
Egmore, Chennai - 8.

.... Respondents
(R1 to R7 in O.A.No.90 of 2019

8. Dr.D.Krupa Shankar
C/o. Principal & Secretary
Ethiraj College for Women,
Egmore, Chennai - 8.

9. Mr.S.Sridharan
C/o. Principal & Secretary
Ethiraj College for Women,
Egmore, Chennai - 600 008.

..... Respondents
(R1 to R9 in A.No.8718 of 2018)

(R8 and R9 impleaded as per order
dated 07.03.2019 in A.No.1788 of 2019
in A.No.8718 of 2018 in C.S.No.78 of 1968)

Prayer in A.No.8718 of 2018 : Application filed under Order XIV Rule 8 of High Court Original Side Rules read with Section 151 of CPC, seeking an order to modify the scheme framed and declared in C.S.No.78 of 1968, dated 19.04.1972 (a) by deleting the clause 5 of the Scheme Decree; (b) provide a fresh clause prescribing the appointment of a retired Judge of the Madras High Court as the Chairman of the Trust Board and Institution, viz., Ethiraj College for Women and (c) to constitute the Board of Trustees by appointing service minded Dignitaries from different fields representing cross-sections of the society in the place of family members.

Prayer in O.A.No.90 of 2019 : Original Application filed under Order XIV Rule 8 of O.S.Rules, r/w Order 39 Rule 1 and 2 of CPC, for grant of ad interim injunction restraining the respondents, their men, agents, legal representatives or any one acting on their behalf from appointing any other family members as a member to the Board of Trustees.

For Applicants : Mr.S.V.Jeyaraman, Senior counsel
for Mrs.A.Arulmozhi
in both Applications

For Respondents : Mr.M.S.Krishnan, Senior counsel
for Mr.Anirudh Krishnan
in both Applications

COMMON ORDER

The prayer in A.No.8718 of 2018 is as follows :

"to modify the scheme framed and declared in C.S.No.78 of 1968, dated 19.04.1972 (a) by deleting the clause 5 of the Scheme Decree; (b) provide a fresh clause prescribing the appointment of a retired Judge of the Madras High Court as the Chairman of the Trust Board and Institution, viz., Ethiraj College for Women and (c) to constitute the Board of Trustees by appointing service minded Dignitaries from different fields representing cross-sections of the society in the place of family members."

2. The prayer in O.A.No.90 of 2019 is as follows :

"to grant of ad interim injunction restraining the respondents, their men, agents, legal representatives or any one acting on their behalf from appointing any other family members as a member to the Board of Trustees."

3. The necessary facts which are required to be noticed for the disposal of these two applications are as follows :

(i) That a reputed Senior Lawyer and a Public Prosecutor who was one of the prestigious member of the Madras Bar, namely, late Mr.V.L.Ethiraj made a Deed of Declaration of a Trust, dated 07.04.1948, under which, he created a Trust called "Ethiraj College for Women Trust". He being the founder of the trust had been the founder trustee for his life time and the trust intended to establish an Arts and Science College exclusively for Women.

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(ii) Accordingly, the Ethiraj College for Women at Chennai was established by the said trust during his life time and the same was affiliated

to the University of Madras. The founder trustee had also constituted a committee / trust board consisting of seven members where he was the founder trustee and he named six other persons who were well reputed personalities in those days in various fields. The first seven members trust board committee headed by late V.L.Ethiraj as founder trustee was consisting the following members :

- "(i) Sri.V.L.Ethiraj (Founder)
- (ii) The Hon'ble Mr.Justice P.Govinda Menon
- (iii) Rev. Ld Murphy
- (iv) Sri M.Subbaraja Iyer (Founder of Vivekanandha College, Chennai)
- (v) Mrs.Ammu Swaminathan (Parliamentarian and mother of Late Captain Lakshmi, Late Dancer Mrinalini Sarabai and Late Sri Govinda Swaminathan, Senior Counsel)
- (vi) Sri M.Ranganatha Shastri

(iii) In addition to that, Late Mr.V.L.Ethiraj added the Principal of the College for the time being as an Ex-Officio member of the Committee along with the University representative. As per the provisions of the Trust, the Trustees and the Committee were given powers to act upon as per the Rules

and Regulations framed. Thus the prestigious Ethiraj College for Women which came into existence in Chennai City started imparting education to the women from all sections of the society, especially the women from the deprived sections.

(iv) Thereafter late Mr.V.L.Ethiraj executed a Will dated 21.04.1952. In the said Will, he appointed the Official Trustee of Madras as sole executor of the Will and also the trustee of all his properties settled through the said Will. The testator mainly intended to sell out those properties covered under the Will through public auction and the sale proceeds shall be made as a corpus, out of which, some philanthropic acts and deeds enumerated in the Will has to be undertaken. In this regard, mainly the founder intended to utilise the income derived from his estate, in awarding scholarship for students studying in the college, i.e., Ethiraj College for Women and the beneficiary of the scholarship to be made shall be based on the recommendation of the managing committee of the college. That apart, the founder wanted to give away some monetary help as a one time disposal or month wise payment to some of his relatives and those aspects have been enumerated in his Will referred to above.

(v) In the meanwhile on 25.11.1951, the Managing Committee of the trust framed rules and bye-laws of the college, under which, the Management of the affairs of the college shall vest in a council of management consisting of not more than seven members. The 7 members committee as has been constituted above headed by late V.L.Ethiraj as founder trustee to manage the affairs of the trust and the college had been in the office.

(vi) After the demise of late Mr.V.L.Ethiraj, the committee constituted by him continued to manage the trust and the institution. When that was so, one V.R.Selvaraj, nephew and one V.J.Madhavan, grand nephew of late V.L.Ethiraj joined together and filed a suit in C.S.No.78 of 1968 before this court inter alia seeking for framing of a scheme decree to manage the affairs of the trust as well as the college.

(vii) The prayer sought for in the said suit was considered by this Court and by the Judgment and Decree, dated 19.04.1972, this Court framed a scheme. In order to appreciate the same, the relevant portion of the scheme

decree referred to above are extracted hereunder :

"1. That a Scheme as set out in the schedule hereto be, and is hereby framed for the administration of the College Trust to manage "Ethiraj College for Women" created by Mr.V.L.Ethiraj, the deceased by a deed of declaration of Trust dated the 7th day of April 1948 and under the Will and Testament dated 21.04.1952 of the said Mr.V.L.Ethiraj;

2. That (i) Mr.N.Mahalingam, Managing Director, Messrs. Sakthi Pipes Limited, (ii) Dr.A.Venugopal residing at No.464, Poonamallee High Road, Madras 10; (iii) Mrs.Soundaram Kailasam residing at "Muruganadi", Kasturi Ranga Iyengar Road, Madras 18, (iv) Mrs.Mona Hensman, residing at "Action Lodge", Mc.Nicholls Road, Madras, and (v) Mr.V.R.Selvaraj, Retired Chief Cashier, Lloyds Bank (a nephew of the late Mr.V.L.Ethiraj) residing at No.22, Damodara Mudaliar Road, Madras 10; (vi) The Principal of the Ethiraj College for Women, Madras; and (vii) a representative of the University of Madras be and are hereby appointed as Trustees in respect of the College Trust known as "The Ethiraj College for Women" and that the first Trustee (viz.,)

Mr.N.Mahalingam, Shall be Chairman of the Board of Trustees among the said seven Trustees appointed herein;

3. That the Board of Trustees for managing the said Ethiraj College for Women, constituted herein, shall assume charge of the aforesaid Trust from this date;

4. That the properties including all the monies of the aforesaid Trust shall vest in the Board of Trustees from this date;

SCHEDULE (DRAFT SCHEME)

1. The Office of the Ethiraj College shall be at the College premises, Egmore, Madras-8. The Management of the College and the Trust properties of the College shall vest in a "Trust Board", which shall consist of 7 members inclusive of the Principal of the College and the University representative who are ex officio members. The said Board shall manage and administer the College Trust and manage the "Ethiraj College for Women".

2. All the immovable properties of the College Trust and the movable assets of the College shall vest in the Board of Trustees.

3. The members of the Trust Board including the Chairman but excluding ex officio member shall in the first instance be appointed by this Court. Of the five members so appointed by Court, one shall retire after the expiry of two years from the date of appointment to be decided by drawing of lots at a meeting duly convened by the then Chairman of the Trust Board for the said purpose, two others to be decided by drawing of lots at a duly convened meeting and shall retire at the expiry of four years from the date of their appointment and the remaining two shall retire at the end of six years from the date of appointment. The vacancies so cause shall be filled up by the remaining members of the Trust Board including exofficio members at a specially convened meeting. The retiring members will be eligible for re-election provided that no members shall hold office beyond two terms consecutively except after a break of two years and the said members will be eligible for election thereafter. The term of tenure of office of the Trustee so appointed shall be for a period of six years, on the expiry of which the said member shall retire by efflux of time.

4. Any vacancy arising in the Trust Board, either by efflux of time, or resignation or death or other causes, whatsoever, shall be filled up by co-option or election by the remaining members of the Trust Board at a duly convened meeting to be held for the said purpose.

5. The Trust Board shall, subject to availability and the following provisions, include one member of the family of the founder, namely a descendant of the brothers or sisters of the founder (1) provided that such member shall be a Graduate of any Indian University and shall have completed the age of 40 years; (2) provided further that the member of the family shall in the opinion of the Board of suitable to be member of Board and the decision of the Board regarding suitability or otherwise shall be final.

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(viii) Therefore as per the scheme decree framed by this Court, a seven members board / committee was constituted and the first committee was constituted by appointing various persons at para 2 of the said decree as extracted above. Out of the 7 persons , 5 shall be permanent trustees having

the limited tenure of 2 to 6 years subject to the retirement due to efflux of time for the first Board of Trustees which has also been specified in the scheme decree.

(ix) After the said scheme was framed in the decree referred to above by this Court, according to the scheme decree, the trust and the college was managed all these years. During these period of about 60 to 70 years very eminent persons had been in the board of trust which includes Former Judges of this Court.

(x) In the scheme decree in clause 5, the Court has made it mandatory that, among 5 trustees to be elected, ofcourse subject to availability, at least one member of the family of the founder, namely a descendent of the brothers or sisters of the founder, shall be elected and be included in the Trust Board. The eligibility to become member of the Trust Board from the family members of the founder is that, such family member must be a Graduate of any Indian University and should have completed 40 years of age. The suitability of any family member to be elected under family

member category can be decided by the Trust Board and such decision shall be final

(xi) Therefore, as per clause 5 of the scheme decree, there must be one family member of the founder, that is the descendants of the founder V.L.Ethiraj through his brothers and sisters, included in the Trust Board. Therefore it become a necessity to induct one family member as indicated at para 5 of the scheme decree of this Court and accordingly, periodically a family member of the founder, after evaluating the suitability, had been inducted in to the Trust Board either by way of election or co-option.

(xii) Accordingly the present Trust Board, i.e., at the time of filing this application in the year 2018, consisting of the following members :

- "1. Thiru.V.M.Muralidharan - Chairman
2. Tmt.Chandradevi Thanikachalam - Member
3. Prof.S.Vittal - Member
4. Dr.M.Sekar - Member
5. Dr.S.Bhuvaneswari - Principal i/c & Secretary i/c
6. Prof.Dr.E.Murugan"

(xiii) Out of the 7 members, one Mr.T.M.Nagarajan, Finance Trustee since resigned on health grounds, in order to accept the resignation of T.M.Nagarajan, the Trust Board had meeting on 17.12.2018 and accordingly accepted his resignation.

(xiv) Only in that circumstances the present Application, i.e., A.No.8718 of 2018 was filed with the aforesaid prayer.

(xv) In the prayer, the applicants sought for deletion of clause 5 of the scheme decree and to provide a fresh clause prescribing the appointment of a Retired Judge of the Madras High court as the Chairman of the Trust and to constitute the Board of Trustees by appointing service minded dignitaries from different fields. With these prayers, the A.No.8718 of 2018 was filed by these four applicants joined together who are the Former Principals or Associate Professors of the Ethiraj College for Women.

3. Opposing the said prayer sought for in this Application, the respondents 1 to 5 and 7 entered appearance through his counsel and filed typed set of documents.

4. Mr.S.V.Jeyaraman, learned Senior counsel assisted by Mrs.A.Arulmozhi, learned counsel appearing for the applicants, by relying upon the averments made in support of these applications, have contended that, during the yester years at least for two to three decades, the trust was well managed under the Stewardship of the then Chairmen who are the Retired Judges of this Court. According to him, several developmental activities were taken place as various new courses have been introduced both in UG level as well as PG level and in this regard in view of the expanded disciplines and the enhancement of people strength who study in the college both in the regular college as well as in the evening college, the college required lot of built up space, accordingly the Trust Board in those years, had constructed new buildings and the Trust Board in those years also identified a place at Vellore which is the birth place of the founder trustee, where, a Higher Secondary School in his name was also established. Therefore according to the learned Senior counsel for the applicants, the activities of the trust had been expanded in a steady grow to serve more and more people in the field of education especially for women education and all went well up to the last decade.

5. The learned Senior counsel would further contend that, however, by virtue of clause 5 of the scheme decree, continuously a family member of the founder trustee had been in the Trust Board and in this regard, it is the pointed allegation on the part of the applicants, as projected by the learned Senior counsel that, the first respondent who was the Chairman of the Trust is a family member. He infact inducted into the Trust in the year 2007 by way of co-option by the Trust Board under the family member quota as per clause 5 of the scheme decree and thereafter the first respondent has become the Chairman of the Board of Trustee in April 2013 after Mr.A.M.Swaminathan, I.A.S., the then Chairman retired.

6. According to the learned Senior counsel, after the first respondent becoming the Chairman of the Trust, the quality of management of the Trust started deteriorating and the first respondent slowly converted the trust as well as the Institutions and properties as the personal property of him and his family members and in this regard, it is the further allegation of the applicants as projected by the learned Senior counsel that, the son and other family members of the first respondent Chairman had been permitted to

meddle with the affairs of the Trust Board, as the family members very often visiting the institution and had been interfering in the activities of the Trust Board. Therefore, according to the learned Senior counsel, only because of the induction of a family member by virtue of clause 5 of the scheme decree, these kind of persons like first respondent under the guise of family member quota are able to get inroad into the Trust Board, thereby instead of managing the trust and serving the people and society at large, those persons are trying to make out profit, out of the trust activities and more or less they treat the trust properties and the institutions as their family property, thereby, the very avowed object for which the founder trustee established the Institution to serve the women folk in higher education, is getting defeated.

7. Therefore, the learned Senior counsel would vehemently contend that, taking into account the experience we gained during the Chairmanship of retired Judges of this Court, where lot of developmental activities taken place in the Trust and the institution, a permanent feature of making a former Judge of this Court as a Chairman of the Trust Board can be made,

for which the existing clause 5 of the scheme decree has to be deleted, instead, a suitable provision can be made by this Court making it mandatory that, only a former Judge of this Court to become the Chairman of the Trust Board and also to make a provision to ensure that suitable eminent persons from all walks of life be made as Trustees to have a better and desirable management of the Trust Board to serve the society at large in the years to come. Therefore the learned Senior counsel would contend that, the decree framed in the year 1972 require some modification, especially in the area set out above, by deleting clause 5 of the Scheme.

8. Opposing the said contention raised by the learned Senior counsel appearing for the applicants, Mr.M.S.Krishnan, learned Senior counsel assisted by Mr.Anirudh Krishnan, appearing for the respondents 1 to 5 and 7 has contended that, all these allegations made by the applicants against the management especially the Chairman of the Trust, i.e., the first respondent is false. He would further contend that, these four persons who are the applicants herein are none other than the former teaching faculties of the Institution, i.e., Ethiraj College for Women at Chennai and in order to settle

some personal score which are best known to them, they have come forward with this application without any plausible reason or supporting materials to substantiate their allegations made against the Trust Board especially against the Chairman of the Trust Board, therefore these applications are liable to be rejected in limini.

9. The learned Senior counsel for the respondents would also contend that, a scheme suit was filed and a scheme decree was made in the year 1972 and in all these years, the decree had been working out with expected result and absolutely there has been no complaint whatsoever from any quarters so far. He would further contend that, if at all any modification is to be made in the decree framed by the Court, the only course of action legally to be adopted is to file a fresh suit, ofcourse under Section 92 of CPC, therefore, outside the scope of Section 92 of CPC, no scheme decree framed by the Court can be amended or modified by way of filing mere applications. In support of his contention, on the ground of maintainability of this application with the prayer sought for therein, the learned Senior counsel appearing for the respondents has relied upon the following Judgments :

1. Shrinivas R.Acharya and Ors., v. Purshottam Chaturbhuj and Ors., AIR 1953 Bom 393

2. Dhirajlal Velji Gucka v. Pratap Bhogilal and others, 1986 SCC Online Bom 211

10. Apart from these preliminary objections and the general arguments made by the learned Senior counsel appearing for the respondents, he has also brought to the notice of this Court by filing typed set of documents on behalf of the respondents that, on 17.12.2018, one of the Trust Board member, one Nagarajan resigned due to health reasons and his resignation was accepted by the said Meeting, dated 17.12.2018, in whose place one Mr.Sridharan was elected. According to the learned Senior counsel, in so far as the first respondent is concerned, who was the then Chairman at the time of filing this application, however, during the pendency of this application, the term of office of the first respondent also expired, as his six years term was over by January 2019. Therefore in the place of the first respondent, a suitable member from the family of the founder trustee had to be elected, as the first respondent had been the

member, thereafter the Chairman of the Trust Board from the quota of the family member. Therefore the Trust Board had a meeting on 21.01.2019, where 8 family members of the founder trustee had been considered, among the eight, Dr.D.Krupa Shankar, who has been later impleaded as 8th respondent herein and the said Sridharan, who was the Principal and Secretary was made as the 9th respondent by way of impleadment by order, dated 07.03.2019 of this Court, had been inducted into the Trust.

11. In support of his contention, the learned Senior counsel for the respondents has relied upon the Minutes of the special Trust Board Meeting held on 21.01.2019. To appreciate the same, the relevant portion of the Minutes of the Meeting, dated 21.01.2019 is hereby extracted :

"The following 4 persons, in alphabetical order, gave their consent expressing their willingness to serve on the Board if co-opted. The remaining 4 persons declined due to various reasons.

1. Dr.D.Krupa Shankar
2. Mr.V.M.Manoj
3. Mr.V.S.Mohan
4. Mr.V.J.Sivaraman

It is brought to our attention today that an injunction application in Appln.No.8718 of 2018 in C.S.No.78 of 1968 seeking an injunction from appointing any family member has been served on the Counsel. The Members of the Board discussed the same and as today's meeting had already been convened earlier and as on date there is no injunction in operation from inducting a family member into the Trust Board, the family member shall be co-opted, as the scheme decree, dated 19.04.1972, pronounced by the Hon'ble Madras High Court in C.S.No.78 of 1968, is still in force and there cannot be a vacuum in the position. However, this will be subject to any final orders of the Hon'ble High Court.

The Board of Trustees perused all the credentials of the persons who expressed their willingness to serve on the Board and, after taking into consideration all factors, resolved to co-opt Dr.D.Krupa Shankar as a Member, Board of Trustees. The commencement of the tenure is 21st January 2019 ending on 20th January 2025."

12. Therefore, the learned Senior counsel, having relied upon the aforesaid developments has submitted that, in the place of the first respondent, the 8th respondent, i.e., Dr.D.Krupa Shankar has been elected under family member quota and his tenure was commenced from 21.01.2019 and would be ending on 20.01.2025. Therefore, the learned Senior counsel would contend that, in the absence of any materials filed before this Court by the applicants, to substantiate the allegations made against the first respondent, this Court may not come to any conclusion about the prayer sought for in this application to amend the decree, especially to delete clause 5 of the scheme decree. He would also submit that, since the very first respondent's tenure itself has come to an end by January 2019 and in whose place, an other family member, i.e., the 8th respondent having been elected and he has taken charge as one of the Trust Board member from 21.01.2019, all these allegations made by the applicants, even though were not substantiated by any material, would become a virtual infructuous stage, as the first respondent is no more Chairman nor a member of the Trust Board. Therefore according to the learned Senior counsel for the respondents, in order to give a quietus to the

issue, these latest developments can be taken judicial notice by this Court and accordingly, these applications can be disposed of, he contended.

13. I have considered the said submissions made by the learned Senior counsels for the parties and have perused the materials placed before this Court.

14. In so far as the preliminary objection raised by the learned Senior counsel appearing for the respondents that, for the prayer of seeking any amendment or modification in the scheme framed by the Civil Court, only a separate suit under Section 92 of CPC alone is maintainable and thus the decree so framed by this Court cannot be varied, amended or modified by the Court itself by merely entertaining the application like the present one, is concerned, the issue is no more *res integra* as in number of decisions it has been decided.

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15. One of the earliest decision in this regard by the Hon'ble Supreme Court is in **Raje Anandrao v. Shamro**, reported in **AIR 1961 SC 1206**.

Based on the dictum of the Hon'ble Apex Court made in this regard, in the aforesaid Raje Anandrao's case, number of various Judgments have come. In fact I had an occasion to confront a similar objection raised by some of the parties in yet another set of applications, where also a scheme decree of this Court were sought to be modified.

16. While considering these legal aspects, after following the decision of Raje Anandrao's case, I have dealt with this issue in the said decision in the matter of **L.Chenkuttuvan v. Interim Administrator**, reported in **2019 (5) LW 865 = (2020) 1 MLJ 659**. The relevant portion of the said decision can be usefully referred to hereunder :

42. I have gone through the said Judgment of the Hon'ble Apex Court, where the facts are almost similar to that of the present one. The following two paragraphs of the said Judgment would give the complete answer to this issue :

"11. Apart from authorities, however, let us see if there is anything in Section 92 of the Code of Civil Procedure which militates against providing a clause in a

scheme framed thereunder for its modification by an application to the court framing the scheme. Section 92 permits a suit in the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature or where the direction of the court is deemed necessary for the administration of any such trust to be filed either by the Advocate-General or two or more persons having an interest in the trust with the consent in writing of the Advocate-General. Reliefs that can be obtained under that section are-

- "(a) removing any trustee;
- (b) appointing a new trustee
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(1) (1907) L.R. 3 T.A. 78

(2) [1913] 24 M.L.J 199.

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

Further sub-section (2) of Section 92 bars a suit claiming the above reliefs unless the suit is filed in conformity with Section 92(1). In the present appeal we

are concerned only with the modification of a scheme; we are not concerned with

appointment or removal of trustees or any other matter enumerated in sub-

section (1) of Section 92. We do not therefore propose to consider whether it

would be open to appoint or remove

trustees etc., on the ground of breach of trust without recourse to a suit under Section 92. We shall confine ourselves only to the question whether in a case where there is a provision in the scheme for its modification by an application to the court, it is open to the court to make modifications therein without the necessity of a suit under Section 92. So far as the scheme is concerned, Section 92 (1) provides for settling a scheme and if a suit is brought for this purpose it has to comply with the requirements of Section 92(1); but where such a suit has been brought and a scheme has been settled, we see nothing in Section 92 (2) which would make it illegal for the court to provide a clause in the scheme itself for its future modification. All that subsection provides is that no suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of a trust as is therein referred to except in conformity with the provisions of that

subsection. This sub-section therefore does not bar an application for modification of a scheme in accordance with the provisions thereof, provided such a provision can be made in the scheme itself. Under sub-section (1) the court has the power to settle a scheme. That power to our mind appears to be comprehensive enough to permit the inclusion of a provision in the scheme itself which would make it alterable by the court if and when found necessary in future to do so. A suit under Section 92 certainly comes to an end when a decree is passed therein, including the settlement of a scheme for the administration of the trust. But there is nothing in the fact that the court can settle a scheme under Section 92(1) to prevent it from making the scheme elastic and provide for its modification in the scheme itself That does not affect the finality of the decree; all that it provides is that where necessity arises a change

may be made in the manner of administration by the modification of the scheme. We cannot agree that if the scheme is amended in pursuance of such a clause in the scheme it will amount to amending the decree. The decree stands as it was, and all that happens is that a part of the decree which provides for management under the scheme is being given effect to. It seems to us both appropriate and convenient that a scheme should contain a provision for its modification, as that would provide a speedier remedy for modification of the manner of administration when circumstances arise calling for such modification than through the cumbrous procedure of a suit.

12. In Veeraraghavachariar's case, ILR 51 Madras 31 the Madras High Court was cognizant of the two decisions of the Privy Council in which clauses had been inserted in the scheme providing for its modification by an application. But the

learned judges were of the view that the point was never raised much less decided by the Privy Council and therefore it could not be said that the Privy Council was of the opinion that such a clause would be intra vires. They thought that inserting such a clause in the scheme would imply that the suit would remain pending for ever. It is not necessary to hold that a suit under Section 92 in which a scheme is framed providing such a clause is pending for ever. The scheme deals with the administration of the trust and for the purposes of the scheme it would not be wrong or improper to treat a suit under Section 92 as analogous to an administration suit. On that view it would in our opinion be just and convenient to provide for a clause in the scheme which is framed for the administration of the trust to allow for its modification by an application. We therefore accept the view of the Bombay, Calcutta, Allahabad and Patna High

Courts in this matter and hold that it is open in a suit under Section 92 where a scheme is to be settled to provide in the scheme for modifying it as and when necessity arises, by inserting a clause to that effect. Such a suit for the settlement of a scheme is analogous to an administration suit and so long as the modification in the scheme is for the purposes of administration, such modification can be made by application under the relevant clause of the scheme, without the necessity of a suit under Section 92 of the Code of Civil Procedure. Such a procedure does not violate any provision of Section 92. The view taken by the Madras High Court that insertion of such a clause for the modification of the scheme is ultra vires is incorrect. It was therefore open to the District Judge in the present case to modify the scheme."

43. In the said Judgment as referred to above, the Apex Court has made it clear that, the sub-section

(2) of Section 92 does not make a bar for an application for modification of a scheme in accordance with the provisions thereof, provided such a provision should have been available in the scheme itself. The Apex Court has also held that, a clause provided in the scheme which is framed for the administration of the Trust, is just and convenient to allow for its modification by an application. Such modification can be made by application under the relevant clause of the scheme without the necessity of a suit under Section 92 of the Code of Civil Procedure and such a procedure does not violate any provision of Section 92.

44. Therefore in unequivocal terms, the Hon'ble Apex Court has held that, it is permissible for the Court to amend a scheme already been framed and settled under Section 92 of CPC by entertaining mere application, provided in the scheme so framed itself, must have a provision to that effect to entertain such kind of application in future to modify the scheme.

45. Here in the scheme in clause 13 as referred to above, it is undoubtedly a way opened, enabling the interested parties over the charities to approach

this Court for modification or directions of the scheme if the necessity or occasion arises or required. Therefore this Court has no hesitation to hold that, if such eventuality arises which requires modification or direction from this Court of the existing scheme, especially certain clauses of the scheme in question now, for the administration of Pachaiyappa's charities, certainly the interested persons can knock the door of this Court by setting the law in motion by way of filing application in this regard. Therefore the said preliminary objection raised on behalf of the respondents are liable to be rejected."

17. The two decisions now relied upon by the learned Senior counsel appearing for the respondents for the said preliminary objection are from the High Court of Bombay. In the first decision in **Shrinivas R.Acharya's** case (cited supra), the learned Senior counsel relied upon para 16, which reads thus :

"16. That brings me to a consideration of the proposed alterations and modifications in the scheme. It is the case of defendants 1 to 7 that the

plaintiffs are only seeking modifications and alterations in the scheme with a view to benefiting themselves by an indirect attempt to go behind the decree in the previous suit. There is considerable force in this argument. Now, it is a well established principle that a scheme once settled by the Court cannot be altered even by the Court except only on substantial grounds. It is true that changes in times and circumstances may 'ex debito justitiae' require that alterations should be made in the scheme to carry out the objects of the endowment and to see that the scheme operates beneficially. At the same time the Court has always to exercise caution in this matter and to see that what has been done by the Court is not disturbed except when there are substantial grounds for doing so and where satisfactory evidence to sustain those grounds is brought before the Court. The paramount consideration must, of course, be the interest of the charity."

18. The said **Shrinivas R.Acharya's** case has been referred to and followed in yet another case of Bombay High Court in **Dhirajlal Velji**

Gucka v. Pratap Bhogilal and others reported in 1986 SCC Online Bom

211, referred to above, in paragraphs 21 and 22 :

"21. The Bombay High Court has also held in the case of Shrinivas R. Acharya v. Purshottam Chaturbhuj, A.I.R.1953 Bom. 393 as under :

"A scheme once settled by the Court cannot be altered even by the Court except on substantial grounds. Changes in times and circumstances may ex debito justitiae require that alterations should be made in the scheme to carry out the objects of the endowment and to see that the scheme operates beneficially.

At the same time, Court has always to exercise caution in this matter and see that what has been done by the Court is not disturbed except where there are substantial grounds for doing so and where satisfactory evidence to sustain those grounds is brought before the Court. The paramount consideration must be the interest of the charity".

22. Thus, the scheme once framed cannot and should not be amended except on substantial grounds. Nothing has been shown to us on behalf of the trustees that there were substantial grounds for seeking these amendments or that the trust would have failed or would not have functioned properly except by carrying out the impugned amendments in the scheme. Confronted with this submission, it must be said in fairness to Shri Gursahani, the learned Counsel for the trustees, that on instructions from the trustees, he made a statement at the Bar that the trustees had acted bona fide in seeking the amendment of the scheme and that if the Court feels that legally this could not have been done inspite of the fact that the objects introduced by way of amendments are laudable, the trustees would gladly accept any modification of the scheme as this Court might direct."

19. Therefore even according to these two Judgments, the dictum was that, the scheme once framed cannot and should not be amended except on substantial grounds.

20. Therefore if substantial grounds are available and if it is established to the satisfaction of the Court, a scheme decree can very well be amended, varied or modified. In this context, the Hon'ble Apex Court's Judgment in **Raje Anandrao v. Shamro** (*cited supra*) has made it very clear that, if there is provision in the very scheme decree itself for future amendment or modification, it is permissible to entertain such plea by way of application for modification of the scheme due to arising of necessity and requirement without resorting for a fresh suit under Section 92 of CPC.

21. Here in the case in hand, in the scheme framed in 1972 of this Court, in para 14 or clause 14 of the scheme, it has been specifically provided that, any party interested in the Trust would have the liberty to approach this Court by way of an application for suitable direction. To have a better understanding, clause 14 of the scheme decree in this case is extracted hereunder :

"14. If any difficulty arises in the working of the scheme any party interested in the trust would have liberty to approach this Court by way of an application for suitable direction. It would also be

open to such party if necessary arises, to pray for marginal modification of the scheme by filing an application in that regard."

22. Therefore at least for a marginal modification of the scheme, an application filed in that regard can be entertained from any interested party over the Trust and therefore if the principle of the Hon'ble Apex Court in the Judgment cited supra is applied to the facts of the case, as the way opened is very much available in the scheme decree itself to entertain such application in future for modification, this Court has no hesitation to hold that, this application, seeking modification of the scheme, can very well be entertained, which means that, this application is maintainable and therefore in this regard, the preliminary objection raised by the learned Senior counsel appearing for the respondents is liable to be rejected, accordingly, it is rejected.

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23. Now if we turn to the merits of the issue, the reason cited by the learned Senior counsel appearing for the applicants, to seek indulgence of this Court to make a modification of the scheme framed by this Court in the

year 1972, especially in the context of clause 5 as he sought for deletion of such clause, is that, after the first respondent becoming the Chairman of the Trust Board, there has been a mismanagement and he has paved the way for the family members to meddle with the affairs of the Trust Board and very often his family members visiting the Institution and the Trust Board Office and had been interfering in the affairs of the management of the Trust Board as well as the Institution.

24. In this context, it is to be noted that, as has been rightly pointed out by the learned Senior counsel appearing for the respondents, on the side of the applicants absolutely there has been no material filed before this Court to substantiate the said allegation made either against the first respondent or against the entire Trust Board. Therefore without any material to substantiate such allegation to the satisfaction of this Court, the prayer sought for by the applicants to amend the scheme decree framed by this Court, in the opinion of this Court, cannot be sustained.

25. Further the reason cited in the affidavit in support of these applications on behalf of the applicants is that, during the stewardship of the erstwhile Chairmen, who happened to be the Former Judges of this Court, there had been lot of developmental activities in the Trust Board Management like managing the properties, development of the Institution, establishment of a new Institution, i.e., School at Vellore and that kind of developments had not been taken place during the tenure of the first respondent as Chairman, therefore the Management has to be in the hands of the Chairman, who must be a Judge of this Court. The said reason given on behalf of the applicants, as projected by the learned Senior counsel, without any materials to substantiate, cannot be countenanced for the purpose of amending a scheme decree.

26. In this context, as has been relied upon by the learned Senior counsel for the respondents, the Bombay High Court in the Judgments referred to above, has made it clear that, unless there is substantial ground, the scheme once framed by the Court cannot and should not be amended. Therefore it is a pre-requisite to the satisfaction of the Court that, there exist

substantial ground, which compels or requires that, a part of the scheme to be modified or amended suitably to meet the present circumstances or to avoid any unlawful / unpleasant activities, which are detrimental to the interest of the Trust and the people at large. If the said test is applied to the present case, this Court feels that, no such situation has arisen as nothing has been substantiated before this Court to establish such a substantial ground to the satisfaction of this Court to interfere in the said scheme decree already been framed by this Court.

27. Moreover clause 14 of the scheme decree, as has been extracted above, makes it very clear that, if any difficulty arises in the working of the scheme, then only, party interested can approach this Court by filing application for modification, that too for marginal modification. Here in the case in hand, what the exact difficulty arises in the working of the scheme has not been specified or spelt out by the applicants, except to make general or vague allegations against the first respondent to state that, he started treating the Trust property as his family properties and some of his family members started meddling with the affairs of the Trust.

28. This Court yet again point out that, absolutely there has been no materials placed before this Court to come to a prima facie conclusion at least, that something went wrong or is going wrong at the hands of the first respondent, being the Chairman of the Trust Board and he involved his family members to meddle with the affairs of the Trust.

29. Apart from all these reasons, yet another clinching reason now has come before this Court, as has been brought before this Court by the learned Senior counsel appearing for the respondents that, on 21.01.2019, there had been a Trust Board Meeting, in order to choose the next member in the place of the first respondent, whose term already expired in January 2019 in the family member quota. Accordingly, out of the 8 persons name from the family placed before committee, four had expressed their willingness to become the member of the committee, therefore all the four persons name had been considered and according to the suitability as found out by the committee, the 8th respondent Dr.D.Krupa Shankar had been elected / co-opted as a member under family member quota of the Board of Trustees and his tenure also was commenced from 21.01.2019 and would be lasting for up to 20.01.2025.

30. It is also to be noted that, on 21.01.2019, when the said resolution was taken up, it was brought to the notice of the Trust Board that, this application was pending before the Court and therefore the said election / co-option of the 8th respondent was made subject to any final orders of this Court.

31. Therefore as on date, even from 21.01.2019, the first respondent is no more Chairman or Trustee of the Trust Board.

32. That apart, while framing the scheme decree in the year 1972, this Court, having taken note of the intention of the founder of the Trust, has framed the scheme. The founder trustee, late Mr.V.L.Ethiraj, while creating the Trust in the year 1948 wanted himself to be the Founder-cum-first Trustee for his life time. Thereafter during his life time, the founder trustee, as he intended, framed the rules and bye-laws dated 25.11.1951, under which, a 7 member committee including himself as a founder trustee was formed, where the Principal of the College for the time being was made as ex-officio member of the Committee. Thereafter at the last leg of his life

time, the founder trustee bequeathed a Will on 21.04.1952, where also he wanted to settle all his properties to be sold for the purpose of creating a corpus to the benefit and endowment of the students who are studying in the college for getting scholarship.

33. With these background and by taking note of these developments and the intention of the founder trustee, this Court, while framing the decree, has made a 7 member committee, out of which, 5 shall be elected / co-opted by the Trust Board at a duly convened meeting to be held for the said purpose. In this regard, clause 4 of the scheme decree has made it clear that, the vacancies shall be filled up by co-option or election by the remaining members of the Trust Board at the duly convened meeting held for the said purpose.

34. Following clause 4, under clause 5 of the scheme decree, this Court has made it very clear that, the Trust Board shall, ofcourse subject to availability, include one member of the family of the founder, i.e., the descendent of the brothers or sisters of the founder, as the Trust Board

member. The twin qualification prescribed by the Court under clause 5 of the scheme decree was that, such a family member must be a Graduate from any Indian University and must have completed 40 years of age.

35. Under Clause 12 of the Scheme, the Court has made it clear that, the Chairman of the Trust Board, except in the case of the first Trust Board which is to be appointed by the Court, shall be elected by members of the Trust Board at a duly convened meeting.

36. Therefore at no point of time, members could be elected without the unanimity or the majority of the entire Trust Board, i.e., remaining members of the Trust Board and the same method shall be adopted while selecting the Chairman of the Trust Board also. Therefore merely because X or Y, belongs to the family of the founder trustee, i.e., descendants of brothers and sisters of the founder trustee, they cannot, *ipso facto*, on that ground, become member of the Trust Board as the twin qualification of Graduation of Indian University and completion of 40 years of age must have been fulfilled. Also on such family member present his candidature to

the Trust Board for election and co-option in the category of family member, his credentials and suitability has to be evaluated and decided by the Trust Board itself, i.e., remaining members of the Trust Board in a duly convened meeting specifically for this purpose, where after discussions and deliberations only, such election or co-option would be made.

37. Therefore these procedures as has been contemplated in the scheme decree made by this Court of the year 1972 has worked out well for all these years as absolutely there has been no quarrel in working out this scheme decree for several decades.

38. As has been rightly pointed out by the learned counsel appearing for the respondents, first time the family member has become the Trust Board Chairman in the year 2013, that too by way of election and he has completed his tenure of six years by 2019 and thereafter as per the scheme decree since the family member would not be eligible to continue to be a member of Trust Board beyond two terms without the gap of two years, he opted out and in whose place the 8th respondent, who is yet another family

member of the founder trustee, has been elected or co-opted in the duly convened Committee meeting in this regard, by resolution dated 21.01.2019 and he has also taken charge as member, i.e., under family member quota. Therefore looking from any angle, this Court finds no plausible reason to interfere with the scheme decree framed by this Court in the year 1972 especially in the context of clause 5, which paved the way for inducting at least one member from the family of the founder trustee.

39. The clause provided by this Court in the scheme decree under clause 5, enabling one family member at least to become member of the Trust Board, in the considered opinion of this Court, is with sound reason as at least one member from the founder's family is necessitated for variety of reasons as the cherished memories of the founder can well be projected and propagated by such family member along with other trust board members. Therefore taking into account of all these aspects only, this Court, while framing the scheme, introduced the one family member induction into the Trust Board under clause 5 of the scheme decree, where also the Court has fixed twin qualification to such a member to become the Trustee and

therefore the said clause 5 made in the scheme decree cannot be found fault with and absolutely there is no substantial ground raised and substantiated by the applicants side even to the prima facie satisfaction of this Court. Hence this Court is of the view that, the prayer sought for in this application does not deserve to be accepted and hence it is liable to be rejected.

40. In the result, A.No.8718 of 2018 is hereby dismissed. In view of the dismissal made in A.No.8718 of 2018, O.A.No.90 of 2019 is also liable to be dismissed, accordingly, the same is dismissed. However there shall be no order as to costs.

12.05.2020

Index : Yes

Speaking order

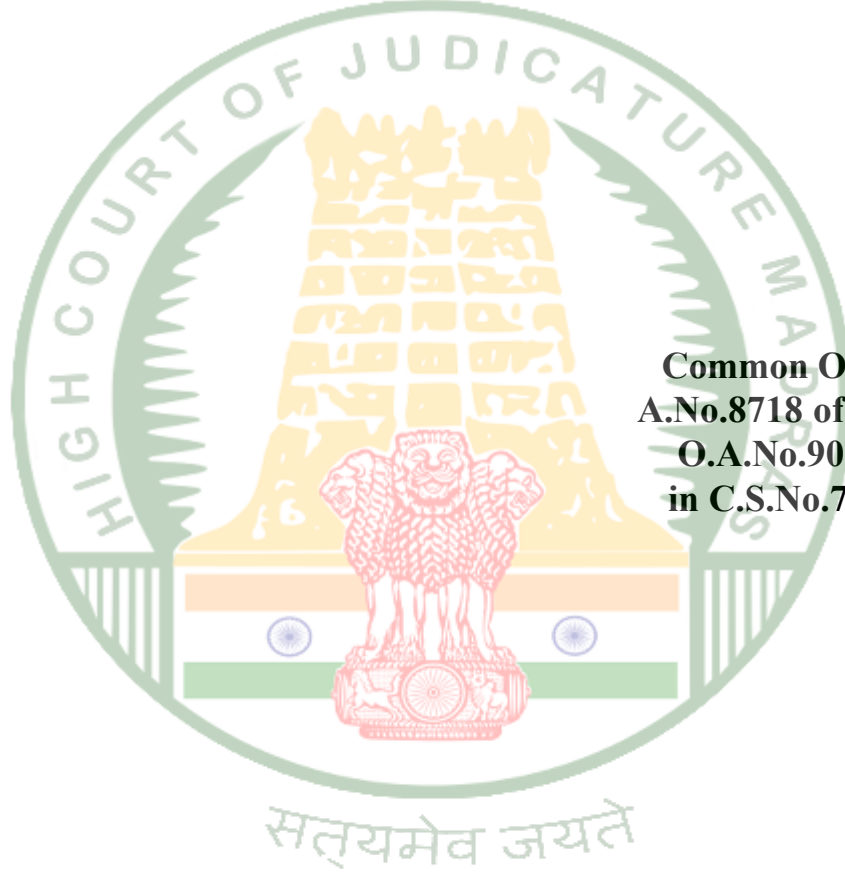
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A.No.8718 of 2018 and O.A.No.90 of 2019
in C.S.No.78 of 1968

R.SURESH KUMAR, J.

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**Common Order in
A.No.8718 of 2018 and
O.A.No.90 of 2019
in C.S.No.78 of 1968**

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12.05.2020