2022 INSC 533

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3791 OF 2022
(ARISING OUT OF SLP(CIVIL) NO. 6706 OF 2021)

V. PRAKASH @ G.N.V. PRAKASH …APPELLANT(S)

VERSUS

M/s. P.S. GOVINDASWAMY NAIDU & SONS' CHARITIES REPRESENTED BY ITS MANAGING TRUSTEE & ORS. …RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

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Preliminary

Leave granted.

2. This appeal, by the plaintiff of a suit for declaration and injunction, is directed against the judgment and order dated 04.03.2021, as passed by the High Court of Judicature at Madras[1] in Appeal Suit No. 978 of 2020 whereby, the High Court has allowed the appeal filed by the contesting defendants (respondent Nos. 1 to 8 herein) and has set aside the judgment and decree dated 12.10.2020, as passed by the Principal District Judge, Coimbatore[2], in Original Suit No. 160 of 2018.

2.1 In the suit aforesaid, the plaintiff-appellant sought the relief of declaration that he was entitled to be appointed as the founder trustee of the public trust M/s. P.S. Govindaswamy Naidu & Sons' Charities (respondent No. 1 herein)[3] as per its Scheme of Administration[4], for being the surviving male descendant of the branch represented by his late father. The claim of plaintiff-appellant was resisted by the contesting respondents with reference to the fact that he was a Green Card Holder of the United States of America and was not fulfilling the requirements of 'residing within the area of Madras Presidency', as envisaged by the Scheme of Administration. The Trial Court held that the plaintiff-appellant was indeed a resident of the area in question and was duly qualified to hold the position of founder trustee of the respondent-Trust. The High

1 For short, 'the High Court'.
2 For short, 'the Trial Court'.
3 Hereinafter also referred to as 'the Trust' / 'the respondent-Trust'.
4 For short, 'SOA'.

Court, however, took the view opposite with reference to the fact that the plaintiff-appellant was continuously holding a Green Card and had stayed in India less than half of the time in the past; and the assertion of his intent of permanently residing in India was contradicted by the evidence on record. Therefore, the High Court set aside the judgment and decree of the Trial Court.

3. Though a seemingly straightforward question as regards construction of the relevant terms of SOA governing the respondent-Trust and their application to the facts of present case (more particularly regarding abode/residence of plaintiff-appellant) is involved in the matter but, the position of founder trusteeship in the respondent-Trust has undergone various rounds of litigation and disputes, some of which have their own bearing in the present matter. Thus, a somewhat lengthy reference to the background aspects would be necessary.

Relevant factual matrix and background

The respondent-Trust and its constituents

4. In the first place, worthwhile it would be to take into comprehension the salient features related with the respondent-Trust and its constituents.

4.1. The respondent No. 1 - M/s P.S. Govindaswamy Naidu & Sons' Charities - is the Trust wherein the appellant has staked the claim to be recognised as one of the founder trustees.

4.2. The respondent-Trust was initially administered as per the trust deed registered on 25.01.1926, which was executed by four persons namely, (1) Shri P.S.G. Venkataswami Naidu, (2) Shri P.S.G. Rangaswami Naidu, (3) Shri P.S.G. Ganga Naidu, and (4) Shri P.S.G. Narayanaswami Naidu. For the better and efficient administration, the general body of the Trust passed a resolution on 26.11.1934 to take legal opinion and followed it up with a request to the Principal Subordinate Judge, Coimbatore in Original Suit No. 145 of 1935 to frame a Scheme of Administration. The Principal Subordinate Judge, Coimbatore, by his order dated 29.02.1936, in supersession of the earlier Scheme, provided for a comprehensive Scheme of Administration of the respondent-Trust. This Scheme, in its Chapter IV under the title “THE BOARD OF TRUSTEES”, provided that there shall be a Board of Trustees consisting of 9 members out of which, the above-mentioned four persons were recognised as ‘Founder Trustees’ while the rest were referred to as ‘Elected Trustees’. It was also provided that one of the founder trustees shall be the ‘Managing Trustee’. It was further provided that a founder trustee shall be entitled to hold office for life. The other provisions as regards term of office of elected trustees are not relevant for the present purpose.

4.3. The relevant provision in SOA, which forms the subject-matter of debate in the present case, is contained in the opening part of Clause (B) of Chapter IV, as regards qualification for trusteeship, and reads as under: -

"QUALIFICATION AND DISQUALIFICATION FOR TRUSTEESHIP
(A) QUALIFICATIONS FOR THE TRUSTEESHIP
No person shall be elected or hold office as trustee unless,
(i) he is a Hindu
(ii) he resides in the Madras Presidency and
(iii) he is not less than 21 years age"

4.4. The provisions relating to vacancies and filling up of vacancies, particularly as regards founder trustees, could be noticed in Clause (C) and Clause (D) (1) of SOA, which may also be reproduced for ready reference as under: -

"(C) VACANCIES:
1) Whenever a vacancy arises, the managing Trustee or any other Trustee on becoming aware of the fact of such vacancy shall bring it to the notice of the Board at the next monthly meeting of the board. The vacancy shall be filled up within two months thereafter.
2. Whenever a Trustee shall during the continuance of his office cease to possess the qualifications necessary for holding the office of Trustee or becomes disqualified to hold the office of Trustee, the managing trustee or any other Trustee on becoming aware of the fact shall bring it to the notice of the Board and the Board after notice to the Trustee concerned and after such enquiry as may be necessary declare that a vacancy has occurred stating the grounds of such declaration and thereupon elect a Trustee in his place under the provisions herein contained.

3. Whenever a Trustee is guilty of breach of trust of gross neglect and breach of duty, the Board shall have power after due and proper notice of the charge to the Trustee concerned and after giving him an opportunity to answer the charges against him investigate in to the matter and after enquiry record its findings on the said charges giving reasons for its conclusions. If it finds that by a resolution passed by a majority of not less than six of whom two will be Founder trustees, he has been guilty of breach of trust or gross neglect and breach of duty involving loss or damage to the charges, then on such a finding being recorded, the Trustee concerned shall vacate and shall be deemed to have vacated his office as trustee. The Trustee to be removed will leave at once. Neither the Trust nor the Board nor any of the Trustees shall be liable to any trustee or trustees so in respect of acts done bonafide in pursuance of these provisions and any person elected to the office of the Trustee shall be deemed to contract with the trust and with each of his Co-trustees to waive all rights of action in respect of acts done bonafide by the Board or any trustee in this behalf.

4. The office of a Trustee shall become vacant by resignation on the part of Trustee and notification of the same to the Board or to the Managing Trustee.
5. Any member of the board who fails to attend five consecutive meetings shall cease to be a member of it but maybe reappointed to the office in accordance with provisions herein contained.

(D) FILLING UP OF VACANCIES:

(1) FOUNDER TRUSTEES
(a) Whenever any vacancy arises in the office of a Founder Trustee, an adult male descendant in the male line of the original founder Trustee if existing and competent according to the rules herein contained, shall be eligible for appointment to that office.
(b) If there be only one in such line and he is willing to act he shall be appointed as Trustee by the Board of Trustees. If such person, however, could not be appointed thereto by reason of his not having the necessary qualifications for Trustee or by reason of his being disqualified for Trusteeship then the remaining Founder. Trustees shall proceed to fill up the vacancy in the same manner as if such person did not exist; but the person so appointed to the office shall hold office only till the disability ceases and on such disability ceasing the person entitled to succeed as herein before mentioned shall be appointed to the place of trustee.
(c) If there are more than one in such line competent to hold office, according to the provisions herein contained, then they shall choose from among themselves and the person so selected shall be appointed to the place. If there is disagreement among them then the opinion of the majority shall prevail. If there is no such majority concurring in such selection of one among them or if they do not select one from among themselves within six weeks of such vacancy then the remaining Founder trustees shall either unanimously or by a majority select one from such competitors and the person so selected shall be appointed to fill the vacancy. A person who is competent to hold office of a Founder Trustee who has however expressed his unwillingness to accept the office shall be precluded from putting forward his rights again but his right to exercise his vote in the selection of a founder Trustee in his line shall remain unaffected.
(d) If there be no competent person in such line or if the only person eligible for appointment expresses his unwillingness to accept the office the office shall be filled up by the remaining founder Trustees by selecting one competent and willing from the other lines. The person so selected shall be appointed as Trustee and he shall be subject to the provisions herein contained hold office for life.
(e) If at any time there shall be a person in the line of any of the Founder Trustees competent to hold office under these rules his rights of succession shall belong to him and he shall be eligible for appointment to the office of a Founder Trustee notwithstanding that by reason of the absence of a person competent and willing in that

line the remaining Founder Trustee selected a person from the other lines."

5. Pursuant to the aforesaid Scheme of Administration, the Trust was conducting its affairs but, in the year 1938, one of the founder trustees Shri P.S.G. Narayanaswami Naidu expired, leaving behind two sons, namely, Shri G. N. Venkatapathy and Shri V. Rajan.

5.1. After the demise of Shri P.S.G. Narayanaswami Naidu, his son Shri G. N. Venkatapathy (father of the appellant) held the position of founder trustee in the respondent-Trust until his demise on 01.01.1994. Thereafter, his brother Shri V. Rajan became the founder trustee, representing the branch of Shri P.S.G. Narayanaswami Naidu and held the position as such until 25.04.2012 when he submitted a letter of resignation and nominated his son Shri Naren Rajan to be appointed as a founder trustee. This act of Shri V. Rajan triggered the dispute and it was alleged that as a consequence of resignation, he had lost his right to nominate or vote in the selection process of the hereditary trustee of the branch represented by him. This had been the genesis of three rounds of litigation revolving around the office of founder trustee representing the branch of Shri P.S.G. Narayanaswami Naidu.

First round of litigation and relevant events

6. The dispute as to the rights of Shri V. Rajan to nominate or vote after his resignation from the office of founder trustee became the subject matter in O.S. No. 631 of 2012 filed by him and his son Shri Naren Rajan against the Trust, the trustees and the present appellant Shri V. Prakash

@ G.N.V. Prakash, who was also a probable candidate to represent the family of Shri P.S.G. Narayanaswami Naidu as founder trustee, being the son of the said Shri G.N. Venkatapathy. In the plaint, an assertion was made that the present appellant (10th defendant in that suit) was not qualified to hold the office of founder trustee but this assertion was not taken forward by the plaintiffs. Hence, the Trial Court went on to decide the other issues involved in the matter, particularly as regards the voting right of Shri V. Rajan after his resignation.

6.1. The Trial Court, by its judgment and decree dated 16.04.2013, held that Shri V. Rajan had lost his right to vote and remaining founder trustees should make the selection between Shri Naren Rajan and the appellant Shri V. Prakash @ G.N.V. Prakash. Thereafter, on 18.04.2013, the founder trustees unanimously chose the appellant for the said office of founder trustee representing the branch of Shri P.S.G. Narayanaswami Naidu. Accordingly, the appellant continued to hold the office of founder trustee and attended the meetings of the Trust.

6.2. However, in appeal, being A.S. No. 178 of 2013, the High Court, by its judgment and order dated 30.06.2014, held that though Shri V. Rajan had lost his right to contest for the office of founder trustee, but his right to vote remained intact and once he had such right to vote, appointment of Shri Naren Rajan with his vote cannot be denied. During the course of consideration of the appeal, the High Court also took note of the fact that there was no dispute on point that both Shri Naren Rajan and

Shri V. Prakash (present appellant) were qualified to be considered for the post of founder trustee and it was also admitted that they did not incur any disqualification in that regard. In view of its findings, the High Court issued mandatory injunction to the defendants 1 to 9 of that suit to appoint 2nd plaintiff, Shri Naren Rajan, as one of the founder trustees.

6.2.1. A few aspects related with the stand of parties qua the present appellant (10th defendant in the suit in question) could be noticed in necessary details. The High Court formulated the points for determination in the following terms: -

> "23. On the basis of the above submissions, the following points for consideration arise in this appeal suit:-
>
> 1. Whether the first plaintiff lost his competency and became ineligible to elect his successor by reason of his resignation as held by the trial court?
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> 2. Whether the declaratory relief sought for by the plaintiffs that the Board Meeting of the Trust held on 25.04.2012 and 30.07.2012 are illegal and not binding on the plaintiffs?
>
> 3. Whether the plaintiffs are entitled to the relief of mandatory injunction directing the defendants 1 to 9 to appoint the 2nd plaintiff as one of the trustees representing the branch of PSG Narayanasamy Naidu?
>
> 4. Whether the defendants 1 to 9 are to be restrained from appointing the 10th defendant as representing the branch of PSG Narayanasamy Naidu?
>
> 5. Whether the defendants 1 to 9 are injected from taking policy decision in the ensuing board meeting?"

6.2.2. The aforesaid point No. 4, as regards restraining the other defendants from appointing the present appellant to represent the branch of Shri P.S.G. Narayanaswami Naidu, had its co-relation with the basic questions involved in point Nos. 1 and 3 i.e., right of the 1st plaintiff Shri V. Rajan to vote for selection of founder trustee after resigning and the mandate for the other defendants to appoint the 2nd plaintiff Shri Naren

Rajan as the founder trustee. In that context, the fundamental requirement was of the competence and qualification of the two rival claimants to the said office of founder trustee i.e., the 2nd plaintiff Shri Naren Rajan and the present appellant Shri V. Prakash; and in that regard, it had been the specific case of all the parties that both of them were qualified to be considered for the said office. This aspect of the matter was repeatedly taken note of by the High Court, as could be noticed from paragraphs 30 and 32 of the said judgment, which read as under: -

> "30. As regard the qualification of the plaintiffs and the 10th defendant are concerned, it is admitted that both the plaintiffs and the 10th defendant are qualified to be considered for the post of founder Trustees. It is also admitted that they did not incur any disqualification from holding that post. According to the learned Senior counsel appearing for the respondents 1 to 3 and 10 and as per the findings of the learned trial Judge, though the first plaintiff was qualified, after having submitted his resignation, he suffered disqualification and therefore, he was not competent to contest to the office of the founder Trustee or in other-words, he lost his competency by reason of his resignation to elect the founder Trustee and only those persons, who are competent to hold the post are entitled to choose one from among themselves to elect or select a founder Trustee as per Clause [c] of Chapter IV(D) (1) and therefore, excluding the first plaintiff, who lost competency, the persons who are eligible to be considered to the office of the founder Trustee representing PSG Narayanasamy Naidu are the 2nd plaintiff and the 10th defendant and therefore, the trial court was right in directing the other Trustees, namely the plaintiffs 2 to 4 to select one among them and as there was consensus among them.
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> *** *** ***
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> 32. According to me, the learned trial Judge as well as the learned Senior counsels appearing for the respondents 1 to 3 and 10 have not properly understood the difference between the qualifications prescribed as per Chapter IV(B) and the process of filling up the vacancy as stated in Chapter IV(D). As stated supra, there is no dispute that the plaintiffs and the 10th defendant are qualified to be considered for the post of founder Trustees and the question to be considered is whether the first plaintiff incurred disqualification

> by reason of the resignation and thereby, lost his competency to hold the office in future."

6.2.3. In regard to the core question as to the competence of Shri V. Rajan to be a member of electoral college, the High Court, of course, returned the finding that he was competent and his only disqualification was of contesting for the office of founder trustee after having relinquished the same. Thus, the High Court put its seal of approval on the selection of 2nd plaintiff Shri Naren Rajan by the majority comprising of the vote of 1st plaintiff and consequently, injuncted the other defendants from appointing the present appellant (10th defendant in said suit) to represent the branch of Shri P.S.G. Narayanaswami Naidu.

6.3. The appellant attempted to question the judgment of the High Court before this Court but, the petition seeking special leave to appeal, being SLP(C) No. 26503 of 2014, was dismissed by this Court on 26.09.2014.

6.4. Thus, the said Shri Naren Rajan came to be appointed as founder trustee, representing P.S.G. Narayanaswami Naidu branch of the family.

6.5. Unfortunately, on 21.05.2015, the said Shri Naren Rajan met with his untimely death due to a road accident.

Second round of litigation and relevant events

7. After the death of Naren Rajan on 21.05.2015, vacancy again arose and the appellant V. Prakash filed a suit, being O.S. No. 1225 of 2015 before the District Munsif Court, Coimbatore, for recognizing him as a founder trustee for the reason that the other surviving male member

Shri V. Rajan was prohibited to hold the office of founder trustee, as held in the earlier round of litigation.

8. While the said suit filed by the appellant was pending, a separate suit in O.S. No. 1952 of 2015, filed by Shri G. Rangaswamy (respondent No. 9 herein) seeking injunction against the Trust in the matter of filling up of vacancies. An order granting injunction therein and very maintainability of this suit were questioned by the contesting trustees before the High Court in Civil Revision Petition No. 665 of 2010 and they sought rejection of the plaint of O.S. No. 1952 of 2015. Therein, appellant filed M.P. No. 3 of 2015 and the said Shri V. Rajan filed M.P. No. 4 of 2015 to get themselves impleaded.

8.1. The said revision petition and the interlocutory applications filed therein were considered together by the High Court in its order dated 26.06.2015. This order carries several interesting features, as noticed infra.

8.2. The said revision petition was filed by the present respondent-Trust through its managing trustee Shri L. Gopalakrishnan, who himself joined as petitioner No. 2 and was also joined by another founder trustee Shri G.R. Karthikeyan and by one elected trustee Shri D. Lakshminarayanasamy[5].

8.3. At the outset, it was submitted on behalf of the plaintiff-Shri G. Rangaswamy (respondent No. 9 herein) before the High Court that he

5 The said revisionists are respondent Nos. 1 to 4 herein.

wanted to withdraw the suit as filed and, therefore, the civil revision petition was unnecessary. However, these submissions were opposed by the learned counsel appearing for the revisionists (contesting respondents herein) as also by learned counsel appearing for the said Shri V. Rajan. The High Court, looking to the circumstances of the case, even while recording the statement made on behalf of the plaintiff that he would withdraw the suit, proceeded to examine the other contentions of the parties wherein the respective claims were asserted on behalf of the present appellant and the said Shri V. Rajan, for being appointed as founder trustee to represent P.S.G. Narayanaswami Naidu branch. It was asserted on behalf of the appellant that he alone was competent for the vacancy in question for Shri V. Rajan having sustained disqualification by resignation. While refuting these submissions, it was asserted by the learned counsel appearing for Shri V. Rajan that the appellant was a Green Card Holder of U.S.A. and was visiting India rarely and he was disqualified for having converted into Christianity. The stand taken on behalf of the revisionists was that they would select a person based on the qualification of two rival claimants i.e., the appellant and Shri V. Rajan.

8.4. The High Court proceeded to observe that the issue regarding the appointment of the trustee representing the line of Shri P.S.G. Narayanaswami Naidu was the basic issue which the Court would be deciding so that final decision could be taken by the existing founder trustees. Thereafter, the High Court referred to various aspects of the

matter, including the reason of Shri V. Rajan's earlier resignation that it was to facilitate the transition of trusteeship to his son (Shri Naren Rajan) but his son having expired, he was entitled to the vacancy so caused.

8.5. Having examined the matter in its totality, the High Court held that Shri V. Rajan was not suffering from any disqualification and at the same time, directed the Board of Trustees to consider the claims of Shri V. Rajan and the appellant V. Prakash and then to take appropriate decision regarding the appointment of founder trustee from Shri P.S.G. Narayanaswami Naidu family.

8.6. The appellant challenged this decision of the High Court in SLP(C) Nos. 23316-23318 of 2015, which was dismissed by this Court by the order dated 04.01.2016 as the main suit itself was withdrawn.

8.7. Subsequently, the said Shri V. Rajan was appointed against the vacancy of founder trustee and continued to function as such. However, as the providence would have it, the said Shri V. Rajan also expired on 21.06.2017.

Third round of litigation & subject-matter before this Court

9. With the death of Shri V. Rajan on 21.06.2017, the appellant remained the sole surviving male member from the branch of P.S.G Narayanaswami Naidu's family and by the letter dated 30.06.2017, he intimated his willingness to serve as founder trustee. Thereafter, on 01.08.2017, clarifications were sought from the appellant by the Board of Trustees in reference to his qualifications to hold the office as founder

trustee. In the detailed letter dated 10.08.2017, appellant brought the judgment and decree in O.S. No. 631 of 2012 and A.S. No. 178 of 2013 to the notice of the Trust.

9.1. Thereafter, on 07.11.2017, the Board replied by stating that in A.S. No. 178 of 2013, the High Court had not given any categorical finding regarding the qualification of the founder trustee. The appellant was further called upon to furnish proof of his permanent residence in India because the Board was of the view that SOA mandated that for a person to be qualified for the post of founder trustee, he must be “permanently” residing in Madras.

9.2. Subsequently, the appellant sent another detailed letter dated 22.11.2017, stating that the finding of the High Court regarding his qualification was categorical and he was duly qualified even in terms of the requirement of residence in the light of his Indian Passport, Aadhaar Card, property documents, bank accounts and previous appointment by the Board itself.

9.3. Again, the appellant received a communication dated 16.02.2018 that the Board had taken note of the pending suit in O.S. No. 1221 of 2015, where the matter was *sub judice*. However, on 22.02.2018, the appellant informed the Board that he had already filed an application for withdrawing the suit on 02.02.2018, being I.A. No. 264 of 2018, with liberty to institute fresh proceedings.

10. Even when all the aforementioned correspondence did not yield the desired result, the appellant filed the present suit in O.S. No. 160 of 2018 before the Principal District Judge, Coimbatore for the relief of declaration that he was entitled to be recognized as the founder trustee as per the SOA and also for perpetual injunction.

10.1. While deciding I.A. No. 272 of 2018, filed by the contesting respondents for rejection of the plaint in O.S. No. 160 of 2018, the Trial Court, by its order dated 27.04.2018, directed the respondent-Trust to decide the eligibility of the appellant with already furnished documents. This decision however was made subject to the result of the suit. The relevant part of the said order dated 27.04.2018 reads as under: -

> "....Already the issue between the parties was with regard to the citizenship of the plaintiff in USA. The document that was sought by the petitioner was explained by the plaintiff herein. so this Court directs the petitioner in I.A.272/2018 to decide the eligibility of the plaintiff with the already furnished document and with the explanation given by the plaintiff dated 22.11.2017 in respect of the citizenship of USA within two weeks from the date of this order and report to this Court on 04.06.2018. Until such time, any decision taken by the petitioner is subject to the result of this suit. Further the plaintiff is agreed to produce the 1st document tomorrow (28.04.2018)."

10.2. Accordingly, the Board of Trustees, in its meeting held on 27.07.2018, considered the claim of the appellant and, after scrutinising the documents, rejected his claim to the office of founder trustee on its view that the founder trustee must be permanently residing in Madras Presidency as per SOA; and the appellant, being a Green Card Holder of U.S.A., was not qualified for the office of hereditary trustee as per Chapter IV Clause (B)(a)(ii) of the SOA. On 21.08.2018, the decision of

Board of Trustees was placed before the Trial Court by filing a memo along with minutes of the meeting.

10.3. Thus, after going full circle of communications and proceedings, the matter was before the Trial Court for adjudication.

11. The plaintiff-appellant submitted before the Court that the conduct of the trustees has been mala fide and unconscionable in not considering him qualified to be a founder trustee and adding the requirement of “permanent” residence. It was further submitted that the Board of Trustees had violated the mandate of SOA which provided the outer limit of 60 days to fill the vacancy in the office of founder trustee. The appellant further submitted that in the light of previous litigation whereby respective Courts had declared him duly qualified and also his previous appointment as a founder trustee, the Board of Trustees was not justified in denying his candidature. The appellant also stated that ‘Green Card’ was a mere privilege granted to him by virtue of his marriage to a US citizen and was not an evidence of citizenship. He further contended to be a resident and citizen of India and submitted his Indian Passport, Aadhaar card, Bank accounts and other documents to support his claim.

11.1. On the other hand, respondent Nos. 1-8 submitted that the suit was not maintainable and denied the claim of appellant by contending that the judgment dated 16.04.2013 in O.S. No. 631 of 2012 was on recast issues, without any decision on the issue of qualifications of the

appellant. Reference was made to page 10 of the said judgment that had been as under: -

> "Both sides chose to leave those issues (issues on disqualification of Mr. Naren Rajan and Mr. Prakash) open as could be gathered during the course of the arguments. Accordingly, the issues are recast as below".

11.1.1. It was further submitted that in A.S. No. 178 of 2013, the High Court did not give any specific finding on the issue of qualification and merely observed by way of obiter dicta that Shri Naren Rajan and the appellant were qualified to be considered for the post of founder trustee. As regards the previous appointment of the appellant on 18.04.2013, it was submitted that the appointment was conditional upon the proof of permanent residence of the appellant in Coimbatore, Tamil Nadu; and the appellant being a Green Card holder of U.S.A. was not qualified to be appointed as a founder trustee as per Chapter IV Clause (B) of SOA.

11.2. After considering the respective pleadings of the parties, Trial Court framed twelve issues. The relevant issues for the present purpose could be noticed as under: -

> "1. Whether the plaintiff is having necessary qualification for the post of founder trustee of the 1st defendant, in terms of the scheme of administer of the 1st defendants?
>
> 2. Whether the averments of the defendants is that the plaintiff is disqualified from being appointed as a Founder Trustee of the 1st defendant as he is a Green Card Holder of the United States of America / a permanent Resident of USA?
>
> 3. Whether the contentions of the defendants that the suit is laid on non existent provision in the scheme of administration dated 29-02-1936 in O.S.No.145/1935 framed by the Court of Principal Subordinate Judge, Coimbatore, is correct or not?

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> 8. Whether the plaintiff is entitled to be recognized as the founder trustee of the 1st defendant trust in the vacancy caused by the demise of Mr.V.Rajan?
>
> 9. Whether the plaintiff is entitled to permanent injunction as prayed for?
>
> 10. Whether the plaintiff is entitled the relief of declaration, declaring that the meetings of the Board of Trustees of the 1st defendant, held after 60 days from the date of demise of Mr. V.Rajan, without notice, without participation of the plaintiff are null and void?"

11.3. After taking the evidence and having heard the parties, the Trial Court proceeded to decide the relevant issues in its judgment dated 12.10.2020.

Findings of the Trial Court

12. After a detailed analysis of the material placed on record as also the previous litigations, the Trial Court decided the question of qualification to be appointed as founder trustee in favour of the appellant. A few of the relevant observations and findings of the Trial Court as occurring in paragraphs 40 and 44 of its judgment could be profitably reproduced as under: -

> "40. Ex.A.2 is the judgment and decree passed in O.S.No.631/2012. In the said suit, the plaintiff's uncle V.Rajan and his son are the plaintiffs. The said suit was filed seeking for the relief of declaration challenging the validity of the meeting of Board of Trustees of the 1st defendant trust and other reliefs. In the said suit the plaintiff herein has been arrayed as 10th defendant and the defendants herein were also arrayed as defendants. The said suit was ultimately dismissed with the direction to the Board of Trustees that it shall choose one from among the 2nd plaintiff (Naren Rajan) and the 10th defendant (V.Prakash @ G.N.V.Prakash, the plaintiff herein) to represent the branch of late.PSG Narayanasamy Naidu in the Board consistent with the spirit of SOA. In the said suit though the Rajan and Naren Rajan pleaded about the alleged disqualifications of the plaintiff herein, later on, they did not press the said plea. In fact, both sides

> choose to leave those issues open. The 1st defendant trust or any other defendants did not raise any plea about the alleged disqualifications of the plaintiff. Even though the issues were recasted, the learned Additional District Judge, after satisfying the qualification of the plaintiff herein, arrived the said decision.
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> *** *** ***
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> 44. Hence, this Court is of the considered view that the plaintiff's qualification, to be appointed as a founder trustee has been affirmed by the Judicial proceedings. The said judicial proceedings reached its finality. In the earlier proceedings, the defendants did never raise any objections with regard to the qualification of the plaintiff. Moreover, in view of the judgment passed in Ex.A.2, the plaintiff was selected as Board of Trustee and the plaintiff had effectively served as a Board of Trustees from 8-04-2013 to 26-06-2015. He had participated in the Board meetings and has contributed his knowledge to the benefit and development of the 1st defendant trust. The said factum has been proved vide the documents Ex.A.37 to Ex.A.47. Further, this Court has perused the Ex.A.9 and Ex.A.10, wherein the 1st defendant trust did not say anything about the alleged disqualification of the plaintiff. Further, the Plaintiff was examined as PW.1 and deposed before the Court that he is an Indian citizen and resident of Coimbatore."

12.1. On the issue of 'Green Card', the Trial Court perused the concerned legislation and literature of the U.S.A., wherein the permanent resident card has been described as a document issued to immigrants under the Immigration and Nationality Act (INA) as evidence that the holder has been granted the privilege of residing permanently in the United States. The holders of the Green Card are known as Lawful Permanent Residents (LPR). They are the citizen of another country but are entitled to apply for U.S. citizenship. The Court came to the conclusion that 'Green Card' was a mere privilege and did not terminate the Indian citizenship automatically. Relevant extracts of the findings of the Trial Court would read as under: -

> "46. It is apposite to mention here that PW.1, in his evidence has deposed that, in the year 2010 itself, he shifted from USA to India

permanently. Further he retired in the year 2009 in USA. He denied the suggestion that he cannot stay more than six months at a time in India. He has deposed that he is holding Indian Passport and he has not applied or obtained USA Passport. Further, he deposed that the even though plaintiff could apply for USA citizenship, he did not apply for the same. Hence, as rightly pointed out by the learned counsel, 'green card' is a privilege. It is one of the way to attain US citizenship. It alone does not confer citizen of US states. If the card holder violates, he will lose the green card holder status. One can voluntarily give up the card. Hence, merely because, the plaintiff is a green card holder, his Indian citizenship will not be declined automatically.

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48. Hence, this Court holds that holding green card is a privilege. Green card holder does not automatically lose his citizenship of his mother country. Hence, this Court decides that plaintiff's having green card, would not be a bar to be a founder trustee."

12.2. The Trial Court accepted the appellant's right to be recognised as the founder trustee pursuant to Chapter VI Clause (4)(c)(1) of the SOA, as being the sole surviving adult male member of the P.S.G. Narayanaswami Naidu branch of the family and granted injunction restraining the defendants from interfering with the right of the appellant as a founder trustee. The Trial Court held and directed as under: -

"53. In view of the above, this Court hold that the plaintiff is entitled to be recognized as the founder trustee of the 1st defendant trust in the vacancy caused by the demise of Mr.V.Rajan. Since, the 1st defendant trust has not acted as per the SOA, the plaintiff is entitled the relief of declaration that is to be recognized the founder trustee of the 1st defendant trust in the vacancy caused by the demise of Mr.V.Rajan, consequently, the plaintiff is entitled the permanent injunction restraining the defendants from any manner interfering with the right of the plaintiff as a founder trustee of the 1st defendant trust and in his role, responsibilities and duties as a founder trustee of the 1st defendant trust.

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56. Admittedly, the scheme framed in the year 1936, at that time there were very limited transport facilities. Nowadays due to advancement of scientific technology and development of human resources, the world has shrunk into a Global Village. Admittedly,

> the plaintiff's wife is a citizen of USA. The plaintiff served in USA. Now he has retired from service, he has winded up his businesses at USA. Due to the developments in the Air transport he can travel from USA to India within a day or two. Due to Covid-19 pandemic, international conferences, seminar, Board Meetings etc., all are being conducted through video conference. In fact, in this case also, both side counsels had argued through video conference. From the above imply that even if the plaintiff resides in USA, he could effectively discharge his function as Founder Trustee and even he can very well participate in the Board Meetings and other meetings through means of technology. Hence, this Court is of the considered view that Chapter IV clause (B) (ii) that one has to reside in the Madras presidency is otiose for the present days and the said provision requires suitable amendment. Hence, this Court is of the considered view that Ex.A.1. Scheme of Administration is to be amended suitably. The plaintiff counsel has submitted that the 1st defendant trust alone is entitled to take steps to amend the SOA. Till the plaintiff is appointed as a Board of Trustee, he has no power to take steps to amend the Scheme of Administration. The power or authority to amend the scheme of administration lies only with the 1st defendant trust."

Findings of the High Court

13. Being aggrieved by the judgment and decree so passed by the Trial Court, the contesting respondents approached the High Court by way of First Appeal in A.S. No. 978 of 2020.

13.1. Learned counsel for the contesting respondents extensively assailed the judgment of the Trial Court in declaring the appellant qualified for trusteeship on the basis of non-existing provision of the SOA. It was submitted that as per Chapter IV Clause (B)(a)(ii) of SOA, one of the qualifications for the post of founder trustee was that the person concerned ought to be a resident within the area of Madras Presidency; and the expressions "he resides in the Madras Presidency" had specific connotations and reasoning in reference to the extensive supervision work required to be carried out by the Trustee.

13.2. *Per contra*, learned counsel for the present appellant submitted that doctrine of *res judicata* was applicable even against the co-defendants. It was further emphasised that the earlier appointment of the appellant, when the Board of Trustee was called upon to elect amongst the descendants of Shri P.S.G. Narayanaswami Naidu during the earlier rounds of litigation, was a sufficient instance for the operation of estoppel by conduct and to forbid the respondents to change their stand.

13.3. After considering the respective submissions of the parties, High Court observed that qualification of the founder trustee with reference to residence in Madras Presidency was the bone of contention; and held that the Trial Court erred in applying the principles of *res judicata* and estoppel in the present suit. The High Court observed thus: -

> "12. The point for consideration in the appeal is whether the plaintiff proved before the Trial Court he resides within the Madras Presidency, to be qualified for the post of Trusteeship in the Appellant Trust?
>
> 13."Madras Presidency" when the scheme framed in the year 1936, during the British India period included most of the present South India states and part of Orissa. After Independence and the limitation of states on linguistic lines City of Coimbatore where the appellant trust Iocated fall under the "State of Tamil Nadu" formerly known as "Madras State".
>
> 14. Be that as it may, the issue is narrowed down whether a green card holder of USA will fall under the meaning of a person resides in Madras Presidency. Though this issue was framed in the earlier round of litigation (i.e) O.S.No.631 of 2012, the said issue was deleted and not adverted leaving the issue open, therefore any observation and finding in the earlier litigation made, it was not on a issue framed. The Trial Court in O.S.No.631 of 2012 expressly made clear it will not advert to this issue. So, whether the plaintiff resides in Madras Presidency in the present suit will not be hit by Section 11 of C.P.C This Court is of the view that the earlier appointment of the plaintiff as Founder Trustee was also done in the midst of litigation and there was no opportunity for the parties

> to prove either way whether holding the green card will disqualify a person therefore, the principle of estoppel also cannot be applied in this case. This Court wants to make clear that the suit ought not to have been decided on the point res judicata or estoppel. Settling the legal objections regarding the maintainability of the suit as above, the point of qualification as per scheme now tested in the right of evidence placed."

13.4. Thereafter, the High Court observed that the appellant was a permanent resident of the U.S.A., as reflected from his Green Card. He was holding Aadhaar Card to raise the presumption of his residence at the address mentioned therein and he was an income tax assessee in India as well as in the U.S.A. However, as per Ex.A24 and Ex.A25, the letters given by Chartered Accountant on 12.02.2018 and 07.01.2019 respectively, for the period 2014 to 2019, the appellant had been out of India for more than half of the period even though he alleged to have shifted permanently to India in the year 2010. After taking note of these facts, High Court observed that as per the spirit of SOA, the plaintiff-appellant has failed to prove his animus to reside in Madras Presidency and could not be termed as a resident. The High Court observed and held as under: -

> "21. Going by his own admission in the cross examination, he has deposed that in the year 2010 itself he shifted to India permanently. Whereas, Ex.A.24 and Ex.A.25 for the period 2014 to 2019, he had not been in India for more than half the period. It is not that he should not go abroad and he should always stay within the Presidency of Madras, when the qualification had been prescribed though a century old unless until it is amended, the spirit the of provision should be respected. The plaintiff who claims Trusteeship have miserable failed to place evidence that he live in Madras Presidency and he continue to have the animus to reside in Madras Presidency.
>
> 22. The plaintiff still holds his green card, most of the time he was not staying in India even according to his own evidence. Based on

his conduct of attending the board meeting earlier, when he was holding the Trusteeship will though give an impression that he will be physically available when the meeting is conducted, but as said in the Supreme Court judgment and relied by the plaintiff counsel, the animus of the person to reside in India is important and only the animus has to be looked into. Here is the case where the plaintiff say he has shifted to India from U.S.A permanently and reside in India since 2010, but his own evidence indicates that only less than 50% of the period he was in India and he holds green card, which show he is a permanent resident of USA. He has not given up his green card. His animus to be a resident of U.S.A is made explicit. In the cross examination, he has asserted that he has no intention to give up his green card. His admission on oath as well as his conduct does not show that he neither on fact resides within Madras Presidency nor have any animus to live within Madras Presidency. Animus of a person can be inferred only by the conduct. Nobody can say the plaintiff should not have the green card or have a business in foreign country and account in a foreign country, but when he wish to hold the Trusteeship of a Trust, which mandates that the trustee must reside within Madras Presidency and if he is not able to satisfactorily prove that he resides within Madras Presidency, it is not obligatory on the part of the other Trustees to induct him to the Trust, contrary to the provision of the scheme of administration.

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26. The learned counsel appearing for the respondent/plaintiff would seriously contend that the respondent/plaintiff is a resident of India as defined under income tax Act and he has all animus to stay in India permanently. Though such statement is made in the course of arguments, evidence placed by respondent/plaintiff does not support the said statement. As pointed out earlier, the respondent/plaintiff had stayed in India less than 50 % and his intention to live in Madras Presidency permanently is not fortified by his conduct. His statement on oath that from 2010 he is permanently residing in India is also falsified by its own document Ex.A.24 and Ex.A.25."

13.5. The High Court further observed that Trial Court had given a wide interpretation to the word "resides" in the light of scientific advancements but, such a change or amendment was not permissible in collateral proceedings and that could only be done via appropriate amendment to the clause in the SOA. The High Court said, -

> “24. Any terms found in the written document not in contrary to law to be understood the way it is stated and not to be supplemented unless there is ambiguity. Here is a clause which says the Founder Trustee must reside within Madras Presidency. The word -resides- as per Oxford dictionary, means -live in a particular place-. The word to be understood as it is defined and cannot be substituted with the word -stay- or -animus to reside- or domicile or citizenship.
>
> 25. The Trial Court Judge has thought that in view of scientific advancement the word reside should not be given the meaning how it was understood 100 years ago. I fear, few years later, some other Judges may think the restricting the post of Trusteeship to male member is against gender Justice so it should be read as female also since in general clauses Act he includes she, men includes women so male includes female. This may be the opinion of the Judges, but the persons who manage the Trust should come forward to amend the clause, if they feel it is out dated or not convenient. Without appropriate amendment to the clause in the scheme of administration which is the out come of the scheme framed under a Court decree, the terms to the scheme cannot be manipulated.”

13.6. In view of above, the High Court set aside the judgment and decree of the Trial Court and held that the appellant was not residing within the area of Madras Presidency as per the qualifications prescribed under the SOA and hence, was not eligible for the office of the founder trustee. The High Court held and concluded as under: -

> “28. Going by the literal meaning of the word -resides- as of now, the records produced and relied by the respondent/plaintiff is inadequate to qualify him as a person who resides in Madras Presidency. However, not a disqualification it is always open to the respondent/plaintiff to place before the Board of Trustees, records to show he resides within Madras Presidency and qualified to hold the trusteeship.
>
> 29. For the said reasons, this Court finds that the trial Court judgment holding that the plaintiff/respondent resides within Madras Presidency and qualified to hold the post of Trustee is contrary to his own admission and other evidence, hence liable to be set aside. Accordingly, this Appeal Suit is Allowed. The trial Court judgment is set aside. Consequently, connected Civil Miscellaneous Petition is also closed. No costs.”

14. The plaintiff-appellant has approached this Court being aggrieved by the judgment and order dated 04.03.2021 so passed by the High Court and that is how the matter is before us for determination of the basic question relating to the validity of the appellant's claim to the office of founder trustee.

Other claimants

15. Before adverting to the rival submission of the main contesting parties, appropriate it would be to take note of a few facts related with two other claimants to the said office of founder trustee in the respondent-Trust.

15.1. The petition seeking leave to appeal was taken up for consideration on 01.07.2021 when it was informed on behalf of the contesting respondents that Shri Narayan Karthikeyan had been appointed as founder trustee on 14.05.2021 on the vacancy in question. In the given set of circumstances, the plaintiff-appellant was permitted to join the said newly appointed trustee as respondent No. 10 and while issuing notice, status quo with regard to composition of the trustees was directed to be maintained.

15.2. The said respondent No. 10 is none other but son of Shri G.R. Karthikeyan, respondent No. 3. His father-in-law and brother-in-law are also holding the office of trustee in the respondent-Trust and are on record as respondent Nos. 7 and 8 respectively. It has been submitted by the respondent No. 10 that he came to be nominated after the appellant was found ineligible because the three founder trustees decided to nominate one of the eligible members from the remaining three family branches of

founder trustees; and accordingly, a decision was arrived at to appoint him as one of the trustees.

16. During the pendency of SLP, on 14.07.2021, an application for intervention (I.A. No. 80383 of 2021) also came to be filed on behalf of one Dr. D. Padmanabhan, who would assert his own right to be appointed as a trustee. The applicant has pointed out the relationship of respondent No. 10 with the other existing trustees and has submitted that the appointment of respondent No. 10 was against the spirit of SOA. The applicant has further submitted that his late father Prof. G.R. Damodaran was the founder principal of the two colleges and contributed towards development of the activities of the Trust, particularly related with empowerment of education; and his late father held the status of Managing Trustee from 1972-1978. The applicant submits that he wishes to be a part of the Trust for the purpose of contributing towards its growth so that the institutions pioneered by his father scale greater heights.

17. As regards the above-mentioned two claimants, suffice it to observe that their respective claims to the office in question could be taken up for consideration only if the claim of the appellant is negatived and he is held ineligible to hold this office. Having said so, we may revert to the core of the matter with reference to the rival submissions.

Rival Submissions

18. Learned senior counsel for the appellant has submitted that the High Court has wrongly reversed the judgement of the Trial Court

whereby the appellant was considered fulfilling the requirement of ‘residence' as per the SOA. The Trial Court was justified in taking note of previous conduct of the respondent Trust as well as previous judicial proceedings. The Trial Court was also justified in considering the Green Card as a mere privilege and not a bar operating against the appellant, so as to prevent him from being appointed as a founder trustee.

18.1. It has been contended by the learned senior counsel for the appellant that the principles of *res judicata* and estoppel are of great importance in the matter at hand, and the contentions on these principles should not have been cursorily rejected by the High Court. In support, reliance is placed on several decisions of this Court.

18.2. The learned counsel would further submit that it was independently proved by the appellant before the Trial Court that he was a resident of the area in question and also had the required animus to reside thereat. His Aadhaar Card, Indian Passport, bank certificates, certificates issued by Chartered Accountants are sufficient to prove his residence and animus, and also to qualify him to hold the office of the founder trustee.

18.3. The learned counsel has argued that any period of physical presence, however short, may constitute residence provided that it is not transitory, fleeting or casual, as was observed by this Court in ***Yogesh Bhardwaj v. State of U.P. & Ors.*****: (1990) 3 SCC 355**. The very fact that appellant retired in 2009, shifted to India in 2010, and has not applied for

citizenship of the U.S.A. till date, duly proves his animus. In support of these contentions, reliance is placed on several decisions, including those in ***Inder Singh Ahluwalia v. Prem Chand Jain & Ors.*****: 1993 SCC OnLine Del 12**, and ***Mst Jagir Kaur & Anr. v. Jaswant Singh*****: (1964) 2 SCR 73**.

19. Learned counsel for the proforma respondent No. 9 has supported the claim of the appellant and has submitted that the Trial Court, after considering all the aspects, had rightly held the appellant qualified for the office of founder trustee, being the only male descendant available in the family branch of Shri P.S.G. Narayanaswami Naidu. Thus, he ought to be appointed the founder trustee as per the SOA. The learned counsel has further submitted that the qualification of the appellant was never disputed by the Board in earlier proceedings. There was a sudden change of stand by the Board, which is *mala fide* and unjustified.

20. *Per contra*, learned senior counsel for respondent Nos. 1-4 and 10 has submitted that the High Court has rightly set aside the judgment of the Trial Court. The bar of *res judicata* has no application in the present matter because the appellant's qualification had never been a matter directly in issue and was never decided on merits in previous rounds of litigation. Furthermore, the bar of estoppel cannot operate against the respondent-Trust because the previous appointment of the appellant was on the condition of submission of proof of permanent shifting to Coimbatore. The learned senior counsel would further submit that the

issue of Green Card qua the residence in India is a pure question of law and hence, principle of estoppel cannot be invoked in the present matter.

20.1. Learned senior counsel has contended that the appellant is not qualified to be a founder trustee as per Chapter IV Clause (B) of the SOA. A Green Card is officially known as a Permanent Resident Card and the holder of this card cannot stay outside U.S.A. beyond one year without re-entry permit. The appellant has himself deposed in his cross-examination about his intention of not giving up his Green Card. He is a pensioner in U.S.A.; has a driving licence; and is an income tax assessee in U.S.A. Thereby, appellant has completely failed to establish his animus to be a resident of India.

21. Learned senior counsel for respondent Nos. 6-8 has also made the submissions in parallel lines and has contended that the principle of *res judicata* cannot be applied as the issue of qualification was not decided on merits and in earlier litigation, there was no conflict of interest between the respondent-Trust (defendant No. 1 in O.S. No. 631 of 2012) and the appellant (defendant No. 10). Thereby, essential conditions for the application of *res judicata* between the co-defendants as laid down by this Court *in* ***Makhija Construction & Engg. (P) Ltd. v. Indore Development Authority & Ors*.: (2005) 6 SCC 304** are not fulfilled and present suit is liable to be dismissed.

22. Having given thoughtful consideration to the rival submissions and having examined the material placed on record, we are clearly of the view

that this appeal deserves to succeed and the decree of the Trial Court deserves to be restored.

The appellant's claim rightly accepted by the Trial Court

23. A comprehensive look at the logic and reasoning of the High Court in the impugned judgment impels us to observe that the High Court seems to have approached the case from an altogether wrong angle and has proceeded on irrelevant considerations while ignoring the relevant factors and material considerations. The High Court seems to have picked up the residential requirement in the qualification for trusteeship in the Scheme of Administration as being of strict physical presence, *de hors* the context and *de hors* the purpose.

24. The overwhelming evidence produced by the plaintiff-appellant in the form of Aadhaar Card issued by the Government of India as also his Income Tax assessments in India based on the certification of Chartered Accountant of his fulfilling the requirement of 'resident' in terms of Section 6 of the Income Tax Act, 1961 has been taken to be of little value by the High Court after counting the number of days of the appellant's stay in India and then questioning that the certificates were not showing as to for how many days he was in Madras Presidency. Even in that regard, the High Court, though referred to the decision in ***Mst Jagir Kaur*** (supra) but failed to take note of the ratio therein. The appellant's ownership and possession of property in India, including residential property; having bank accounts in India; being assessed as resident for

the purpose of Income Tax Act, 1961 have all been brushed aside by the High Court by mere count of number of days of stay in India. With respect, we are unable to endorse this approach.

25. In paragraph 21 of the impugned judgment, the High Court has observed that the spirit of the provisions prescribing qualification ought to be respected. With respect, it appears that the High Court in the first place seems to have missed out the fundamentals on the spirit of formation of trust and its Scheme of Administration. As noticed, the trust was established in the year 1926 by the sons of Shri P.S. Govindaswamy Naidu and the trust was actually named as "M/s. P.S. Govindaswamy and Sons' Charity". The Scheme of Administration, while envisaging nine trustees, specifically provided for the four sons of Shri P.S. Govindaswamy as the founder trustees. Office of founder trustee has been made a heritable one with the concept of having the hereditary trustee in the line of each of the founder trustee. Until 01.01.1994, the appellant's father Shri G.N. Venkatapathy remained a founder trustee after the demise of his father Shri P.S.G. Narayanaswami Naidu, one of the original founder trustees, who died in the year 1938. The hereditary trusteeship, in the spirit of Scheme of Administration, has continued in relation to the lines of other original founder trustees too as the respondent Nos. 2, 3 and 4 are respectively representing the branches of Shri P.S. Venkatapathy, Shri P. Rangaswami Naidu and Shri P.S. Ganga Naidu. Reverting to the branch of Shri P.S.G. Narayanaswami Naidu who died in the year 1938 and was substituted by

his son Shri G.N. Venkatapathy, it is noticed that after the death of Shri G.N. Venkatapathy, his brother Shri V. Rajan was taken as the founder trustee to represent this branch. As noticed above, there had been internal disputes, which cropped up after resignation of Shri V. Rajan and which led to litigations and appointment of Shri Naren Rajan and later appointment of Shri V. Rajan again as founder trustee. As already noticed, with the demise of Shri Naren Rajan on 21.05.2015 and of Shri V. Rajan on 21.06.2017, it is the appellant alone who remains to be the male descendant to represent the branch of Shri P.S.G. Narayanaswami Naidu.

25.1. When looking at the spirit of the Scheme of Administration of Trust, in our view, it would be a travesty of the Scheme itself if in the presence of the appellant, the representation of this branch of the founder trustee is annulled or the position is shifted to someone else. Of course, this could happen if it is established beyond doubt that the appellant has incurred one or more of the disqualifications. In this suit, no other disqualification has been alleged by the respondents against the appellant except his want of residence in Madras Presidency. This suggestion has been effectively repelled by the appellant by production of cogent evidence and with specific assertion that he was residing in India since 2010. In our view, when examining the matter from the point of view of spirit of Scheme of Administration, the concept of representation of the branch of founder trustee needs to be respected and, in that regard, claim of the descendant like the appellant cannot be lightly brushed aside by a mere count of

number of days of stay in India while ignoring all other features and factors showing his choice of staying in India.

25.2. As observed by this Court in ***Mst Jagir Kaur*** (supra), ultimately, the question of residence in every case depends on the facts, but the word 'reside' usually means something more than a flying visit or a casual stay. The appellant who has continuously been in India, apart from holding property and bank accounts in India and also holding an Aadhaar Card, could least be said to be a person visiting India casually or as a transit tourist.

26. The High Court has posed a question that certificates do not disclose that out of 979 days in seven years, how many days the appellant was in Madras Presidency? Again, the approach of the High Court does not commend to us. It has not been shown if the appellant had not been available in the area in question so as to effectively participate in the administration and management of the Trust. Mere holding of Green Card of the United States of America cannot be treated as decisive of the matter in the present case.

27. The High Court has made adverse comments on the justified observations of the Trial Court that in view of the scientific advancements, the word 'reside' should not be given that meaning as was understood a century back. With respect, such observations of the High Court are again, not in conformity with the principles of construction of a document.

27.1. If at all the rule of literal construction is applied literally, the term in question about residing within “Madras Presidency” would itself be treated as redundant for the simple reason that geographically or demographically, there does not exist any location as of today which could be termed as “Madras Presidency”. Obviously, such an approach would be incorrect and the area that was known as “Madras Presidency” at the time of drafting of the document in the year 1926 and framing of the Scheme of Administration in the year 1936 would be taken note of and whatever area is now referable to the said erstwhile “Madras Presidency” area would be relevant; and the residence has to be with reference to the said area. The point relevant for the present purpose is that the expression “Madras Presidency” is not being construed in its literal sense and is construed with reference to its present meaning.

27.2. Taking cue from the aforesaid, when we take up the verb “reside” to understand its meaning and purport with reference to the object of the document, its present day meaning and connotation cannot be lost sight of. Of course, if a person has given up his residence and has permanently settled at some other place, the question may arise about his fulfilment of the condition but, at the same time, the expression “resides” cannot be given a literal meaning as if a person like the plaintiff-appellant having multiple places of residence would incur disqualification for the purpose of the deed in question if not permanently located at a particular place.

28. While not approving the approach of the High Court in this matter, particularly in relation to the construction of the terms of SOA, we may observe a little further. The words and expressions in the deeds or statutes are preferably provided their contextual and contemporary meaning. In this process of construction, the words and expressions are not viewed as fossil remains; rather they retain the organic character and do take their meaning from all the surroundings. For that matter, a particular word like "resides" could carry multiple different connotations with reference to the time or period of its interpretation; and connotations may be different than those understood about 100 years back. When a particular word or expression in any document is to be operated and applied, all the relevant characteristics available *in praesenti* have to be kept in view for a meaningful and purposeful construction. Of course, that meaning should not do violence to the real intent and purpose.[6]

29. In order to buttress its reasoning, the High Court has even gone to the extent of suggesting a proposition in paragraph 25 of the impugned judgment which, to say the least, does not stand to logic. The High Court has observed that if the construction of sentence or words was to be made with reference to the present-day scenario, sometime later some

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6 In the case of ***Directorate of Enforcement v. Deepak Mahajan*****: (1994) 3 SCC 440** this Court has pointed out that the words are not passive agents or mathematical symbols so as to carry the same value and meaning the same thing at all times. This Court has said,

> **"93.** It is apposite, in this context, to refer to the following passage found in Chapter 4 in the book titled *The Loom of Language*:
>
> "Words are not passive agents meaning the same thing and carrying the same value at all times and in all contexts. They do not come in standard shapes and sizes like coins from the mint, nor do they go forth with a decree to all the world that they shall mean only so much, no more and no less. Through its own particular personality, each word has a penumbra of meaning which no draftsman can entirely cut away. It refuses to be used as a mathematical symbol.""

Judge might think that restricting the trusteeship to male member was against gender justice and it should be read to include female too. With respect, we are unable to endorse this approach. The hypothesis as suggested by the High Court is of the process of altering the term of a document. The question at hand is of assigning a logical, contextual and contemporary meaning to a particular expression. It is one thing to alter the term of a document and cannot be equated with the process of assigning a purposeful meaning to a particular expression. In the true rules of construction, the words are always assigned the meaning which stand in tandem with their context, while assuring that the assigned meaning serves the purpose.

29.1. The requirements of physical residence, with the rapid advancement of the means of communication and transport cannot be ignored particularly when the purpose of the term 'residence' in document in question is to ensure participation in the affairs of the trust effectively, as and when required. The intent of the Trial Court in its observations had been only this much that in view of the present-day advancement, literal meaning of residence, by requiring actual physical presence every day and every moment is not correct. We have no hesitation in endorsing the views and findings of the Trial Court.

The questions of *res judicata* and estoppel

32. After the discussion and analysis foregoing, we have arrived at a clear conclusion that the contesting respondents had been unjustified in

questioning of the eligibility of plaintiff-appellant to hold the office of founder trustee with reference to his Green Card and want of permanent residence in the area in question. This had been the finding of the Trial Court which we have no hesitation in restoring, while setting aside the contra conclusion of the High Court on the merits of the principal issue involved in the matter. That being the position, the other arguments of the parties in regard to *res judicata* and estoppel need not even be gone into because, in our view, the result which the appellant seeks to derive from the operation of these principles has nevertheless been reached in the present case with reference to the evidence led herein. Thus, we do not propose to elaborate on the issues of estoppel and *res judicata* as raised by the plaintiff-appellant.

32.1. We may, however, indicate that in our *prima facie* opinion, the principle of estoppel may not operate against the contesting respondents. The plaintiff-appellant seeks to invoke the principle of estoppel essentially with reference to the fact that after the judgment dated 16.04.2013 in O.S. No. 631 of 2012, he was unanimously chosen as the founder trustee on 18.04.2013. The said decision of the continuing founder trustees to induct the appellant to represent his branch was essentially pursuant to the order of the Trial Court but, ultimately the decision of the Trial Court did not sustain itself and was reversed by the High Court in its judgment dated 30.06.2014 in A.S. No. 178 of 2013. In that position, the said decision of the

founder trustees to induct the appellant on 18.04.2013 could not have operated as estoppel against them.

32.2. However, in our *prima facie* opinion, what is applicable to the question of estoppel would not directly apply to the question of r*es judicata*. The entitlement of the rival claimants to the office of founder trustee representing Shri P.S.G. Narayanaswami Naidu branch was a matter innate and interwoven with the question as raised before the High Court in A.S. No. 178 of 2013. The High Court distinctly recorded in its judgment dated 30.06.2014 that there was no dispute about qualification of the rival claimants which included the present appellant in his capacity as 10th defendant in the said matter. The present contesting respondents were indeed parties to the said proceedings and particularly the Trust was a party thereto and was duly represented by the Managing Trustee. When the question of qualification or disqualification could have been raised and was not raised by the present contesting respondents, it is difficult to say that the principles of *res judicata* and at any rate, those of constructive *res judicata* in terms of *Explanation IV* to Section 11 of the Code of Civil Procedure, 1908 would not apply.[7] However, we are not elaborating on these aspects

7 The said Section 11 and its *Explanation IV* read as under:

> "**11. *Res judicata***. – No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
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> *** *** ***
>
> *Explanation IV.*- Any matter which might an and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

for the reason that in the present suit, the plaintiff-appellant has, in our view, categorically established the fact that he was indeed eligible and was not suffering from the alleged disqualification.

Conclusion

33. Viewed from any angle, we are satisfied that the judgment of the High Court remains unsustainable. In our view, the Trial Court had rightly analysed the evidence on record and arrived at a just conclusion in upholding the claim of the appellant to the office of founder trustee in the respondent-Trust as the representative of the branch of Shri P.S.G. Narayanaswami Naidu.

34. Accordingly, and in view of above, this appeal succeeds and is allowed; impugned judgment and order dated 04.03.2021 is set aside; and the judgment and decree of the Trial Court dated 12.10.2020 are restored. Consequently, the appointment of respondent No. 10 in the Trust shall stand annulled and the appellant shall be entitled to hold the office of founder trustee representing P.S.G. Narayanaswami Naidu branch. As a necessary consequence of our findings and conclusions, the claim of the applicant of I.A. No. 80383 of 2021 is rendered redundant. That application also stands rejected.

The parties shall bear their own costs throughout.

……..…… J.
(VINEET SARAN)

……..…… J.

(DINESH MAHESHWARI)

NEW DELHI;
MAY 09, 2022.