(2008) 02 MAD CK 0183

In the Madras High Court

Case No : A.S. No. 238 of 1996

Ayyanar Gounder APPELLANT

Vs

Manickam and 16 others RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 02 MAD CK 0183

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : G.K. Ilanthiraiyan, for the Appellant; V. Raghavachari for R7, Mr. R. Murugesan, Spl. G.P for H.R. and C.E. for R3, 4 and 10, Mr. Vaidyanathan for R17, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This appeal has been preferred against the Judgment and Decree, dated 07.12.1995 made in O.S.No.877 of 1994 on the file of the Principal Subordinate Judge, Salem. The appellant herein was the first plaintiff in the suit before the trial court The second plaintiff Vaithi Gounder died, even when the case was pending before the trial court and his Legal Representatives were arrayed as respondents 11 to 16. As per the order passed in C.M.P. No. 11693 of 2003, dated 28.01.2003, the 17th respondent has been impleaded. Respondents 5 to 9 were Defendants 6 to 10 in the suit.

2. In the statutory suit, filed u/s 70 of the Tamil Nadu Hindu Religious and Charitable Endowment Act 22/59 (Herein after referred to as Act), the prayer sought for is to set aside the order passed by the third respondent, Commissioner, Hindu Religious and Charitable Endowment, dated 20.07.1984 in S.R.No.11 /1984 and to declare that the plaintiffs 1 and 2 and the defendants 1 to 3 are hereditary trustees of Sri Govindaraja Perumal Temple, Udayapatti and to cancel the appointment of fit person appointed by Hindu Religious and Charitable Endowment and also for other consequential relief.

3. The trial court, considering the oral and documentary evidence and the arguments advanced by both sides, dismissed the suit with costs of the contesting defendants. Aggrieved by which, this appeal has been preferred.

4. It is not in dispute that Sri Govindaraja Perumal Temple is situated at Udayapatti Village, Salem Taluk. In the plaint, it has been averred that the plaintiffs 1 and 2 and defendants 1 and 2 were hereditary trustees of Sri Govindaraja Perumal Temple and third defendant was also hereditary trustee and poojari of the above temple. It is an admitted fact that the aforesaid persons had filed O.A.No.24 of 1974 before the Deputy Commissioner, H.R. & C.E. (Admn) Coimbatore, to declare them as hereditary trustees of Sri Govindaraja Perumal Temple, Udayapatti. After an enquiry, the Deputy Commissioner, Coimbatore, declared by his order, dated 27.07.1976, declared the above said persons as hereditary trustees of the said temple. However, on the petition filed by the villagers in C.S.No.24163/82 u/s 69(2) of the said Act, the Commissioner,'' H.R. & C.E. Department, Chennai, initiated suo moto proceedings and passed an order, whereby, the order, dated 27.07.1996 passed by the Deputy Commissioner was set aside and the matter was remitted back to him for fresh disposal, in accordance with law.

5. On 30.07.1984, the Assistant Commissioner, H.R. & C.E. (Admn) Dept, Salem, by his order in ROC.No.1659/84-A3, appointed an Inspector, H.R. & C.E., Salem Division as fit person for the suit temple. Aggrieved by which, the appellant and others filed a writ petition under Article 226 of the Constitution, seeking an order to issue a writ of certiorari to quash the said order. It is not in dispute that during the pendency of the writ petition, O.A.No.24/74 appeared to have been dismissed for default on 27.03.1986. This Court, by order dated 18.02.1993, passed in W.P.No.8087 of 1984, has held as follows :

"As already adverted to, the very application in O.S.No.24 of 1974 praying for declaration of the petitioner and three others as hereditary trustees of the said temple had been dismissed for default by the Deputy Commissioner on 27.03.1986. On the facts of the dismissal of the said application, which was not subsequently stated to have been revived, it goes without saying that the petitioner cannot at all be recognised, in the eye of law, as hereditary trustees of the said temple. When they are thus no longer to be construed as hereditary trustees, they cannot at all question the validity or otherwise of the appointment of respondent 2 as fit person to the said temple."

6. It is clear that this Court has held in W.P.No.8086 of 1984 that the order of the third respondent, Commissioner, H.R. & C.E., Department is not opposed the any law and also set out all the relevant factors, which had compelled the Commissioner to initiate suo moto enquiry, on the order of remand by taking various aspects into consideration. It is seen that the third respondent, Commissioner, H.R. & C.E., Department has given reasonable opportunity to the appellant and others to defend their case before the Deputy Commissioner, so as to establish the said authority that they are the hereditary trustees of Sri

Govindaraja Perumal Temple and therefore, as held by the Court below, no case has been made out in the suit, against the order of remand passed by the Commissioner, H.R. & C.E., in S.R.No.11/84, dated 20.07.1984.

7. Learned counsel appearing for the appellant contended that though the Deputy Commissioner, the 10th respondent, by his order, dated 27.07.1976, has declared the appellant and three others as hereditary trustees, the Commissioner, H.R. & C.E., third respondent herein had set aside the order, nearly 8 years after the order was passed. As per the plaint averments, at the instigation of the defendants 1 to 3, the defendants 6 to 10 filed the petition in S.R.No.11/84, before the Commissioner, H.R. & C.E., who set aside the order passed by the Deputy Commissioner and remitted back the matter for fresh disposal.

8. It is not in dispute that the third respondent herein, being the Commissioner, H.R. & C.E., had power to set aside the order passed by the Deputy Commissioner on merits and remit back the matter for fresh disposal. Pursuant to the order, fit person was also appointed to look after the administration of the suit temple, though the appellant and another had filed the aforesaid writ petition and got interim stay in their favour, subsequently, the writ petition was dismissed and the interim stay already granted was also vacated. As per the order, dated 27.02.1996 made in O.A.No.24 of 1974, the Deputy Commissioner, H.R. & C.E., Administration Department, had passed the following order "The petition be and is hereby dismissed for default.

9. As contended by the learned counsel for the appellant, as per the order in RC.O.A.No.12/87/Bl, dated 11.05.1990, the Deputy Commissioner, H.R. & C.E. (Admn) Department, Salem -8, had passed the following order :

"In view of the O.S.877/84 pending on the file of the Principal Subordinate Judge, Salem u/s 70 of the H.R. & C.E., Act, the file is closed for the time being and will be reopened as and when the civil suit is disposed if necessary."

10. It is not in dispute that due to bifurcation of the district, administration of the H.R. & C.E. Department, Deputy Commissioner, H.R. & C.E., Salem had got jurisdiction and accordingly, he passed the order, whereby quashed the proceedings in O.A.No.12/87/Bl, dated 21.05.1990, in view of the pendency of the suit in O.S.No.877/84 on the file of the Subordinate Judge, Salem, u/s 80 of H.R. & C.E., Act.

11. According to the learned counsel for the appellant, though the application in RC.O.A.No.24/74 B1, dated 27.03.1986 was dismissed, subsequently, it was revived and renumbered as RC.O.A.N0.12/87/B1, dated 11.05.1990. However, as per the aforesaid order, the file was closed by the Deputy Commissioner, H.R. & C.E., Salem, subject to the disposal of the civil suit. However, it is not in dispute that the aforesaid suit was also dismissed on merits.

12. It is an admitted fact that the statutory suit in O.S.No.877 of 1984 was filed

by the appellant and others, not only challenging the order passed by the third respondent, Commissioner, H.R. & C.E., Chennai, but also to declare that the appellant and four others were hereditary trustees of Sri Govindaraja Perumal Temple, Udayapatti and also to cancel the appointment of fit person of the temple. It is seen that for the very same relief of challenging the appointment of fit person, writ petition was filed by the appellant and the deceased second plaintiff.

13. As contended by the learned counsel for the third respondent, since the writ petition was dismissed by this Court, the same prayer in the suit would not be maintainable before the Subordinate Court. As far as the prayer seeking to declare the appellant and four others as hereditary trustees of the suit temple is concerned, the trial court has disposed the same on merits.

14. The appellant / first plaintiff had filed the suit along with the deceased second plaintiff therein to declare that the said plaintiffs 1 and 2 and defendants 1 to 3 as the hereditary trustees of Sri Govin-daraja Perumal Temple, Udayapatti. As held by the trial court, as per Ex.A.4, as early as on 10.09.1982, the third defendant in the suit had written a letter to the Deputy Commissioner, 11th respondent herein, whereby resigned from his hereditary trusteeship. Admittedly, the suit was filed only on 22.08.1984 and therefore, on the date of institution of the suit, the third defendant had not claimed to be one of the hereditary trustees along with the plaintiffs. Similarly, the first defendant in the suit was also stated to have resigned from his hereditary trusteeship, as early as in the year 1982 and as such, he had not claimed hereditary trusteeship along with the plaintiffs. Admittedly, the said defendants have not joined with the plaintiffs in seeking the relief. In such circumstances, the appellant and the other plaintiff cannot claim trusteeship in favour of the defendants 1 to 3. During the pendency of the suit, the second plaintiff died and one of his sons was impleaded as third plaintiff, as per the order passed in I.A.No.1522 of 1991, dated 21.09.1992 by the trial court and subsequently, the other legal representatives were impleaded as defendants 12 to 16, as per the order dated 07.04.1993 passed in I.A.No.22/93. As held by the court below, the plaint was not suitably amended, in so far as the relief sought for is concerned and therefore, the relief sought for by the appellant / plaintiff in favour of the defendants 1 to 3 was rightly negatives by the court below.

15. In this appeal, after the death of the second plaintiff, Vaithi Gounder, his legal representatives were arrayed only as respondents, since they were not willing to join with the appellant in seeking the relief sought for in the suit. Therefore, the relief sought for in the suit in favour of the persons, other than the appellant herein is not legally sustainable and the court below has to consider the relief sought for by the appellant / plaintiff in the suit. The appellant and the other plaintiffs had claimed that they were trustees of the suit temple along with the defendants 1 to 3, stating that their ancestors were claimed to be the trustees of the temple. However, as found by the trial court, absolutely there

is no evidence let in, on the side of the appellant to show that his ancestors were the trustees of the temple at any point of time.

16. On a perusal of the evidence of P.Ws.2 and 3, it is clear that the father of the second plaintiff was not at all a trustee of the temple and therefore, the finding of the trial court that the plaintiffs have failed to establish that their ancestors were the trustees of the temple is based on reliable evidence and materials. The finding of the trial court is that there is absolutely no evidence let in on the side of the plaintiffs to claim hereditary trusteeship. The first plaintiff in the suit alone has preferred this appeal, the alleged other hereditary trustees and their legal representatives as respondents, as they did not support his case.

17. As per Section 63 (b) of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, Joint Commissioner or Deputy Commissioner, as the case may be is the authority, vested with the power to enquire into and decide the disputes, relating to the office of the hereditary trusteeship. The order, dated 29.07.1976 passed by the Deputy Commissioner, H.R. & C.E. (Admn) Department, Coimbatore, the 10th respondent herein was set aside by the Commissioner, H.R. & C.E. Department, Chennai, by his order dated 20.07.1994 in S.R.No.11/84, whereby the third respondent had directed the 10th respondent herein to dispose the same afresh on merits, according to law.

18. The plaintiffs in the suit, without trying to establish the claim before the Deputy Commissioner, pursuant to the order of the third respondent, dated 20.07.1984 filed the statutory suit u/s 70 of the H.R. & C.E., Act to declare them as hereditary trustees.

19. As found by the court below, it is seen that there is no acceptable evidence to establish that the appellant is a hereditary trustee of the suit temple along with the others, as stated by him in the plaint. It is seen that most of the documents filed in the suit before the trial court are only after the date of filing of the suit and as such, much reliance cannot be placed on the said documents.

20. As per Section 6 (11) of the Act, "hereditary trustee" means the trustee of a religious institution, the succession to whose office devolves upon by hereditary right or is regulated by usage or is specifically provided for the same by the founder, so long as such scheme of succession is in force and therefore, sayings of hereditary trusteeship is that the office devolves on hereditary trustees or regulated by the usage specifically provided for by the founder. Admittedly, the appellant has not established that as to how he got the hereditary trusteeship, either by way of devolution or directly from the founder of the temple, regulated by usage.

21. On the contrary, the oral and documentary evidence available on record, as found by the court below is sufficient to prove that in the suit temple, all the villagers are permitted to worship and perform poojas, as a matter of right by forming various committees, constituting of persons even from other communities. It is not in dispute that buildings of the temple were constructed

only collecting donations from the public and idols of the deities were installed only from the funds donated by persons belonging to various communities and the affairs of the temple is also being maintained out of the funds collection and donations from the devotees and worshippers, for which hundial is also placed. On the aforesaid facts and circumstances, this Court is of the view that there is no error or infirmity in the findings of the trial court in dismissing the suit, so as to warrant any interference in the appeal. In the result, the appeal fails and accordingly, the same is dismissed. However, there is no order as to costs in this appeal.