APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Mockett.

1932,
October 11.

P. RAJAGOPALA GRAMANI (DEFENDANT), APPELLANT,

v.

BAGGIAMMAL (PLAINTIFF), RESPONDENT.*

Indian Trusts Act (II of 1882), *ss.* 11, 41—*Trust deed—Minor beneficiary with vested or contingent interest under—Court —Inherent power of.*

When there arises an emergency or a state of circumstances which it may reasonably be supposed was not foreseen or anticipated by the author of the trust and is unprovided for in the trust instrument, and which renders it desirable and perhaps even essential, in the interests of the beneficiaries, that certain acts should be done by the trustees which they themselves have no power to do, and to which the consent of all the beneficiaries cannot be obtained by reason of some not being *sui juris* or not in existence, the Court will exercise its general administrative jurisdiction by sanctioning, on behalf of all parties interested, those acts being done by the trustees.

When an advance under the above-mentioned circumstances was sought out of the estate for the benefit of a minor who is a beneficiary with a vested or contingent interest, the Court exercised its extraordinary jurisdiction and granted a reasonable amount.

APPEAL from the judgment of STONE J., dated 8th August 1932, in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Application No. 1879 of 1932 in Civil Suit No. 137 of 1932.

C. Brooke Elliot for appellant.

K. Krishnaswami Ayyangar with *V. S. Rangachari* for respondent.

Cur. adv. vult.

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* Original Side Appeal No. 59 of 1932.

JUDGMENT.

RAMESAM J.—This is an appeal from the decree of our brother STONE J., dated 8th August 1932, in Application No. 1879 of 1932 in Civil Suit No. 137 of 1932. The defendant is the appellant before us. The facts out of which this appeal arises may be briefly stated. One Raju Gramany executed a deed of trust on 1st September 1919 under which he settled his properties upon trust appointing the defendant, who is his son-in-law by his second wife, as trustee. At the time of his death he had three houses and had a fixed deposit for a sum of Rs. 50,000 in the Imperial Bank. He provided that one of the houses shall be utilised for the residence of the members of his family, that is, his wife and his daughters until their marriage. The income of the other houses which is said to be Rs. 80 per month was to be utilised by the trustee for paying taxes in respect of the estate, for repairs and for the expenses of his first wife, Baggiammal, who is the plaintiff in this suit. After her death, the net income was to be paid over to his son Gnanasundaram and after the death of Gnanasundaram it was to be distributed equally between his children. But, if he died issueless, it was to be distributed equally between the daughters. The interest accruing on the fixed deposit in the Imperial Bank was to be spent similarly. Misunderstandings had arisen between the first wife, Baggiammal, and the trustee, and this suit was filed by Baggiammal against the defendant for the purpose of removing him from trusteeship. A notice of motion was taken in this suit for the purpose of obtaining an interlocutory order from the Court directing the defendant to pay (i) Rs. 1,500 required for the nuptial ceremonies of the plaintiff's grand-daughter, that is,

the daughter of Gnanasundaram, including the amount required for the earlier ceremony when she attained age; (ii) a sum of Rs. 2,000 required for paying off certain creditors from whom she borrowed for the expenses of her suits 268 and 269 of 1931; (iii) a sum of Rs. 1,000 required for paying off the decree-holder in Small Cause Suit No. 2480 of 1931, the plaintiff having borrowed that amount for the marriage expenses of her grand-daughter from one Ratna Bai; and (iv) certain miscellaneous items such as maintenance, etc., amounting to Rs. 1,000. Altogether she applies for the payment of Rs. 6,500.

The duties of the trustee are defined in the deed of trust already mentioned. No provision was made by the settlor for expenses of suits between his wife and the trustee, nor has he provided for the expenses of the marriage and nuptials and other ceremonies connected with his grand-daughter. It is very difficult to say what exactly he intended. Perhaps he intended that the expenses of the marriage and other ceremonies of the grand-daughter were to be defrayed by the wife out of the net income which was to be paid to her, or perhaps it was an oversight on his part. The duties of the trustee are governed by section 11 of the Trusts Act which runs as follows :—

> "The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.
>
> Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction."

In this case Gnanasundaram's children are both minors and other children may be born who are entitled to take under the trust deed. The Court's consent is therefore necessary. Section 11 is based on the

well-recognized principles of English law. In *Walker, In re. Walker* v. *Duncombe*(1) FARWELL J. observed:

"The question that I have to consider is whether I can on the true construction of this will authorize the trustees to make any expenditure larger than the sum mentioned in the will. I decline to accept any suggestion that the Court has an inherent jurisdiction to alter a man's will because it thinks it beneficial. It seems to me that is quite impossible. But, in considering what is the true construction of the will, it is open to the Court to ascertain if there be a paramount intention expressed in the will, and, if so, to consider whether particular directions are properly to be read as subordinate to such paramount intention, or are to be treated as independent positive provisions."

Here, there being a paramount intention to benefit the grand-daughter, the question is whether the Court cannot sanction expenses for her marriage and other ceremonies as subordinate to that intention. In *New's case*(2) it was held:

"Where . . . there arises an emergency or a state of circumstances which, it may reasonably be supposed, was not foreseen or anticipated by the author of the trust and is unprovided for by the trust instrument, and which renders it desirable and perhaps even essential, in the interests of the beneficiaries, that certain acts should be done by the trustees which they themselves have no power to do, and to which the consent of all the beneficiaries cannot be obtained by reason of some not being *sui juris* or not yet in existence, the Court will exercise its general administrative jurisdiction by sanctioning, on behalf of all parties interested, those acts being done by the trustees . . . ";

and it is said that this principle particularly applies where the estate consists of a business or of shares in a mercantile company. In *Tollemache, In re*(3), on appeal from the judgment of KEKEWICH J. on page 457 of the same volume, the Court affirmed the judgment of

(1) [1901] 1 Ch. 879, 885. (2) [1901] 2 Ch. 534.
(3) [1903] 1 Ch. 955.

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KEKEWICH J. and dismissed the appeal. ROMER L.J. said :

"*New's case*(1) shows how far the Court will go, and beyond what point it will not go."

COZENS-HARDY L.J. observed :

"In my opinion, *New's case*(1) constitutes the high-water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts."

In KEKEWICH J.'s judgment at page 457 he enumerated various sub-headings of this extraordinary jurisdiction. The first sub-heading is where an advance was sought out of the capital of the estate for the benefit of a minor who is a beneficiary with a vested or contingent interest. The present case must if at all fall under this heading. The second sub-heading is where a business has got to be continued. The third is where a business is to be sold to a joint stock company. The fourth is where re-construction of a company is contemplated. The fifth is where mortgages have got to be dealt with. As I already said, the further headings do not help the petitioner in this case—vide also Lewin on Trusts, thirteenth edition, pages 319 and 398. Having regard to the principles laid down in the above-cited English cases and the provisions of section 11 of the Trusts Act, we think we may sanction a reasonable amount for the expenses of the consummation ceremony of the grand-daughter. But we think the amount sanctioned by the learned Judge is rather too high. We think it is enough to allow Rs. 750 for the coming of age ceremony and for the consummation ceremony, the amount to be distributed according to the discretion of the grand-mother. This amount may be raised by a loan in the Imperial Bank or any other Bank on the security of the fixed deposit receipt at a reasonable rate of interest

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(1) [1901] 2 Ch. 534.

and the interest and the principal of the loan should be paid off in monthly instalments of Rs. 50 to be deducted out of the monthly payment to the plaintiff from the net income. If before the loan is discharged the plaintiff and Gnanasundara die, the balance should be debited against the interest of the grand-daughter Chandrambal. But, as to the second, third and other items, we are unable to see how these expenses fall within the principles mentioned above.

It is said by the learned Advocate for the respondent that the trustee practically consented to the order of the learned Judge. MR. Brooke Elliot, who appeared before us for the appellant, denies that he ever consented, but, on the other hand, opposed the petition. He however, stated his willingness to obey the directions of the Court. The trustee is of course bound to obey the directions of the Court and a statement to that effect cannot amount to a consent that the plaintiff's application in respect of the various items should be allowed. Even Mr. Krishnaswami Ayyangar does not say that there was any consent that a particular amount should be awarded. Under these circumstances we think that the matter is really left to the Court to decide under section 11 of the Trusts Act. The consent of the other beneficiaries will not be necessary.

We allow the appeal to the extent indicated above. The plaintiff will pay two-thirds of the costs of the trustee to be debited against her monthly allowance in instalments. The trustee will re-imburse himself in respect of his own costs from the interest of the trust estate. The direction to pay the amount to the Advocate will remain.

MOCKETT J.

MOCKETT J.—I agree. I must however add that I am satisfied that, whether there was or was not a

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consent decree in the strict sense, there was no serious opposition to the course adopted by the learned Judge. Previous orders in this trusteeship had been made by several Judges of this Court, all apparently by consent. Now the trustee takes up the correct attitude that the terms of the trust deed must be strictly applied and on that basis informs us that he argued before the learned trial Judge and has now in this appeal through his Counsel addressed learned arguments to us based on the provisions of the Indian Trusts Act and certain decisions of the English Chancery Courts. We must of course accept this assurance. I cannot help thinking that the argument before us was at least a little more emphatic than that addressed to the learned Judge. I do not find in the learned Judge's judgment, which has not been printed and which is very brief, any indication that the question of importance which is now raised was argued before him. I mention this as I was at one time during the course of this appeal of opinion that we ought to send the matter back to the learned trial Judge for decision after argument, but after what Mr. Brooke Elliot has said I concur with my learned brother that as the matter has now been fully argued before us it is better to deal with it here in the interests of saving judicial time.

The facts have been stated by my learned brother and I do not propose to repeat them. It is sufficient to say that in the estate of Raju Gramany deceased, his widow the plaintiff is given a life interest, with remainder over to the settlor's son for life and after his death to his children. The widow Baggiammal is now suing to remove the trustee with whom she is quarrelling. In fact she asks for Rs. 1,500 for the nuptial ceremonies of her grand-daughter, Rs. 2,000 for paying off creditors from whom she borrowed for

the expenses of litigation in 1931 and Rs. 1,000 for paying off a decree-holder. This debt was in respect of money borrowed for the marriage expenses of her grand-daughter and miscellaneous items to the extent of Rs. 1,000. She asks that this money should be advanced out of the capital of the trust property. We are told that this widow is an elderly lady. It must be borne in mind that she has a life interest only. There is no specific provision for maintenance or for raising loans in the trust deed. But section 41 of the Trusts Act would appear to give power to the trustee to do this when necessary. That surely must apply to the case of persons having reversionary interest in the capital. Section 11 of the Act deals with the duties of trustees. It will be seen that they are bound to carry out the purpose of the trust except as modified by the consent of all the beneficiaries being competent to contract or, where the beneficiary being incompetent to contract, the consent of a principal Civil Court of original jurisdiction has been obtained. There is a proviso that nothing in the section requires the trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries. Now it is clear, I think, that to raise Rs. 6,500 out of the capital for the purposes for which it is intended in this case to be used is not within the provisions of the Trusts Act. There has been no consent of the beneficiaries competent to contract and it is not suggested the matter was brought to the learned trial Judge on the basis that this was a matter so beneficial or advantageous to the minor beneficiaries that the formal permission of the Court should be obtained. Section 11 of the Trusts Act would appear to have been founded on the principles which are specifically stated in

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New's case(1) and I think that the doctrine therein enunciated applies to this country, namely, that

"where an emergency or a state of circumstances which, it may reasonably be supposed, was not foreseen or anticipated by the author of the trust and is unprovided for by the trust instrument arises, the Court would exercise its general administrative jurisdiction on behalf of all the parties interested."

As pointed out, *New's case*(1) has been held in England now to

"constitute the high-water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts."

The judgment of KEKEWICH J. in *Tollemache, In re*(2), which is approved by the Court of Appeal in *Tollemache, In re*(3), and which appears to be the leading case on the subject, sets out the grounds on which the extraordinary jurisdiction of the Court would be exercised. I agree with my learned brother that the only payment which has been sanctioned in this case and which can conceivably be brought within that judgment is the amount of the nuptial expenses of the grand-daughter who has a contingent interest in the trust. My learned brother considers that Rs. 750 is adequate for the purpose named and I, of course, agree with him in any estimate of this sort. I also agree with the safeguards which he has named for the protection of the corpus of the trust property against diminution caused by the raising of Rs. 750. I agree that the appeal should be allowed to the extent which this sole payment involves and also with the order proposed as to costs.

Messrs. Short, Bewes & Co.—Attorneys for appellant.

G.R.

(1) [1901] 2 Ch. 534. (2) [1903] 1 Ch. 457.
(3) [1903] 1 Ch. 955.