ANDHRA PRADESH HIGH COURT

Potti Swami

Vs.

Rao Saheb D. Govindarajulu

Appeals Nos. 64 and 118 of 1954

(S. Qamar Hasan and Jaganmohan Reddy, JJ.)

24.07.1953. 07.04.1959

JUDGMENT

Jaganmohan Reddy, J.

1. These two first appeals are directed against the judgment and decree of the Second Additional Subordinate Judge of Vijayavada dismissing the suits, O. S. Nos. 22/1949 and 107/1950, for recovery of Rs. 11,230 (in O. S. No 22/49) being the amount of principal and interest at 6 per cent per annum from 1-1-47 and for Rs. 5,464/- (in O. Section 107/50) being the principal amount with interest at 3 per cent per annum. Both these suits relate to the recovery of subscriptions paid to the Bezwada Hospital Association, registered under Act XXI of 1860, of which defendants 1 to 21 constitute the General Body, due to the non-fulfilment of the objects of that Association, namely, the building of a hospital at Bezwada. In so far as O. Section 107/50 is concerned, the defendants are Rao Saheb D. Govindarajulu the Maddula Narayana Sarma who are defendants 3 and 4 in O. Section 22/1949.

2. In O. Section 22/1949 the plaintiff alleged that defendants 1 to 5 who are the Bezwada Hospital Association represented by its President Mrs. S. Kapoor, and its office-bearers, C. Narasimham Chowdari, D. Govindarajulu, Vice-Presidents, M. Narayana Sarma, Secretary and K. Nagabhushana Rao, Joint Secretary, constitute the Managing Sub-Committee of the said Association, the main object of which was to establish and maintain a Hospital at Bezwada with public funds and donations. It is alleged that the Managing Sub-Committee approached the plaintiff and represented that they wanted to construct and maintain an up-to-date and fully equipped hospital at Bezwada and that they would manage to get a grant from the Government for at least half the amount required; but the plaintiff and other donors insisted that unless the construction was commenced before the end of 1946, they would not contribute and further insisted that their donations should be returned back if the construction was not commenced before that date. To this condition the Managing Committee agreed whereupon the plaintiff consented to pay Rs. 20,000/- and immediately issued a cheque for Rs. 10,000/- in the name of the 3rd defendant and promised to pay the balance within three months thereafter. A receipt was issued for this amount on 19-1-1946 embodying the condition that the amount donated by the plaintiff would be returned to him in case the construction of the building was not commenced

before the end of 1946. This condition, according to the plaintiff, is a condition precedent binding on all the defendants and that time was thus the essence of the contract. It is further stated that inasmuch as the Association was unable to raise the necessary funds and the Government did not grant any sum, the whole scheme was abandoned and consequently the plaintiff is entitled to the sum of Rs. 10,000/- which he paid to the Association. As the amount has not been returned in spite of several demands, the plaintiff claimed the amount of Rs. 10,000 together with interest by way of damages at the rate of 6 per cent per annum from 1-1-1947.

3. The 1st defendant in the suit while not denying the object of the formation of the Bezwada Hospital Society, admitted having collected from several rich and generous persons a sum of Rs. 70,000/-. She stated that immediately thereafter her husband was transferred and in spite of the enthusiasm of the local people the project could not be pushed through, that the amount was deposited in the Imperial Bank of India and after waiting for some time to see whether the project would reach its fruition or not, she personally considered it fair that if others were also agreeable the amount could be returned to the donors who had generously made their contributions and accordingly she issued cheques to all the donors which were received by them, but they themselves resolved that they did not want their money back and would still like to pursue the project. It is, therefore, stated that the fault was not that of the office-bearers, that the defendant is ever ready to comply with the decision of the Court and that in so far as her personal opinion is concerned, since the project of building a big hospital could not be fulfilled in a place where they tried to serve the people to the best of their ability, something for public good should be done even with the amount now available, that the claim for interest by way of damages is neither fair nor legal, as nobody had the use of the amount and nobody wrongfully retained it and that she is not liable for any costs.

4. The 2nd defendant denied having made any representation to the plaintiff or any one else to the effect that the construction of the hospital would be started within a year or that a Government grant would be obtained, and that he was not a party to the alleged agreement of the managing committee mentioned in para 5 of the plaint to refund the amounts collected from the donors if the work of construction of the hospital was not commenced before the end of 1946. He further stated that he was not aware of the alleged receipt dated 19-1-1946 passed by the 3rd defendant in favor of the plaintiff, that he was not aware of what efforts were made to achieve the objects of the Association or whether the Association abandoned its whole scheme and why. In conclusion he stated that he did not know when the plaintiff made the demand, and prayed that the amount contributed may be utilized for public purposes which purpose of the association need not be defeated so long as deserving institutions with objects similar to those of the Association such as the Canon Anantham Hospital existed. He also denied his liability for costs.

5. The 3rd defendant denied the liability for refund, though he admitted the receipt embodying the condition for refund. It was stated that the plaintiff had told him that he being a paralytic wanted to see the construction of the hospital started without delay and for that purpose had the condition embodied in the receipt, but that was never intended to be binding on or enforceable against anybody and therefore the plaintiff is not entitled to enforce the said condition and ask for refund of this donation. He further stated that the Government granted a site for the hospital, that correspondence with regard to the construction is still going on, that it is not true that the object of the donation failed, and that even if it failed the plaintiff is not entitled to ask for a refund of the donation. It was further mentioned that this defendant and the 4th defendant filed an

interpleader suit on the file of the Second Additional Subordinate Judge's Court in which the present contentions can be put forward and relief obtained and yet the plaintiff filed the suit unnecessarily. He therefore prayed that the suit should be dismissed.

6. The 4th defendant adopted the written statement of the 3rd defendant. The 5th defendant contended that the suit is not maintainable in law and according to the articles of association of the Society. The other defendants except 16 to 18 and 23 remained ex parte. The 29th defendant was given up as per the orders of the court dated 26-6-1949. Defendants 16 and 17 contended that the suit was not maintainable and both of them prayed for the amount being applied for other purposes similar to the original one. The 18th defendant who is the Collector of the Krishna District, the late Mr. Mahanty was only a member of the Committee in his individual capacity, that the suit against him was not properly framed, because neither the Government nor the District Collector, Krishna, in his official capacity was involved in the subject matter of the suit and that no notice under Section 80 C. P. C, was given and the suit as such is not maintainable. The 23rd defendant, Principal of the S. R. R. College, Bezwada, prayed for the dismissal of the suit and contended that even if the Managing Sub-committee agreed to refund the amount if the construction was not commenced before the end of 1946, the Committee has no power to do so, as such conditions would not bind the Society, that the receipt alleged to have been given by the 3rd defendant to the plaintiff is not binding on the Society and that the plea that time is the essence of the contract is untrue and untenable, that the money actually donated by the plaintiff became the property of the Association and that the plaintiff is not entitled in law to claim a refund thereof. Even assuming that the objects for which the Society was incorporated failed, the proper course of action is the one laid down in Section 13 of the Societies Registration Act XXI of 1860. In the other suit, namely O. Section 107 of 1950, the plaintiff alleged that he paid a sum of Rs. 5,000/-as subscription by a cheque dated 4-8-1943 and that this sum and the other sums contributed by others, amounting to Rs. 70,000/- was deposited in the Imperial Bank of India at Bezwada. In view of the objects of the Association not being fulfilled, some of the donors wanted refund of their subscriptions advanced by them, but as the general body could not meet and as some members of the managing committee cherished a pious wish from time to time that the association could still be made to function, the amounts have not been given to them, nor were any replies given to the claims for refund. The plaintiff in this suit also reiterated the fact of the Secretary having filed O. S. No. 34 of 1949 an inter-pleader suit impleading the other members of the Managing Committee and the members of the General body as well as the other donors and requesting the court to allow them to interplead between the association which never met and decided the claims for refund by the donors who are pressing for such refunds. It was stated that in the suit it was prayed that direction to the Imperial Bank be given for payment of their respective amounts due to the donors. In that inter-pleader suit it was asserted that the Government did not render the necessary assistance by reason of which and for some other reasons it became very remote to achieve the objects of the association. Even attempts of the defendants to convene meetings of the general body on several occasions failed for want of quorum. Consequently the defendants and the general body became helpless and were obliged to file the said suit. In view of these assertions made above, the plaintiff claimed return of his subscription with interest from the date of demand on 3-6-1950 in which it was also requested to nominate one of the members as the person to serve under Section 6 of the Societies Registration Act. To this request also, there was no reply. The 1st defendant remained ex parte. The 2nd defendant in his written statement contended that the suit was not maintainable and that it was clearly time-barred. No question of there being a trust created for the benefit of the donors as

alleged by the plaintiff arises. While admitting the amount paid by the plaintiff, it was denied that either this defendant or any other member of the Managing Committee ever represented or could represent late Potti Swamy or any other donor that a hospital would be constructed and started immediately and that nothing was done to implement the objects of the association, that negotiations with the Government are going on and that this defendant adopts the allegations in plaint in O. Section 34/49 and prayed that it may be read as part of his written statement herein. Some of the defendants in O. Section 34 of 1949 raised the plea of 'Cy Pres' doctrine stating that the amounts collected under donations should be applied for similar purposes and hence the plaintiff is not entitled to refund of the amount. The plaintiff is not entitled to claim any interest and that, in any view, the interest claimed is excessive. It is not correct to say that the defendant represents the Managing Committee particularly having regard to O. Section 34 of 1949 and that the suit is bad for nonjoinder and misjoinder of parties.

7. In the first suit O. Section 22 of 1949, issues were drawn relating to the plaintiff's light to recover the sum claimed, his being entitled to interest and whether the authority relied upon by him is true, valid and binding on the defendants. Two additional issues were framed which were designed to determine whether the Collector, Krishna was a member of the Bezwada Hospital Association and whether the suit against the 18th defendant is not maintainable without notice under Section 80 C. P. C. The Second Additional Subordinate Judge found on these two additional issues that the suit against the District Collector, Krishna in his official capacity is not maintainable and that it is not maintainable without notice under Section 80 C. P. C.
The findings on these issues are not contested before us in the appeal. On issue 1, it was held that the plaintiff was not entitled to recover the sum claimed either under the contract set up in the plaint or the gift set up at the time of arguments or under the authority relied upon by him. Similarly since the amount was deposited in the Imperial Bank of India on the very next day and has been in safe custody with it, the plaintiff was not entitled to interest in any view of the matter. As regards the third issue the Subordinate Judge found that the authority relied upon by the plaintiff is neither genuine, nor valid, nor binding on the defendants. In the end, he dismissed the suit with costs of the contesting defendants. In the other suit O. Section 107 of 1950, on issue 2, he held that there was no resulting trust and that the forum in which the suit should have been filed was the principal court of original civil jurisdiction of the district in which the building of the society was situated and consequently the Subordinate Judge held that the two suits were not maintainable and that the plaintiffs were not entitled to the refund claimed. He also held that they were not entitled to any interest. This suit was also dismissed.

8. Against the judgment in O. Section 22 of 1949 is A. Section 118 of 1954 while A. Section 64 of 1954 is against the judgment and decree in O. Section 107 of 1950. During the pendency of this appeal, the appellant in the former appeal died and his legal representative Manikonda Prafulla Chendrarao was brought on record. The learned advocates for the respondents do not wish to support the judgment on the question of non-maintainability of the suits because they were not filed in the Principal Court of Original Civil Jurisdiction of the district in which the chief building of the society was situate. In our view, they were well advised to so contend. Section 13 of the Societies Registration Act to which a reference has been made by the Subordinate Judge does not support the conclusion arrived at by him because that is a provision dealing with the dissolution of societies and the adjustment of their affairs. It is only such matters as are dealt with in that section that are to be agitated by way of a suit in the principal court of original civil jurisdiction of the district in which the chief building of the society is situate, but

disputes relating to the society and the third persons are not governed by this provision. Section 6 clearly empowers a society to sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion. The proviso to Section 6 clearly envisages the possibility that if on application to the governing body some other officer or person be not nominated to be the defendant, the president or chairman, or principal secretary or the trustees thereof can be sued. These suits are therefore clearly maintainable because admittedly the plaintiffs have given notice to the Managing Committee to nominate a person or persons on its behalf for the suit to be defended, but no reply was given. The pertinent passage in Ex. A-8 the notice given by the plaintiff in O. S. No. 107 of 1950 is as follows :

> "As my clients entertain reasonable doubts as to the maintainability of the suit in law and as some of the defendants therein have actually taken the objection that the said suit is not maintainable, my clients wish to file a suit of their own for recovery of the amount of Rs. 5,000/- originally donated by them, from you, i.e., the managing committee but as the rules of the Association did not provide for any particular office-bearer against whom suits have to be filed, you are hereby requested under the proviso to Section 6 of the Societies registration Act to nominate one particular office-bearer or other person to be the defendant to the suit so contemplated by my clients."

In view of the failure by the managing committee to nominate the person who could be sued as a defendant on behalf of the society the plaintiff was fully justified in making the president, vice-president, principal secretary as defendants which is warranted by the proviso to Section 6 of the Societies Registration Act. In so far as the other suit, O. S. No. 22/49, is concerned, the entire governing body and all the members of the association have been made parties. Consequently it cannot be said that either of the suits are not maintainable.
9. The main questions urged in these appeals are : (1) whether the appellant in A. S. No. 118/54 had paid the donation subject to the condition that it will be returned if the hospital was not constructed within a year as alleged by him; (2) even otherwise as the object of the association was not fulfilled, is there a resulting trust in favor of the donors and (3) whether these amounts for any other reason are refundable to the appellants and (4) whether the suits are barred by limitation.

10. In so far as A. S. No. 118/1954, is concerned, the appellant Manikonda Venkata Narasimham wrote a letter Ex. A-5 dated 23-9-1945 to Rao Saheb D. Govindarajulu, who was then the Chairman of the Bezwada Municipality and later the Vice-President of the Society as under :

> "I learn that you are engaged in getting a Big Hospital constructed at Bezwada and that you are also the Vice-President of the Bezwada Hospital Committee under whose auspices, this hospital is going to be constructed. I have great pleasure to offer a donation of twenty thousand rupees (Rs. 20,000) for the construction of a ward in my name and that the said ward should be exclusively constructed in my name. You may get along with the construction of the same and I shall pay down the amount as soon as it is demanded. If by God's willing (sic), I am satisfied with all the planning of the construction of the said

> hospital I shall make a further donation of Rs. 5,000/- after January, 1946 only."

Govindarajulu, on receipt of the cheque for Rs. 10,000/- acknowledged it under Ex. A-1 dated 19-1-1946 in the following terms :

> "Today I have received from you a cheque for Rs. 10,000/- (ten thousand rupees only) on the Andhra Bank Limited, Bezwada as part payment of your contribution of Rs. 20,000/- (Rupees twenty thousand only) and I hereby promise to repay the amount in case the construction of the said hospital will not be begun by the end of this year. The balance of Rs. 10,000/- (Rupees ten thousand) should be paid by you within three months."

When it became clear that the proposed hospital was not going to be constructed within the time specified or subsequently in the near future, several persons including the plaintiff began to make demands. The plaintiff also sent a telegraphic notice dated 23-7-1948 claiming return of the money. These facts are evident from the interpleader suit filed by the Vice-president and the Secretary against the rest of the members of the governing body and some of the donors, being O. S. No. 34/1949, on the file of the Subordinate Judge, Bezwada. The plaint in that case clearly establishes the contentions of the plaintiffs in both the cases that the object of the society could not be fulfilled and that there was no possibility of it being fulfilled and that none of the members of the governing body or the general body was taking any interest in the furtherance of the objects of the society. The allegations in the plaint in O. S. No. 34/49 were that the main object for which the association was formed was to establish a hospital with public funds and that a sum of Rs. 70,589/- was collected by the Managing Sub-Committee from defendants 27 to 44 and 46 and from some others of which the plaintiffs in both the present suits were shown as defendants 43 and 46. Para 6 disclosed the state of affairs at the time of the interpleader suit and it may best be stated in the words of the plaintiffs in that suit :

> "The managing sub-committee due to circumstances beyond its control could not make any further collections from the public of the public purse at Bezwada has been over-strained by several demands from the Government from 1943 onwards by way of war fund and other allied funds. Still the Managing sub-committee negotiated with the Government through the Surgeon General with the Government of Madras for the required land and construction of the necessary buildings, and ultimately got an order dated 2-5-1946 that in case the Association agrees for the conditions imposed in the said Order, the Government would take up the construction of the Hospital at Bezwada on condition that the Association will meet the entire funds required for the said construction. A copy of the said order is herewith enclosed. The conditions imposed by the Government in the said order are such that they cannot be agreed upon by the Managing Sub-Committee. The Secretary called for a meeting of the General Body twice on 19-10-1947 and 19-5-1948 to consider the said order of the Government, but none of the members of the General body turned out except the plaintiff and the 3rd defendant on that occasion".

In para 7, it was stated that the defendants 27 to 44 and 46 are demanding a return of their donations on pain of filing suits on the ground that the objects of the association are not fulfilled and that there is not even a prospect of its fulfillment. Para 8 sets out that the Managing Sub-Committee gave two replies to the letter dated 2-5-1946 to the Government through the Surgeon General with the Government of Madras dated 2-10-1946 and 5-6-1948 stating that they cannot raise any more public funds and that in case the Government starts immediately the construction of the hospital in the site allotted for it the association will place the funds collected already at the disposal of the Government and that no reply has been received by the Association from the Government as yet.

11. In para 10, the plaintiffs averred that there is no sanction of the general body for the refund of the donations and that the general body are not responding to the notices of the Secretary dated 19-4-1947, 19-10-1947 and 19-6-1958 and the Managing Sub-Committee is helpless in the matter. Para 11 which is important is extracted below :-

> "The plaintiffs feel that the possibility for the fulfillment of the objects of the Association as mentioned in para 2 of the Memorandum of the Association is too remote taking into consideration the present political atmosphere and the financial commitments, of the Government which do not permit the allotment of any funds by the Government for the construction of the Hospital at Bezwada. Defendants 27 to 44 and 46 who are the donors are claiming the amounts of their donations to be returned to them, while the members of the general body do not meet and do not give any directions in the matter to the Managing Sub-Committee. Hence plaintiffs file this suit to get necessary directions from this Honourable Court and to get themselves absolved from all responsibility and liability in the matter".

This interpleader suit was filed on 30-7-1948 and though it was dismissed the plaint allegations therein establish clearly the allegations in these appeals that there was no possibility of the Government of Madras ever sanctioning the scheme for the establishment of a hospital at Bazwada, that the amount collected was not sufficient, that the managing members or the general body were taking no interest whatever in the association and consequently no meeting could be held, that the possibility of establishing hospital was too remote. It may here be stated that several notices were given by the plaintiff in O. Section 107 of 1950 to which there were no replies. Ex. A. 6 dated 26-12-1943 is a notice in which it was stated that the committee has since abandoned the idea and practically dissolved itself and that no refund of Rs. 5,000/- was made and therefore, it called upon the President, Mrs. Kapoor to refund the amount. No reply was given to this. Again to another letter from the same person on 27-7-1946 (Ex. A.7) no reply was sent. In this letter also it was stated that the object of the association having failed, the donors are entitled to refund of the amounts contributed by them and therefore made a request to the Secretary as the Principal Officebearer of the association to return to the plaintiff Rs. 5,000/- immediately. Ex. B.10 dated 19-4-1947 is a notice calling for a meeting on these letters of the plaintiffs in both the suits to determine the action to be taken in view of the registered notices from some of the donors, the failure on the part of some of the donors to pay their promised donations and the unavoidable and unforeseen delay in the execution of the objects of the association. As we have already stated there was no quorum, nor was any one interested, nor was any meeting held, as such nothing could be settled. At this state it may be necessary to advert to

the fact that the Government of Madras had been insisting on the entire cost of the building to be brone by the association before this scheme could be sanctioned, Ex. B.9 letter from the Surgeon General dated 2-5-1946 establishes this clearly. It was there stated :-

> "That the entire cost of construction including any possible increase in cost due to fluctuations in prices should be met by the Association".

But nothing seems to have come out of these proposals. The object as shown in the Memorandum of Association, Ex. B.1, is only to construct a hospital at Bezwada and to transfer the same to the Government. The rest of the objects are only ancillary to this main object. Under the constitution, the members of the general body are to hold office only for two years and thereafter fresh elections had to be held. It is obvious therefore in the absence of any fresh election the members ceased to be members of the society. Be that as it may, so far as A.S. 118/54 is concerned, it is clear that the amount of Rs. 10,000/- was paid and received with the condition that it will be refunded if a hospital was not constructed by the end of the year 1946 and as far as the plaintiff in the other appeal is concerned, he tries to establish by oral evidence that this donation was also subject to the same condition. But that evidence is not credible.

12. P.W.4 Potti Venkayya, partner of the plaintiff's firm says that defendants 4 and 3 and one Kumari Siva Rao, village Munsif of Bezwada came to him for subscription and said that they would get a hospital constructed with the funds and that they would refund the money if the hospital was not constructed. In cross-examination he further stated that they wanted that the money should be refunded in case no hospital was built and that the defendants 3 and 4 and the village munsif agreed. Though it is sought to be asserted that there was a prior agreement for refund, in none of the notices given on behalf of the plaintiffs is there any reference to this agreement.
All that the notices referred to above showed was that since the object of the association was not capable of being fulfilled, the amount was asked to be refunded. We are therefore not impressed with this oral testimony that at the time when the plaintiff donated the amount the organisers promised to return the money if the hospital is not built.

13. In so far as the contention of the respondent is concerned, namely, Govindarajulu Naidu had no authority to give the receipt Ex. A.1, agreeing to refund the money if the hospital is not constructed within a year and that the members were not bound thereby the simple answer to this contention is that when an amount has been paid and received specifically subject to a condition, even when the person agreeing to the condition was not empowered, it cannot be said that the amount paid by the donor was unconditional. If Govindarajulu was not authorised to accept the amount on that condition certainly the amount would not have been paid and consequently it cannot be said that the gift was also absolute. On that ground itself the appellant would be entitled to a refund.

14. The next contention is whether the object of the association having failed the amounts collected can be applied "cypres" for the fulfilment of any other object similar to that which was in the contemplation of the donors. The appellants contend that it cannot be so applied. The respondents on the other hand, contend that the amounts paid were out and out gift and consequently it should not be returned. The doctrine of "cypres" connotes that if the wishes of the

testator cannot be carried out literally they will be carried out as nearly as possible to what he desired. That is, where a testator shows a general charitable intention, but the object of his charity turns out to be impracticable or when there is surplus money after the trust has been performed the "cypres" doctrine will operate to enable the Court to apply the whole fund or the surplus as the case may be to another charity as merely as the testator's intention. But where the prescribed mode of doing the charitable act is the only one the testator has at all contemplated, the Court cannot apply the doctrine of "cypres", but there will be a resulting trust for the testator's estate. The Privy Council in *Mayor of Lyons v. Advocate General of Bengal*[1], observed at page 309 as follows : The principle on which the doctrine rests appears to be, that the court creates charity in the abstract as the substance of the gift, and the particular disposition as the mode, so that in the eye of the Court, the gift, notwithstanding the particular disposition may not be capable of execution, subsists as a legacy which never fails, and cannot lapse.

15. It was held in that case that in applying the cypres doctrine regard may be had to the other objects of the testator's bounty, but primary consideration is to be given to the gift which has failed and to a search for objects akin to it. It is therefore clear that the application for the doctrine is dependent upon the intention of the donor and in the case of bequest by a will for a charitable purposes courts which are generally anxious to favour charities have been inclined to apply the 'cypres' doctrine if there was the slightest indication of the general charitable intention. In *Santhan Ray v. Advocate General of Bengal*[2] it was held with

[1] ILR 1 Cal 303 [2] ILR 48 Cal 124 : (AIR 1921 Cal389)

reference to the decision of the English Courts that "there is a weighty authority for the proposition that the doctrine of 'cypres' is applied only in wills and not in deeds. These observations were approved of in *Audesh Singh v. Commissioner, Lucknow*[3], Lewis in his treatise on Perpetuity (1843) says at page 440 that

> "the doctrine of "cypres' is in fact an off shoot that general system of indulgence and laxity of construction as respects wills, which has long obtained in our court both of law and equity, but which has not been suffered to have place, in regard to the interpretation of and giving effect to instruments inter vivos"

Lord Keynon C.J. in *Brudenell and Brooks v. Elews*[4], says :-

> "The doctrine of cypres goes to the utmost verge of the law, even in the construction of wills; and we must take care that it does not run wild. But it Las never been applied to the construction of deeds. The cases cited were questions upon wills".

16. This dictum was approved by Lord Eldon in the same case when it went before him. In our view also, the preponderance of authority is in favor of the application of the doctrine of cypres to wills and not to deeds or gifts inter vivos.

17. In the present case, the only object of the association which came into existence as its very name indicates was for the construction of a Hospital at Bezwada. The donations were collected for achieving this specific object. In these circumstances, apart from the question whether the money was received with the definite understanding that it will be returned if the hospital at Bezwada was not constructed, there being no general charitable intention by the donors, the

amount cannot be applied 'cypres'. Where, however, the donor's intention can be given effect to, the court has no authority to sanction any deviation from them on the ground of any expediency. To do so would be in effect to authorize the association to spend money which it has collected for one object for another object which is not authorized by the memorandum of association itself. In other words, the court would be changing the object of the association which has to be done in a particular mode under the provisions of law applicable to the association. In gifts inter vivos where the moneys have been raised for a particular purpose it is incumbent upon the trustee to apply specifically for that object and if that object cannot be fulfilled there would be a resulting trust in favor of the donor or contributor. In *Laxman Chettiar v. Ramaswami Chettiar*[5], a Bench of the Madras High Court held that the unexpended balance belongs to the subscribers rateably in proportion to their subscriptions. There 30 persons who were owners of saltpans associated themselves for the purpose of devising means of easy transport facilities, in respect of their salt from Arasady salt factory to Tuticorin. Each of them subscribed Rs. 6/- per saltpan and raised a sum of Rs. 18,000/- to construct a metalled road from Tuticorin to the salt factory, Venkatasubbarao J., stated the principle at page 618 (of Mad LJ) as follows :-

[3] AIR 1934 Oudh 329
[5] 1938-1 Mad LJ 616
[4] (1801) I East 442 at p. 451

> "Where funds are held in trust for a particular purpose, which fails or comes to an end, there arises a resulting trust of such funds as remain, in favour of the contributors or, if they are dead, their personal representatives .... The unexpended balance belongs to the subscribers ratably in proportion to their subscriptions".

In AIR 1934 Oudh 329, it was held that where donors had given subscriptions for a specific purpose which had become impossible, he was entitled to refund. In *Harish Chandra v. Hindu Dharma Sewak Mandal*[6], it was similarly held that where gift is made for a specific charitable purpose, it cannot be said that the donor had a general intention. In the former case in response to an appeal for funds for the founding of a College for a particular community, a person subscribed a certain amount and the founding of the college became impossible by the passing of a University Act and the money so collected was sought to be utilized for the purpose of the general educational advancement of the community but the donor claimed refund. The Subordinate Judge had applied the doctrine of cypres in that case, but Harries and Rachhpal Singh JJ. disagreed with this conclusion. The Judicial Committee in *Commissioner, Lucknow Division v. Deputy Commissioner of Partabgarh*[7] dealing with a case where the subscriptions were paid to a committee of some persons chosen by the subscribers from amongst them for the purpose of fulfilling a specific and well defined charitable purpose, held that a complete trust is created to apply the funds in carrying out the object and where that object has failed, the amount has to be refunded. Lord Maugham tersely observed thus at pages 240 and 241 :

> "The money having been paid over to the committee, a complete trust was created to apply the funds in carrying out the object mentioned. If the object has become impracticable, the subscribers, in view of the opinion referred to. have a clear right to the return of their subscriptiosn pro rata subject to the rights of the trustees. The present members of the committee are trustees in either event; in the event of impracticability being shown, they are trustees for the subscribers; if, on the other hand, impracticability is not shown, they still have to carry out the trust. In either event they are entitled to their

proper costs, charges and expenses as trustees". The learned Advocate General for the appellant has relied on several English cases. *In Re: Davis; Hannen v. Hillyer*[8], *In re, Andrew's Trust : Carter v. Andrew*[9] *In re British School of Egyptian Archaeology; Murray v. Public Trustee*[10] and *In re Hiller : Hiller v. Attorney General*[11], In all these cases a general charitable intention was declared. The case of 1954-2 All England Reporter 59 (supra) is further illustrative of the principle that if the object is not fulfilled the donors could have claimed the amount and in that case; the donors in spite of advertisements inviting people to claim their money bach had not claimed it.

The court of appeal, Romer LJ, dissenting held that on the construction of the form and of the brochure, which was issued by a council known as South Bucks and East
Berks for collecting subscriptions for the extension of the accommodation of the existing King Edward VII hospital at Windsor and the erection and maintenance of a

[6] AIR 1936 All 197 | [8] 1902-1 Ch 876 | [10] 1954-1 All England Reporter 887
[7] AIR 1937 PC 240 | [9] 1905-2 Ch 48 | [11] 1954-2 All England Reporter 59

new voluntary hospital at Slough, held that although the donors had given their money for the establishment of a hospital at Slough, it was not of the essence of their gifts or their intention that the hospital should be a voluntary one and they intended merely to promote the provision of a hospital in and for Slough; the intention was not to be imputed to them that their money should be returned to them if the proposed Slough hospital were not built; and the funds representing their contributions must be applied cypres. Even so, Denning L. J. observed at page 71 :

> "There may be some exceptional cases where the donor makes it clear that if the main purpose should become impossible, he will want his money buck. I regard the Medical Sciences case as such a case. But in the absence of some such evidence, the law will, I think, make in every case a presumption in favor of charity. The present case shows how right the law is to make this presumption. Before the matter was brought before the court, the trustees issued many advertisements in the local papers inviting people to claim their money back. No one did so. The trustees even invited some of the larger subscribers to be parties to friendly proceedings to claim their money back, but none of them was willing to claim it. As no one was forthcoming, there was nothing left to be done except ask the Official Solicitor to represent the donors, and he has done so. And it is significant that, even now, not a single person has come forward, not a single affidavit has been made, to rebut the presumption of charity".

This case is not an authority for the proposition that the doctrine of cypres is either applicable in cases of donations or that the amount should not be returned if the donors had demanded it on the failure of the object for which they had contributed. In this view of the matter, the specific object with which the plaintiffs-appellants had contributed having failed they are entitled to a refund of the same.

18. With respect to the question of limitation in O.S. No. 107 of 1950, the plaintiff clearly stated that there is no limitation for the suit as there is an express trust within the meaning of Section 10

of the Limitation Act and even otherwise Article 120 of the Limitation Act will apply. He further adds that the three years rule of limitation applies and the cause of action be held to commence from 15-5-1947 the date of demand and the Court having been closed For the summer holidays till 18-6-1950, the suit is filed on 19-6-1950 which is well within time. The defendants did not deny this averment nor take up any plea that the suit was barred by limitation nor was there any issue on this count.

19. In the other suit O.S. 22/49 also, no point of limitation was raised nor was there any issue. In these circumstances, the respondents cannot be permitted to raise any question of limitation. In O.S. 107 of 1950 even otherwise after the demand was first made on 26-12-1943 the suit having been filed on 19-6-1950 it is within six years under Article 120 of the Limitation Act. In the other suit O.S. 22 of 1949 it is not shown how the suit is barred by limitation because on the admitted facts itself the demand was made by telegram dated 23-7-1948 and the suit was filed in 1949 which is well within time.

20. In the result, the appeals are allowed. The appellant in A.S. No. 118/54 will have a decree for Rs. 10,000/- together with any proportionate sum actually earned after the amount was deposited with the defendant No. 29, the Imperial Bank of India, at Vijayavada. The appellant in A.S. No. 64/54 will have a decree for Rs. 5,000/- together with any proportionate sum actually earned on the said sum after its deposit with the Imperial Bank of India at Vijayavada. The contesting respondents will have only one set of costs which will be apportioned between the appellants in accordance with the amounts decreed.

Appeals allowed.