

KABC010017262023



IN THE COURT OF THE PRINCIPAL CITY CIVIL AND
SESSIONS JUDGE, AT BENGALURU

Dated this the 24th day of January, 2024

Present: Shri Muralidhara Pai B.
B.Com., LL.B.
Principal City Civil and Sessions Judge,
Bengaluru.

Misc. No. 148/2023

- Petitioners:
- 1) Sri V.P. Satyapal Rao
S/o late Sri V.S. Panduranga Rao,
Aged about 77 years,
R/at # 1127/3, 5th Cross, 2nd Block,
2nd Main, BEL Layout,
Vidyaranyapura,
Bengaluru – 560097.
 - 2) Sri V.P. Ashok
S/o late Sri V.S. Panduranga Rao,
Aged about 71 years,
R/at No. 921, 3rd A Cross,
Near Lokhandes Hospital,
HRBR Layout,
Banaswadi,
Bengaluru – 560043.
 - 3) Sri V.P. Vinayak,
S/o late Sri V.S. Panduranga Rao,
Aged about 62 years,
R/at No. 107,
NCN Apartment,
Flower Garden Road,

Near Ganesha Temple,
Babusapalya,
Bengaluru – 560043.

- 4) Sri V.K. Manohar Babu
S/o late Sri V.S. Krishna Rao,
Aged about 65 years,
R/at New No. 30/7, Old No. 84,
St. John's Road Cross,
Rukmini Colony,
Sivanchetty Garden,
Bengaluru – 560042.
- 5) Sri V.K. Sudesh
S/o late Sri V.S. Krishna Rao,
Aged about 62 years,
R/at New No. 30/7, Old No. 84,
St. John's Road Cross,
Rukmini Colony,
Sivanchetty Garden,
Bengaluru – 560042.

(By Sri M.D. Raghunath, Advocate)

Vs.

Respondents : Nil.

ORDER

This is a petition filed under Section 92 (f) of Code of Civil Procedure read with Section 34 of Indian Trust Act praying for permission to the Petitioners to sell the schedule property in the interest of justice and equity.

2. The notice of this petition has been published in Hosa Diganta Bengaluru edition dated 03.08.2023 calling upon any interested person to appear before the Court and to submit their say in the matter. In spite of the same no one has appeared before the Court claiming any interest in the subject matter of the petition.

3. During the enquiry on this petition Petitioner No. 5 has deposed before the Court as PW-1 and got marked documents at Ex. P-1 to P-12.

4. Then this Court heard learned Counsel for Petitioners.

5. The following points would arise for the consideration of this Court:

- 1) Whether the Petitioners have made out valid ground to permit them to sell the property as prayed in the petition?
- 2) What Order?

5. The findings of this Court on the above points are under:

Point No.1:- In the Negative;

Point No.2:- As per final order;

for the following:

REASONS

6. Point No.1: Admittedly one Sri V. Subbanna Rao was the owner of the property in question i.e., property bearing Old No. 5, New No. 3 situated in G No.1 Street, Lakshman Mudaliar Street Cross, Bengaluru measuring East to West 23 feet + 25 feet and North to South 82 feet. He had purchased the said property under a registered sale deed dated 25.11.1943. Subsequently, said Sri V. Subbanna Rao executed a Deed of Trust on 04.02.1958 and appointed his two sons namely Sri V.S. Panduranga Rao and Sri V.S. Krishna Rao as Trustees and created a private Trust in respect of the above referred property for the benefit of persons named at Schedule B of their Trust Deed.

7. The Petitioners have maintained the present petition claiming that they are the beneficiaries of the Trust created by Sri V. Subbanna Rao and that at present there are no other beneficiaries of the Trust other than them. They

have submitted that the schedule property is not fetching any income as it is situated in cross road and not suitable for development. As such they have contended that they intend to sell the schedule property and the benefits that would be received from such sale would be utilized as per the tenets of the Deed of Trust executed by Sri V. Subbanna Rao. Hence, they have prayed to allow the petition.

8. During the enquiry on the petition, the Petitioner No. 5 has filed his affidavit in lieu of examination-in-chief and got examined as PW-1. In his evidence PW-1 has reiterated the averments of the petition and prayed to allow the petition on the ground that the schedule property is not fetching any income and they are intending to sell the schedule property so that the benefits received from such sale can be utilized in terms of the Trust Deed.

9. During the evidence, PW-1 has got marked few documents in support of their contention. These documents include sale deed dated 25.11.1943, Trust Deed dated 04.02.1958, death certificates of Sri Panduranga Rao, Parvathi Bai Varne, V. Krishna Rao and V.K. Jayalakshmi,

Khata endorsement pertaining to the schedule property and some photos of the schedule property and its CD.

10. On going through the contentions of the Petitioners it becomes clear that the Trust Deed in question would be the material document to decide the present petition. The Trust Deed marked at Ex. P-2 goes to show that Sri V. Subbanna Rao had created a Trust in respect of the schedule property for the benefit of persons mentioned in Schedule B therein namely Sri V.S. Panduranga Rao, Smt. Parvathi Bai, Sri V.S. Sathyapal, Sri S. Ashok Kumar and Sri Premanath, who are the wife and sons of Sri V.S. Panduranga Rao, Sri V.S. Krishna Rao, Smt. Jayalakshmi and Sri Manohar, who are the wife and son of Sri V.S. Krishna Rao. The recitals of the Trust Deed make it clear that the Trust Deed in question had been executed only for the benefit of the above referred persons.

11. It is the case of the Petitioners that Sri V.S. Panduranga Rao, Sri V.S. Krishna Rao and their wives namely Smt. Parvathi Bai and Smt. Jayalakshmi respectively are no more. The death certificates produced by the Petitioners

before the Court at Ex. P-3 to P-6 support the said contention of the Petitioners. Further, amongst the remaining beneficiaries Sri V.P. Sathyapal Rao, Sri V.P. Ashok, Sri V.P. Manohar Babu are parties to this petition as Petitioner Nos. 1, 2 and 4 respectively. The Petitioners have not come up with any statement regarding one more beneficiary namely Sri Premanath named at Sl.No. 5 in Schedule B of the Trust Deed.

12. More importantly, the recitals of the Trust Deed go to show that the founder had created the Trust for the benefit of certain persons named in Schedule B of the Trust Deed and to enjoy the income that would be derived from the schedule property apart from using the said premises for their residential purpose. The terms of the Trust Deed do not provide any option for the beneficiaries to sell the property or to use its sale proceeds for their benefit. On the other hand, Clause No. 9 of the Trust Deed goes to show that the founder intended continuation of the Trust till the death of last survivor amongst the beneficiaries and then only the Trust should extinct.

13. As per Clause No. 9 of the Trust Deed the schedule premises shall be inherited by lineal descendants of Sri V.S. Panduranga Rao and Sri V.S. Krishna Rao equally after the death of last survivor amongst the beneficiaries. The founder of the Trust has also made it clear that in the event of there being no lineal descendants of Sri V.S. Panduranga Rao or Sri V.S. Krishna Rao, the schedule property should go to Itoba Temple in Bangalorepet (Cavalry Road, opposite to Sabha School) for feeding the poor out of the net income thereof. Clause No. 10 of the Trust Deed further makes it clear that the persons who inherit the property can only own and possess the property solely and absolutely with unfettered power of alienation and disposal. In view of the same, this Court holds the Petitioners herein have no right to sell the schedule property and to use its sale proceeds for themselves, which would be contrary to the terms of the Trust Deed executed by Sri V. Subbanna Rao. Accordingly, Point No. 1 is answered in the Negative.

14. Point No.2: In the result, this Court proceeds to pass the following:

ORDER

The petition filed under Section 92 (f) of Code of Civil Procedure read with Section 34 of Indian Trust Act is dismissed.

(Dictated to the Stenographer Grade-I directly on the computer, typed by him, then corrected and pronounced by me in the Open Court on this the 24th day of January 2024).

(Muralidhara Pai B.)
Principal City Civil & Sessions Judge,
Bengaluru.

ANNEXURE**List of the witnesses examined for the Petitioners:**

PW-1 - Sri V.K. Sudesh

List of the witnesses examined for the Respondents : Nil**List of documents marked on behalf of the Petitioners:**

Ex. P-1 - Original Sale Deed dated 25.11.1943.
Ex. P-2 - Original Trust Deed dated 04.02.1958.
Ex. P-3 - Death certificate of Panduranga Rao.
Ex. P-4 - Death certificate of Parvathi Bai Varne.
Ex. P-5 - Death certificate of V. Krishna Rao.
Ex. P-6 - Death certificate of V.K. Jayalakshmi.
Ex. P-7 - Khata endorsement.
Ex. P-8 to
Ex. P-11 - Four photographs.

Ex. P-12 - CD.

List of the documents marked for the respondents: Nil

Principal City Civil & Sessions Judge,
Bengaluru.