

(1932) 08 BOM CK 0014

Bombay High Court

Case No: O.C.J. Suit No. 886 of 1930

Alice Rice

APPELLANT

Vs

S.N. Cama

RESPONDENT

Date of Decision: Aug. 25, 1932

Citation: AIR 1933 Bom 404 : (1933) 35 BOMLR 840 : (1934) ILR (Bom) 181 : 147 Ind. Cas. 579

Hon'ble Judges: Kania, J

Bench: Single Bench

Judgement

Kania, J.

This suit is filed by two daughters and a son of one Hormusji Edulji Cama, who became a convert to Christianity and adopted the name of William Edward Rice, to recover from the defendants, who are the present trustees of the trust deed made by Hormusji Muncherji Cama on January 23, 1872, maintenance and other allowance as provided in the first declaration of Clause 2 of the trust deed. It is alleged in the plaint that the plaintiffs are the descendants of Hormusji Muncherji Cama. The father of the plaintiffs during his lifetime was working as a preventive officer in the Customs department on a monthly salary of Rs. 600. While he was alive the trustees had paid a sum of Rs. 50 per month to one Mersy Rice, the eldest daughter of Hormusji Edulji Cama. It is alleged in the plaint that Hormusji died on July 7, 1929, without leaving any substantial assets. It is further alleged that the three plaintiffs are being educated at Barnes High School, Deolali, and they have not got the proper or necessary means for their education. In para. 11 of the plaint it is alleged that the plaintiffs are the members of the family of the said Hormusji Muncherji Cama and are in poor, distressed and indigent circumstances. It is further alleged that the plaintiffs are the proper persons to be recipients of the support and relief directed to be extended to or conferred upon them by the said declaration in the trust deed. It is further alleged that the defendants are aware of the plaintiffs' circumstances. In paras. 12 and 13 of the plaint it is alleged that although applications were made to the trustees for a grant of an allowance to the plaintiffs they have refused to do

so. Paragraph 14 of the plaint then runs as follows :-

The plaintiffs further say that in any event the decision of the defendants declining to render any assistance to the plaintiffs out of the said trust fund, is quite unfair and unreasonable and is not bona fide.

2. The defendants have filed a written statement in which they deny that the plaintiffs are proper persons to receive the allowances under the trust deed from them. They further say that they have made all proper inquiries and in their opinion the plaintiffs are not entitled to receive anything from the trust funds. They further contend that they having exercised the discretion which was given to them under the trust deed the Court has no power to question their exercise of the discretion. In the alternative it is contended that the deceased Hormusji Edulji Cama having become a convert to Christianity the plaintiffs are not members of the family of the deceased Hormusji Muncherji Cama within the meaning of the first declaration of the second clause of the trust deed.

3. On a summons taken put for further and better affidavit of documents the learned Chamber Judge directed the following two issues to be tried, in Court, as preliminary issues :-

1. Whether the plaintiffs, under the circumstances set out in the plaint, are entitled to challenge the decision of the trustees of the trust deed mentioned in the plaint upon a true and proper construction of the trust deed ?

2. Whether upon a true and proper construction of the trust deed the plaintiff's are beneficiaries thereunder at all ?

4. The trust deed Exhibit A mentions the property which is settled on trust and then in the first clause provides for the creation of the "Hormusji Muncherji Cama Charity Fund" and the collection of the interest on the Government Paper settled on trust.

5. Clauses 2 and 16 of the said trust deed, which are material for the purpose of determination of the issues, run as under :-

2. And it is hereby agreed and declared that, the said Trustees or Trustee shall divide the same dividends into five equal portions, four of which equal parts shall yearly be paid, applied or expended, in the discretion of the said Trustees or Trustee, in and upon the four charitable purposes next hereinafter set forth, it being hereby distinctly provided and declared that, in such yearly payment, application and expenditure, the said Trustees or Trustee, for the time being, shall give a preference to the objects of charity coming within the first of the four declarations of charitable purposes hereinafter set forth, to those coming within the second, third and fourth of such declarations, and in like manner shall give preference to the objects coming within the second of such declarations to those coming within the third and fourth of such declarations and in like manner shall give a preference to the objects coming within the third of such declarations to those coming within the fourth of

such declarations.

first declaration. The support, maintenance, assistance or relief of such members of the family of the said Hormusji Muncherji Cama as may be in poverty, distress or indigent circumstances; due enquiries as to the circumstances and deserts of the respective recipients being made by the said Trustees or Trustee who shall satisfy themselves or himself that the intended recipients respectively are members of such family and proper persons to be recipients of the support or relief hereby directed to be extended to or conferred upon them, with power for the said Trustees or Trustee, at their discretion to discontinue any allowance which shall have been made by them or him, under or by virtue of the terms of these presents, to any person or persons whomsoever, whenever it shall appear to the Trustees or Trustee, fit and proper so to do.

Second declaration. The support, maintenance, assistance or relief of such Parses members of the family, commonly known in India as "Camajee Cooverjee"s Family," as may happen to be in poverty, distress or indigent circumstances; such enquiries being previously made by such Trustees or Trustee, as is hereinbefore directed with references to the members of the said family of Hormusjee Muncherjee Cama.

Third Declaration.-The support, maintenance and assistance or relief of such followers of the Zoroastrian creed as may be in poverty, in distress or in indigent circumstances, after making due enquiries as aforesaid.

Fourth Declaration.-The furtherance and support of religious charitable or benevolent schemes, objects or purposes, in the discretion of the Trustees or Trustee, for the time being, preference being given, in the exercise of such discretion, to the maintenance of the three Dhurumshalas, situate respectively at Nowsaree, Big Damaun, and Small Damaun, established and dedicated to charitable purposes by Ruttonbai, the late widow of the late Hormusjee Muncherjee Cama and the mother of the said Pestonjee Hormusjee Cama and Dossabhoy Hormnsjee Cama, parties hereto, in the Christian year one thousand eight hundred and forty-five.

16. And lastly, in order that fit and eligible persons may, at all times hereafter, be found willing to take upon themselves the burden of the execution of the trusts hereby created and declared, and that, in so doing, the minds of all such persons may be fully satisfied and assured, it is hereby declared that the acts and deeds of all trustees of these presents in the execution of the trusts hereby in them reposed, shall be favourably and liberally regarded and construed by all Courts, judges, functionaries, and persona whatsoever and whomsoever, it being the wish and desire of the said parties hereto of the first part, and the true intent and meaning of these presents, that the said trustees shall only be bound and required to act, in the execution of the aforesaid trusts, in such manner as may appear to them, to the best of their judgment, calculated to carry out and perform the said trusts, and in

conformity therewith, effectually to promote the several schemes, objects and purposes, hereinbefore specified or referred to....

6. It is contended that although the trustees have the power to decide whether particular persons are entitled to the benefit of the trust income or not that discretion of the trustees is liable to be supervised and, if necessary, altered by the Court. As a general proposition I do not think this statement can be disputed. I do not think that if the clause in the trust deed is worded as recited above or if it is recited in stronger language which makes the decision of the trustee final or even if words are used in the trust deed which would expressly oust the jurisdiction of the Court to question the discretion of the trustees, the Court's jurisdiction cannot be ousted. According to the decision in *Reven*, *In re : Spencer v. National Association for the Prevention of Consumption and other forms of Tuberculosis* [1915] 1 Ch. 673 such a direction would be void and inoperative on the ground of repugnancy and as being contrary to public policy. It is, however, equally clear that once the trustees have exercised the discretion and the exercise is within their power, unless it is shown that the exercise of the discretion was not bona fide or was perverse, the Court would not interfere with the exercise of that discretion. Indeed the Court would be slow to interfere with the discretion of the trustees, when the settlor has given them absolute discretion, unless a very strong prima facie case is made out. As an illustration of the Court not being inclined to interfere with the discretion, when bona fide exercised, the case of *Re Burrage : Burningham v. Burrage* (1890) 62 L.T. 752 is an authority. In the present case the effect of the plaint is that according to the plaintiffs they are members of the family of the deceased Hormusjee Muncherjee Cama and they are in poor, distressed and indigent circumstances. According to them they are proper objects of maintenance and support within the meaning of the first declaration of Clause 2. They further allege that they have not been paid any allowance under the trust deed. These are the only allegations contained in the plaint on which the contention contained in paragraph 14 of the plaint can be based. In that paragraph it is alleged that the decision of the trustees is unfair, unreasonable and not bona fide. The first two grounds are not available to the plaintiffs because once the trustees have decided the matter after making such inquiries as they consider proper, it is not for the Court to decide whether the decision was unfair or unreasonable, having regard to the wide powers given to the trustees. The mere allegation in para. 14 of the plaint that the decision was not bona fide does not, in my opinion, help the plaintiffs. The allegation that a certain act is not bona fide is an inference to be deduced from the facts alleged by the plaintiffs. For the inference that the act in question is not bona fide the plaintiffs have to give particulars as to what actions and for what reasons they say that the trustees' act is not bona fide. On looking at the previous paragraphs it is found that the averments only show that they being proper objects, according to the plaintiffs, have not been paid any allowance and that is the only ground for alleging that the decision of the trustees was not bona fide. I do not think that having regard to the powers given to

the trustees to satisfy themselves that the intended recipients were members of such family and proper persons to be recipients of the support or relief by the trust deed directed to be extended to or conferred upon them, the mere allegation that the decision of the trustees is not bona fide is sufficient to give the Court jurisdiction to inquire into the decision of the trustees. It was the duty of the plaintiffs, in a case like this, to put before the Court the various facts on which they rely for showing how the act of the trustees was not bona fide. By merely alleging that although they are the proper objects of the bounty of the settlor the trustees have not paid them anything, the plaintiff's do not establish the case of want of bona fides. It is common ground that in cases of this kind there may be various claimants to the trust income which is available for distribution by the trustees. So long as the trustees have not utilised the money for their own personal use but have paid the same to persons whom they consider in their judgment to be proper persons to receive the bounty, it is not on a mere general allegation of want of bona fides open to Court to assume jurisdiction to inquire into the action of the trustees. I, therefore, think that having regard to the allegations in this plaint the first issue should be found in the negative.

7. The second issue, which, having regard to my finding on the first issue, it is not necessary for me to decide, may, if necessary, be decided in favour of the plaintiffs. In my opinion the wording of the first declaration of Clause 2 is not restricted to the Parsee members of the settlor's family. The words used in declaration (2) of the same clause clearly indicate that when the settlor wanted to indicate the Parsee members of his family he used the proper expression in that place. It is contended on behalf of the defendants that the whole scheme of the trust deed is to benefit persons belonging to the Zoroastrian faith and to no others, Looking to the whole trust deed I feel that there is considerable force in that contention. At the same time it must be remembered that even if the parties wanted to make provision for a certain thing, it is the duty of the Court only to see whether in fact the words used show that that intention has been carried out. The first declaration is perfectly general in its terms and allows the trustees to pay money to members of the settlor's family. In that clause there is no suggestion whatsoever which can lead me to infer that the benefit was to be restricted to the members professing the Zoroastrian faith. In the absence of any words in the first declaration to that effect I am not able to accept the contention of the defendants in this respect because if I accept that contention it would mean that I should be reading the word "Parsee" before the words "members of the family" in that declaration. I do not think any authority justifies any such addition. The second issue should, if necessary, be found in the affirmative.