

(1950) 11 MAD CK 0026

In the Madras High Court

Case No : A.A.O. No"s. 118 and 223 of 1949

Bava G. Gopalaswami Mudaliar

APPELLANT

Vs

V.S. Thyagaraja Mudaliar and Others

RESPONDENT

Date of Decision : 28-11-1950

Acts Referred:

Madras Hindu Religious Endowments (Amendment) Act, 1946 — Section 84(1), 84(2)

Citation : AIR 1951 Mad 693 : (1951) 64 LW 154 : (1951) 1 MLJ 248

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : R. Sundaralingam and B.G. Chokkappa, in No. 118, M. Seshachalapathi and M. chockalingam, in No. 223, for the Appellant; R. Sundaralingam and B.G. Chokkappa, in No. 223, M. Seshachalapathi and M. chockalingam, in No. 118, for the Respondent

Final Decision : Allowed

Judgement

Govinda Menon, J.—These two appeals arise out of O. P. no. 27 of 1948 in the District Court of East Tanjore, which was a petition u/s

84(2), Madras Hindu Religious Endowments Act, to set aside the decision of the Hindu EeligiouB Endowments Board in O. a. No. 279 of 1946.

2. Sri Thiagarajaswami Devasthanam, Tiruvarur, in Tanjore district, is a famous Hindu religious institution and in the Ulthukurai Kattalai attached to

the temple, it is common ground, "that the hereditary trusteeship vested in two families, viz., the Bava family and the Vadapathimangalam family.

Bava Vaithilinga Mudaliar and V. S. Thyagaraja Mudaliar were the two trustees of this Kattalai, each of whom representing his own family, before

the death of Vaithilinga Mudaliar on 6-4-1943 leaving him surviving a widow, a daughter, a daughter"s son and two brothers, viz., Bava G.

Gopala-swami Mudaliar and Bava C. Panchapakesa Mudaliar. On account of

disputes as to who should succeed to the hereditary trusteeship of the Ulthurai Kattalai in the place of the deceased Vaithilinga Mudaliar, one of his undivided brothers Bava Gopalaswami Madaliar, filed O. S. no. 117 of 1946 on 3-4-1946 in the Court of the District Muosif of Tiruvarur, praying for a decree that he is the hereditary trustee of the Ulthurai Kattalai of Sri Thyagarajaswami Temple at Tiruvarur and for possession of the said office with such further and other reliefs as were necessary. To that suit the Hindu Religious Endowments Board was impleaded as the first defendant, the Executive Office of the Sri Thyagarajaswami Devasthanam as the second defendant, the widow of the deceased Vaithilinga Mudaliar as the third defendant and the other divided brother of the said Vaithilinga Mudaliar, Bava G. Panehapakesa Mudaliar, as the fourth defendant and the co-trustee representing the Vadapathimangalam family, V. S. Tbiagaraja Mndaliar as the 5th defendant. The widow, the 3rd defendant, contended that she was the lawful trustee and succeeded to the office of trusteeship on the death of her husband Vaithilinga Mudaliar. After this suit was filed, on 5-4 1946, the Madras Act X of 1946 which amended the Hindu Eeligious Endowments Act came into force whereby Section 84 of the Aofc was changed in material respects. After the suit had been pending for over a year, the plaintiff applied to the District Munsif's Court for permission to withdraw the suit on the ground that the necessary parties had not been impleaded in the suit and therefore the suit would fail for a technical reason. By I. a. No. 249 of 1947, the learned District Munsif permitted the plaintiff to withdraw the suit with liberty to file a fresh suit. On 11 4-1946, prior to the withdrawal of the suit, Bava Gopalaswami Mudaliar applied to the Endowments Board by O. A. No. 279 of 1946 praying that he may be declared as the hereditary trustee of the Ultburai Kattalai in succession to Bava C. Vaitbilingam Mudaliar. This petition was also contested by the widow of Vaithilinga Mudaliar as well as by V. S. Thiagaraja Mndaliar who contended that Bava Vaithilinga Mudaliar was not a hereditary trustee of the Kattalai and that even assuming that he was a hereditary trustee Bava Gopalaswami Mudaliar, who was a divided brother of the deceased cannot succeed to the office in preference to Vaithilinga Mudaliar's heira. The Endowments Board enquired into the matter fully and passed a considered order on 24-9- 1947

holding that the petitioner Bava Gopalswami Mudaliar has proved his case and was entitled to be declared as one of the hereditary trustees of the Ulthurai Kattalai. The order of the Endowments Board, after stating the facts and circumstances which led up to the petition, concluded that as Vaithilinga had left no male issue, his next brother Gopalswami Mudaliar, the petitioner was entitled to claim the hereditary trusteeship and in the face of the documents filed by him and the admission of Thiagaraja Mudaliar's father to the effect that the Bava family was one of the hereditary trustees and particularly in view of the documentary evidence filed on behalf of Bava Gopalswami Mudaliar, there can be no doubt whatever that the hereditary trusteeship vested in the petitioner Bava Gopalswami Mudaliar. As a result of this declaration, the other trustee V. S. Thiagaraja Mudaliar applied to the District Court of East Tanjore u/s 84 (2), Hindu Religious Endowments Act to set aside the order declaring Bava Gopalswami Mudaliar as the hereditary trustee of the Ulthurai Kattalai. The learned District Judge held on a construction of Section 84 (1) (b) that the Endowments Board had no jurisdiction to decide a dispute regarding succession to the trusteeship and, therefore, set aside the order of the Board declaring Bava Gopalswami Mudaliar as a hereditary trustee. Against the order of the District Judge, Bava Gopalswami Mudaliar who was the 1st respondent has preferred C. M. A. No. 118 of 1949 and the Hindu Religious Endowments Board which was the second respondent has preferred O. M. A. No. 223 of 1949. To the appeal filed by Bava Gopalswami Mudaliar, his brother's widow Pappu Ammal as well as the divided brother Panchapakesa Mudaliar are impleaded as respondents in addition to V. S. Thiagaraja Mudaliar and the Hindu Religious Endowments Board. In the other appeal by the Board, the respondents are V. S. Thiagaraja Mudaliar and Bava Gopalswami Mudaliar. At the hearing of these appeals before us, nobody appeared on behalf of the widow of Vaithilinga Mudaliar or on the side of the divided brother Panchapakesa Mudaliar; but it was represented to us by the advocate appearing for Gopalswami Mudaliar that at present there is no dispute inter se between the members of the Bava family as regards the person to succeed to the hereditary trusteeship on the death of Vaithilinga Mudaliar and that all of them have recognised Gopalswami Mudaliar as the rightful claimant and the hereditary trustee. The point in controversy centres round,

as already stated, the interpretation of Section 84 (1) (b) of the Act, Section 84 has undergone transformation since its first enactment by Act II [2]

of 1927. It was amended by Act IV [4] of 1930 in the first instance and later on by Act X [10] of 1946. It will be useful to set out the section as it

stood originally and as it has been subsequently amended :

Act II of 1927. Act IV of 1930. Act X of 1946.

(1) If any dispute arises as to whether an institution is a math or
arises as to :

to whether a math or temple whether an institution is a math or

ia one to which this Act temple as defined in this Act or (a) Whether the institution is a

applies or as to whether a whether a temple is an except-ed math or temple as defined in

temple is an excepted temple, such dispute shall be decided this Act.

temple, such dispute shall be by the Board.

decided by the Board. (b) Whether a trustee is a

hereditary trustee as defined in

this Act, or not, or

(c) Whether any property or

money endowed is a specific

endowment as defined in this

Act or not such dispute shall be

decided by the Board and no

Court in the exercise of its

original jurisdiction shall take

cognizance of any such dispute.

(2) A trustee affected by a (2) Any person affected by a (2) Any person affected by a

decision under sub-s. (1) decision under subs. (1) may decision under sub-s. (1)

may within one year within one year, apply to the may, within six months, apply

apply to the Court to Court to modify or set aside such to the Court to modify or set

modify or set aside such decision; but subject to the result of such decision.
decision but, subject to the such application, the order of the
result of such application, Board shall be final (by reason of the
the order of the Board shall omission of S. 4 re-except-ed
be final. temples.)

(3) From every order of a
District Judge on an application
under sub-s. (2) an appeal shall
lie to the High Court within 3
months from the date of the
order.

(4) Subject to the result of
an application under sub-s. (2)
or of an appeal under sub-8. (3)
the decision of the Board shall
be final (by reason of the
omission of cl. (5) of S. 9
classifying certain temples as
"ex-cepted temples").

8. The learned District Judge has held that the Act is whether a person who
admittedly is all that the Board is permitted to decide under a trustee

holds it as a hereditary trustee, that is if a trustee is functioning with respect to a
temple or a math as defined in the Act all that the Board is

empowered by Section 84 (1) (b) is to find out whether he is a hereditary trustee
or not ; or in other words, what the section means is a decision

as to whether the trusteeship is a hereditary one and nothing more. The
distinction between an excepted temple and a non-excepted temple was

abolished by the Amending Act of 1946 by which Sub-section (5) of Section 9
was repealed and the definition of hereditary trustee in Sub-section

(6) was altered and a new definition was substituted. Under the section as it
stood before the amendment of 1946, if any dispute had arisen as to

whether a temple as defined in the Act is an excepted temple or not, such a

dispute shall be decided by the Board and therefore, in the view of the lower Court, what is contemplated by Section 84 (1) (b) is only the finding out of the hereditary nature of the trusteeship. Here the right of Goplaswami Mudaliar as a trustee has been questioned by the other heirs of the deceased Vaithilmga Mudaliar. So he is not admittedly a trustee and that being the case, the Board had no jurisdiction to find out whether he is a hereditary trustee and declare him as such. The learned District Judge expressed the opinion that the right given to the Board is limited and can be exercised only when the trustee happens to be the son of the last hereditary trustee or if the last hereditary trustee has appointed him as his successor. But the Board has no jurisdiction to find out the relative merits of competing claimants for the trusteeship, each one of whom claiming to be first of all a trustee and secondly a hereditary trustee. The question of trusteeship can, therefore, be decided only under the common law by a civil Court and if the civil Court decides any one of the parties as a trustee, then it is open to the Board to find out whether such a trusteeship is hereditary in the family or not. After the words "or not" in Clause (b), for the word "or" the phrase a hereditary trustee as defined in this Act" should be added and if that is done, the clause would read thus :

Whether a trustee is a hereditary trustee as defined in this Act, or not a hereditary trustee as defined in this Act.

The learned District Judge relied upon a passage in Halsbury's Laws of England, vol. 27 at p. 154, Section 292 to the following effect :

Statutory provisions giving jurisdiction to inferior Courts, to Government departments, or to bodies created ad hoc, must be strictly construed and the procedure prescribed must be exactly followed.

Reliance was also placed upon passages at pp. 235 and 241 of Maxwell's Interpretation of Statutes, laying down that a Legislature would not make an important innovation without a very explicit expression of its intention and therefore it would not oust the jurisdiction of a superior Court without a distinct expression of its intention or by necessary implication. We agree with the learned District Judge that what is contemplated by Clause. (b) is the determination by the Endowments Board only of the hereditary trusteeship but what the lower Court has overlooked is that, in finding out whether a person who claims to be a hereditary trustee is such a

hereditary trustee, if a preliminary question regarding his rights to trustee-ship itself has to be decided, the Act does not oust the jurisdiction of the Board for that purpose. The conclusion arrived at by the learned District Judge involves the anomalous situation that where there is a dispute between two individuals regarding the hereditary trusteeship of an institution, in the first instance resort must be made to a civil Court which would decide as to who is to be the trustee and then the successful party must apply to the Endowments Board to declare him as a hereditary trustee ; because it is not open to a Court in the exercise of its original jurisdiction, to take cognizance of any dispute regarding the hereditary trusteeship at all as such a dispute can be decided only by the Board. The situation thus created cannot be considered to be a happy one. It is well known that a statute made for the public good ought to be liberally construed--Statute pro publico commoda late interpretantur. We do not think that the framers of the amended clause intended such a result to arise. In our opinion what was sought to be done by the amendment is that the Board had the power to determine, as a preliminary point in considering the question of hereditary trusteeship, whether the person who claims that right is a trustee at all or that he fulfils the requisite initial qualification of being a trustee. As the preamble of the Act itself says it was intended to provide for better administration and governance of certain Hindu religious endowments. Therefore, if in deciding whether a person is a hereditary trustee or not, the initial point regarding his trusteeship has to be considered and concluded, it cannot be said that such an enquiry and conclusion are taken out of the scope of the powers of the Board.

4. The learned counsel for the contesting respondent V. S. Thiagaraja Mudaliar, stoutly defended the decision of the District Judge and strenuously contended that all that the Board could do in the circumstances is to find out whether an admitted trustee fulfils any one of the three requirements laid down in the definition of a hereditary trustee in Section 9 Sub-section (6), these three requirements being, firstly, whether the succession devolves by hereditary right; secondly, whether it is regulated by usage; and thirdly, whether it is specifically provided for by the founder. He also invited our attention to various sections of the Act where a hereditary trustee is given greater rights than a non-hereditary trustee; for example u/s

53 of the Act an Assistant Commissioner can suspend, remove or dismiss any non-hereditary trustee whereas he has no such power as regards a

hereditary trustee. u/s 53-A the Endowments Board alone can suspend, remove or dismiss a hereditary trustee. The disqualifications which would

bring about a cessation in the holding of non-hereditary trusteeship are not the same for hereditary trusteeship; for example, u/s 34 if a person

applies to be adjudicated or is adjudicated a bankrupt or insolvent, or if he is sentenced by a criminal Court to transportation or to imprisonment

for a period of more than six months and such a disqualification has not been cancelled by the Government, he cannot be a non-hereditary

trustee. The only disqualification so far as a hereditary trustee is concerned, is that he should not be a person who has ceased to profess the Hindu

religion. He also invited our attention to the proviso to Section 57 Sub-section (1) Clause (c) which lays down that where provision is made in the

scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as a trustee, of the person next in

succession who is qualified.

5. In order to compare and contrast the rights and obligations of a hereditary trustee, the learned counsel also invited our attention to Section 42

and 58. He further contended that if there is a dispute regarding a right of succession to the office of a hereditary trustee, wherein questions

regarding the genuineness of a will or the existence of an adoption or matters like that have to be decided, the Board, even in the initial stage, as a

preliminary step to find out whether a person can fulfil the status of a hereditary trustee, has no power to decide that question. On the other hand,

learned counsel for the Endowments Board referred us to Section 25, Income Tax Act, wherein power is given to the Income Tax authorities to

find out initially whether a family which has to be assessed to Income Tax is divided or not, Similarly powers are given in the Madras Hereditary

Village Officers Act to the revenue authorities to find out whether a person who claims to succeed to a hereditary village office is entitled to do so

and in deciding that question, points regarding validity of adoption or genuineness of a will would have to be decided. It seems to us that the

Legislature, in giving the power to the Board to decide the question of hereditary trusteeship, has impliedly conferred the right to decide the

question of trusteeship also as a preliminary point. In this context it is useful to refer to the observations of Lord Esher M R. in the Queen v.

Commissioners for Special Purposes of the Income Tax, (1888) 21 Q. B. D. 313 :

When an inferior Court OF tribunal or body, which has to exercise the power of deciding facts is first established by Act of Parliament the

Legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to

such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them

conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned,

and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The Legislature may entrust the

tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the

jurisdiction, on finding that it does exist, to proceed further or do something more. When the Legislature are establishing: such a tribunal or body

with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for

otherwise there will be none.

This passage shows that if a statutory body, unlike a Court exercising functions in common law, invested under the law to decide a question, it has

power impliedly and implicitly given, to decide a preliminary issue which would be the root of the main question that has to be decided. Reference

may also be made to the observations in Admiralty Commissioners v. S. S. Volute, (1922) 1 A. G. 129 : 91 L. J. P. 38. The decision in the Queen

v. Commissioners for Special Purposes of the Income tax, (1888) 21 Q. B. d. 318 was cited with approval by Lord Reading C. J. in Rex v.

Bloomsbury Income Tax, 1915 3 K. B. 768 : 85 L. J. K. B. 129. Two of those three English cases, The Queen v. Commrs. for Special Purposes

of the Income Tax, 21 Q.B.D. 313 and Rex v, Bloomsbury Income Tax, 1915 3 K. B. 768 : 85 L. J. K. B. 129 were considered by our learned

brother Viswanathe Sastri J., in T.R.K. Ramaswami Servai and Another Vs. The Board of Commissioners of the Hindu Religious Endowments, .

Learned counsel for the Board relying upon various cases, viz., Nilmani Kar and

Others Vs. Raja Sati Prasad Garga Bahadur and Others,

contended that the effect of an amending statute is not to deprive the rights which already existed unless there is specific provision to that effect.

According to him, the section, as it stood before the amendment, conferred upon the Endowments Board the right to decide whether a temple is an

excepted temple or not. That is, whether the trustee of such a temple is a hereditary trustee or not and in doing so, the Board had the power to find

out whether he was a trustee or not. We do not think that these decisions can be of much help. In our opinion, following the dictum of law set out

by Lord Esher M. B. in the Queen v. Commissioners for Special Purposes of the Income Tax, 21 Q. B. 313, if it is open to the Endowments

Board in finding out whether a person is a hereditary trustee, to decide whether he is, in the first instance, a trustee at all. No serious consequence

can follow from such a decision for, under Sub-section (2) of Section 84, any person affected by a decision under Sub-section (1), can apply to

the Court to modify or set aside such decision. It has been held in *Iswarananda Bharati Swami v. H. R. E Board, Madras*, 56 Mad. 40 : A. I. R.

1932 Mad. 593, that the Court, in dealing with such a original application, has all the powers and shall follow the procedure in trying a original suit.

That means that all the oral and documentary evidence which the parties possess and which are relevant can be let in and the decision of the Court

has now been made subject to an appeal which right was not in existence prior to 1946. The Legislature would, therefore, not have prohibited the

Board from embarking upon an enquiry preliminary in nature to find out whether a person who claims to be a hereditary trustee is really a trustee

or not.

6. Learned counsel for the Endowments Board, the appellant in C. M. A. No. 223 of 1949, and for the appellant in C. M. A. No. 10 of 1949,

contended that V. S. Thiagaraja Mudaliar, who applied to the District Court, was not a person affected by a decision of the Board. The contention is

that the joint right of trusteeship which is hereditary in his family is in no way affected by declaring Bava C. Gopalaswami Mudaliar as the person

entitled to be the hereditary trustee from the Bava family. Mr. Seshachalapathi wanted the Court to draw a distinction between the words

"interested" and "affected" and invited our attention to various sections of the

Act wherein the word "interested" occurs as well as other sections- where the word "affected" occurs. In addition we were also asked to consider the meaning of the term "aggrieved" in relation to these words. The places where the word "interested" occurs and which were brought to our notice are : Sections 9 (9), 55 (4), 57 (7), 63 (7), 64, 65, 65A (5) (b), 67 (4), 73 (1) and 76 (2), From these sections, it was sought to be argued that where the Legislature intended rights of a public-character to be considered, the word "interest" was used and where the rights of private character are in contemplation, the word used was "affected" as in Sections 77 (2), 79-A (3) and 84 (2); and the word "aggrieved" was used in Section 44-B. It was sought to be impressed that because the legislature has not used the word "interested" in Section 84(2) and because Thyagaraja Mulaliar's private rights are not in any way concerned in the decision by the Endowments Board, he had no right of a petition to the lower Court. On the other hand, the respondent's counsel invited our attention to a decision in *Kumaraswami Chettiar v. Board of Commissioners for the H. R. E. Madras*, 1937 M. W N. 1117 : A. I. R. 1937 Mad. 940, where the word "affected" was considered. In our opinion, the nice distinction that is sought to be drawn between the words "interested" and "affected" need not be finally decided in these appeals. By the declaration of the appellant Bava C. Gopalaswami Mudaliar as a hereditary trustee, the other hereditary trustees' rights are certainly affected because if the Board had declared a person who has no legal right to function as a hereditary trustee, then the admitted hereditary joint trustee certainly stands to lose by being associated with a person who had no business to function as a hereditary trustee. We have no doubt whatever that the petition to the lower Court was justified in the circumstances of the case.

7. The respondent's counsel next contended, relying upon *Janaki Ammal v. Sanjeevi*, A. I. R. 1941 Mad. 552 : 1941-1 L. M. J. 510 and passages in Mayne's Hindu Law, Sections 809 and 810, that since sex is no disqualification for succession to trusteeship Vaithilinga Mudaliar's widow is the next hereditary trustee. As the lower Court has not adjudicated between the claims of the appellant Bava C. Gopalaswami Mudaliar and the other heirs of Vaisbilinga Mudaliar, we do not wish to express any opinion on this question.

8. The appeals are accordingly allowed. The decision of the lower Court is set aside, and O. P. No. 27 of 1948 is remanded to the District Court of East Tanjore for fresh hearing and disposal. The District Judge will, in the enquiry that would ensue, decide between the competing claims of the heirs of Vaithilinga Mudaliar as to who is to be the hereditary trustee. The parties are at liberty to adduce such evidence as they desire. Costs of these appeals will abide and follow the result of the fresh hearing by the District Judge.