(2003) 04 MAD CK 0079

In the Madras High Court

Case No : Appeal Suit No. 440 of 1988

Deputy Commissioner (Judicial), H.R. and C.E. (A) Dept. and Commissioner, H.R. and C.E.(A) Dept.	APPELLANT
Vs	
M. Perumal, Manickam, Dhavamani, Ramaraj, Palanivel, Andiyappan and Perumal	RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 70(2)

Citation : (2003) 3 LW 122 : (2003) 3 MLJ 151

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : G. Sukumaran, Special Government Pleader, for the Appellant; K. Jayaraman, for the Respondent

Final Decision : Allowed

Judgement

P. Thangavel, J.—This appeal has been filed by the defendants as appellants against the judgment and decree dated 25.3.1986 and made in

O.S. No. 29 of 1984 on the file of the Court of Subordinate Judge, Madurai.

2. The facts that are necessary for disposal of this First Appeal are as follows:- Arulmigu Kannimar Temple at Chinnapatti village,

Kancharampettai, Madurai North Taluk, Madurai District is an ancient temple and for the support of the said temple an Inam grant has been

awarded by ancient Rajas. The said Inam was confirmed by the Inam Commissioner in the year 1865. The temple and the lands granted for

maintenance of the said temple were managed by one Manicka Gounder and his descendants hereditarily as hereditary trustees. The genealogy of

the descendants of Manicka Gounder is annexed to the plaint. As per Inam Fair

Register, permanent tenure was granted in favour of Manicka

Gounder as worshiper of the said temple meaning thereby as poojari of the said temple. The said Manicka Gounder had three sons, viz., Manicka

Gounder, Perumal Gounder and Andiappa Gounder. Plaintiffs 1 and 2, who are respondents 1 and 2 herein, are grand sons of Manicka Gounder,

first son of grantee Manicka Gounder, while the plaintiffs 3 and 4, who are respondents 3 and 4 herein, are great great grand sons of Perumal

Gounder, second son of grantee Manicka Gounder. The plaintiffs 5 to 7, who are respondents 5 to 7 herein, are the descendants of Andiappa

Gounder, who is third son of grantee Manicka Gounder. The respondents 1 to 7 herein were keeping the management of the temple by remaining

in possession of the lands given by Inam Commissioner as grant for the maintenance of the temple. The respondents 1 to 7 herein have been in

management of the said temple by possessing the lands granted for maintenance of the temple without any interference from any quarters by paying

kist. Ryotwari patta for the above said lands has been granted in favour of the temple by the Settlement Tahsildar by order dated 5.10.1966.

3. The respondents herein filed a petition in O.A. No. 129 of 1979 before the Deputy Commissioner, Hindu Religious and Charitable Endowment

Board, Madurai u/s 63(b) of the Hindu Religious and Charitable Endowment Act 22 of 1959 (hereinafter referred to as ""the Act"") for an order

declaring that the respondents herein were holding the office of trusteeship of the temple hereditarily. The Deputy Commissioner (Judicial) Hindu

Religious and Charitable Endowment at Madras, the first defendant, after transfer of the above said O.A. No. 129 of 1979, had declared the

office held by the respondents herein as hereditary trusteeship. The accounts were audited and payment of contribution and audit fees were also

made by the respondents herein to the above said Department. The Commissioner of Hindu Religious and Charitable Endowment, Madras, the

second defendant on unseen allegations took up a suo motu appeal against the said order in A.P. No. 57 of 1981 and cancelled the order passed

by the first defendant on the ground that the respondents herein are not the descendants of Manicka Gounder referred to in the Fair Inam Register

and they are not hereditary trustees in management of the temple. It is under the said circumstances, the respondents herein as plaintiffs have filed the suit to set aside the order of the Commissioner of Hindu Religious and Charitable Endowment Department, Madras-34 in A.P. No. 57 of

1981 dated 5.8.1983 and to declare that the respondents herein are holding the office of trusteeship of Arulmigu Kannimar Temple at Chinnapatti

village, Kancharampettai, Madurai North Taluk, Madurai District hereditarily.

4. The appellants as defendants resisted the claim made by the respondents herein as plaintiffs on the following grounds:-

The respondents herein are not hereditary poojaries cum trustees of Arulmigu Kannimar Temple at Chinnapatti village. In the Inam Fair Register

one Manicka Gounder was shown as worshiper and not as poojari. The term worshiper and poojari are different in all aspects and therefore,

worshiper cannot be known as poojari of temple. The alleged ancestors of the respondents herein were not managing the affairs of the temple as

poojaries and hereditary trustees. The allegation of no interference in the alleged right of the respondents herein as poojaries or trustees for

generation is also not correct. The genealogy furnished along with the plaint is not admitted and the same has to be proved. The lands shown in

Fair Inam Register were granted as Devadayam for the upkeep of the temple. After holding an enquiry under Minor Inams Abolition Act, 1963,

ryotwari patta was issued in the name of the temple by the Settlement Tahsildar, Unit No. I, Madurai in S.R.621/MI Act/MDU-66 dated

5.10.1966 for an extent of 5.69 Acres for the upkeep of the temple as Devadayam in T.D. No. 159. No patta was granted in favour of the alleged

ancestors of the respondents herein treating them as poojaries of the temple. On the application made by the respondents herein in O.A. No. 129

of 1979 u/s 63(b) of the Act, the respondents herein were declared as hereditary trustees of the said temple. They cannot be declared as

hereditary trustees under the above said Act. Therefore, a suo motu proceeding was initiated u/s 69(2) of the Act in A.P. No. 57 of 1981 and the

order of the first defendant was set aside by the second defendant by order dated 10.12.1980. There is no evidence to show on the side of the

respondents herein that they are in management of the temple for more than 3 generations or over 100 years to claim hereditary trustee. The order

passed by the second defendant in A.P. No. 57 of 1981 is valid and legal and cannot be assailed. The fact of cultivating the lands and paying kist on behalf of the temple by the respondents herein will not confer them to claim poojariship or hereditary trusteeship and the respondents herein are

not entitled to the relief sought for in the suit and the suit is not maintainable. It is on these grounds, the appellants as defendants have sought for

dismissal of the suit.

5. After considering the submission made on both sides in the light of the material evidence available on record, the trial Court has come to a

conclusion that the ancestors of the respondents herein and after them, the respondents herein are in management of the temple and its lands as

poojaries cum hereditary trustees and accordingly declared the respondents herein as hereditary poojaries cum trustees thereby setting aside the

order of the second appellant dated 10.12.1980. Aggrieved at the judgment and decree dated 25.3.1986 and made in O.S. No. 29 of 1984 on

the file of the learned Subordinate Judge, Madurai, the defendants as appellants have come forward with this appeal.

6. The points for determination in this appeal are:-

(1) Whether the respondents herein are descendants as shown in the genealogy annexed to the plaint to Manicka Gounder referred to in the Fair

Inam Register and whether the said Manicka Gounder and after him the respondents herein, as descendants, continued to manage the affairs of the

temple by remaining in possession of the lands granted for the upkeep of the said temple as poojaries cum hereditary trustees?

(2) Whether the order of the second appellant dated 5.8.1983 and made in A.P. No. 57 of 1981 is liable to be set aside?

7. Points 1 and 2:- The first plaintiff M. Perumal Gounder was examined as P.W.1 and one Thirumal Asari was examined as P.W.2 apart from

marking Exs.A-1 to A-12 on the side of the respondents herein. The appellants have produced Exs.B-1 and B-2, but had not let in any oral

evidence on their side.

8. Admittedly, Arulmigu Kannimar Temple at Chinnapatti village, Kancharampettai, Madurai North Taluk, Madurai District was having 11 cents in

Survey No. 90/1 and 5.45 Acres in Survey No. 90/3 in the above said village by virtue of the Inam grant made by ancient Rajas. The said Inam

was confirmed by the Settlement Authorities in favour of the temple in the year 1865 as seen from the admission made in the pleadings in the plaint.

Even though P.W.1 had claimed that the said temple is the family deity of the respondents herein and their ancestors on the ground that it was

constructed only by Manicka Gounder, there is no pleadings to that effect in the plaint. There is also no evidence on the side of the respondents

herein to show that the construction of the temple was made by Manicka Gounder, except the interested testimony of the first respondent herein.

P.W.2 Thirumal Asari, who was examined in support of the case of the respondents herein, would also state that he does not know as to who had

constructed the demised temple. Therefore, the claim made by the respondents herein that the demised temple was constructed only by Manicka

Gounder and the said temple was treated only as family deity cannot be sustained.

9. Of course the respondents herein have claimed as descendants of Manicka gounder, who was aged about 96 years as seen from the Fair Inam

Register, Ex.A-1 as on 27.9.1863. To establish that the respondents herein are descendants of said Manicka Gounder, it is pleaded in the plaint

that one Manicka Gounder, Perumal Gounder and Andiappa Gounder were the sons of the said ancestor Manicka Gounder mentioned in Ex.A-1.

It is also pleaded that the respondents 1 and 2 are the grand sons of Manicka Gounder, the first son of Manicka Gounder referred to in Ex.A-1,

while the respondents 3 and 4 are the great great grand sons of Perumal Gounder, the second son of above Manicka Gounder referred to in Ex.A-

1. It is also pleaded that the plaintiffs 5 to 7 are the descendants of Andiappa Gounder, the third son of Manicka Gounder referred to in Ex.A-1.

In support of such claim, a genealogy table was annexed to the plaint.

10. In support of the evidence of P.W.1 with regard to the pleadings referred to above, Thirumal Asari was examined as P.W.2. He is admittedly

not related to the family of the respondents herein. P.W.2 would admit during the cross-examination that he does not know as to who had

constructed the temple at ancient time and does not know who was managing and administering the affairs of the demised temple. Though P.W.2

claims that there are about 4 to 5 acres of lands to the above said temple, he did not know the survey numbers of the above said lands. P.W.2

claims that the respondents 1 to 7 are cultivating the lands of the temple separately. But he did not know in whose name, the patta for the said lands is standing. He further would admit that he does not know anything about Manicka Gounder.

11. Ex.A-12 is the audit report submitted by Assistant Audit Officer of Hindu Religious and Charitable Endowment, Administration Department

(Audit Wing) of Madurai to the Assistant Commissioner of Hindu Religious and Charitable Endowment, Administration Department, Madurai on

23.2.1982. A perusal of Ex.A-12 audit report, inter-alia, would disclose that the respondents herein had given statements in writing to the audit

party that the demised temple owns 5.69 acres of punja lands at Chinnappati village and the said lands were leased out to various persons for a

total sum of Rs. 1,200/- per fasli from fasli 1383 to fasli 1387 and for Rs. 1,500/- per fasli from fasli 1388 to fasli 1390. If the statement made by

the respondents to the audit party as referred to in Ex.A-12 is taken into consideration, the evidence given by P.W.2 that the lands owned by the

temple was cultivated separately by the respondents 1 to 7 herein in part cannot be true. If the nature of the evidence given and admission made by

P.W.2 during cross-examination including that he does not know anything about Manicka Gounder referred to in Ex.A-1 are taken into

consideration, it is clear that P.W.2 cannot have knowledge about Manicka Gounder referred to in Ex.A-1 and his descendants as stated in the

chief-examination and that P.W.2 had come forward to give evidence only to support P.W.1 as he is from the same place. Therefore, the evidence

of P.W.2 cannot be safely acted upon to hold that the genealogy annexed to the plaint is true. Except the unacceptable evidence of P.W.2, there is

no other evidence to prove the genealogy.

12. In State of Bihar Vs. Radha Krishna Singh and Others, the Honourable Apex Court was pleased to hold as follows:-

..... before going to the oral, documentary and circumstantial evidence, it may be necessary to state the well established principles in the light of

which we have to decide the conflicting claims of the parties. It appears that the plaint genealogy is the very fabric and foundation of the edifice on

which is built the plaintiff''s case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases,

as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the Courts in relying on the genealogy put forward must guard themselves against falling into the trap laid

by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims.

The principles governing such cases may be summarised thus:

(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of

the facts proved but there are several considerations which must be kept in mind by the Courts before accepting or relying on the genealogies:

(a) Source of the genealogy and its dependability.

(b) Admissibility of the genealogy under the Evidence Act.

(c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.

(d) Age of genealogies.

(e) Litigations where such genealogies have been accepted or rejected.

(2) On the question of admissibility the following tests must be adopted:

(a) The genealogies of the families concerned must fall within the four corners of Section 32(5) or Section 13 of the Evidence Act.

(b) They must not be hit by the doctrine of post litem motam.

(c) The genealogies or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long

course of decisions to be inadmissible.

(d) Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source,

time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved.

(emphasize supplied)

If the principles laid down by the Honourable Apex Court in the case cited above is taken into consideration, it is clear that the Courts which relies

on the genealogy put forward by one of the parties must guard themselves against falling into the trap laid by a series of documents or a labyrinth of

seemingly old genealogies to support their rival claims. In this case, the evidence of P.W.2, who is nothing to do with the family of the respondents

herein alone is available. But there is nothing to show about the special means of knowledge disclosing the exact source, time and the

circumstances under which P.W.2 had acquired knowledge about the descendants of Manicka Gounder mentioned in Ex.A-1 whom P.W.2

admits to have no knowledge to speak about genealogy or descendantship. If a cautious approach is made with regard to the genealogy in the light

of the evidence given by P.W.2, it is clear that the genealogy pleaded by the respondents herein by annexing the same in the plaint cannot be

accepted as rightly pointed out by the second appellant in his order Ex.A-9 dated 5.8.1963 in A.P. No. 57 of 1981 setting aside the order of the

first appellant as seen in Ex.A-7 dated 10.12.1980 in O.A. No. 129 of 1979 after issuing notice to the respondents herein as seen in Ex.A-8 dated

14.10.1981. It is relevant to point out that the second appellant in his order referred to above had specifically mentioned that there is no proof for

genealogy establishing that the respondents herein are the descendants of Manicka Gounder referred to in Ex.A-1. If the circumstances stated

supra are considered, it cannot be held that the respondents herein as plaintiffs have proved the genealogy pleaded and annexed to the plaint.

13. The learned Special Government Pleader, Mr. G. Sukumaran, has brought to the notice of this Court, the decision of a Division Bench of this

Court reported in the Commissioner, Hindu Religious and Charitable Endowment (Administration) Department, Nungambakkam High Road,

Madras 600 034 and 2 others - vs. - Srimathi and another, 2001(4) C.T.C. 469. The Division Bench of this Court, relying on the decision

reported in State of Bihar Vs. Radha Krishna Singh and Others, referred to above, has held that the plaintiff, who has filed a genealogy tree to

claim that he is hereditary trustee of a temple, has to prove the same to the satisfaction of the Court and if the said plaintiff fails to prove the said

genealogy, he has to be non suited. If the said decision rendered by a Division Bench of this Court is applied by way of analogy, for want of proof

of genealogy by the respondents herein, they have to be non suited.

14. A perusal of Ex.A-1 Fair Inam Register would disclose that the grant of the above said 5.69 Acres of Devadayam lands was awarded for the

support and upkeep of Arulmigu Kannimar Temple at Chinnapatti village, as a permanent and tax free grant. The perusal of Ex.A-1 further would

disclose that Manicka Gounder mentioned therein was described only as a worshiper. In 2001(4) C.T.C. 469 cited above, the Division Bench of

this court has held that worshiper means person who comes to worship and worshiper cannot be treated as trustee or manager. It is also held that

the ancestor of the plaintiff shown as worshiper in Fair Inam Register can neither be a trustee nor a manager and therefore, the plaintiff cannot be

declared as hereditary trustee as descendant. With due respect such earlier decision of the Division Bench of this Court has to be followed by this

Bench, unless this Bench dissent to that verdict by referring the matter to a larger Bench. As there is no ground to dissent the earlier decision

referred to above, it has to be held following the earlier decision that Manicka Gounder, who was described as worshiper in Fair Inam Register,

cannot be treated as poojari or trustee or manager of Arulmigu Kannimar Temple at Chinnapatti village, so as to enable the respondents herein to

claim as poojaries or trustees or managers of the said temple as descendants, even if it is taken for argument sake that they are descendants of the

said Manicka Gounder.

15. The learned counsel appearing for the respondents herein has brought to the notice of this Court the entries made in Ex.A-1 ""renders pooja on

important days"" and would contend that the above entries in Ex.A-1 would disclose that Manicka Gounder was poojari of the said temple. But the

learned Special Government Pleader appearing for the appellants would contend contra stating that there is nothing in Ex.A-1 to show that

Manicka Gounder was treated as a poojari or a trustee of the said temple. A careful perusal of the above said entries would disclose that Manicka

Gounder was not recognized as poojari or trustee or hereditary trustee of the said temple, but it was mentioned that he has to render pooja on

important days from and out of the income derived from the lands to which patta stands in the name of Arulmigu Kannimar Temple at Chinnapatti

village. It will mean, as rightly pointed out by the learned Special Government Pleader appearing for the appellants that he has to give out of the

income from the lands to do pooja on important days and it will not mean that he should do poojas as poojari in the said temple. Therefore, the

contention raised by the learned counsel appearing for the respondents herein as mentioned above cannot be accepted.

16. Ex.A-2 dated 5.10.1966 is the proceedings of the Settlement Tahsildar (Minor

Inams), Unit No. I, Madurai in S.R.621/MI Act/MDU/66. A

perusal of Ex.A-2 would disclose that the respondents herein and others mentioned therein had claimed before the Settlement Tahsildar (Minor

Inams) to issue patta for 11 cents in Survey No. 90/1 and 5.45 acres in Survey No. 90/3, Chinnapatti village as descendants of Manicka Gounder,

who was said to be in possession of the said lands by rendering pooja service to Arulmigu Kannimar Temple at Chinnapatti village. The Settlement

Tahslidar (Minor Inams), who held an enquiry in connection with issue of patta to the above said lands, has pointed out the non-production of any

record to prove the occupation of the said lands by the claimants therein, i.e., the respondents herein or to show that they are the descendants of

original possessee. But the evidence of the karnam of the said village before the said Authority had disclosed that the claimants are in possession of

the said lands to render pooja for the said temple. Even after the said evidence given by the Karnam of the said village, the Settlement Tahsildar

(Minor Inams) had come to a conclusion that mere possession of the lands will not enable them to get ryotwari patta and accordingly granted

ryotwari patta to the said lands in the name of Arulmigu Kannimar Temple for its support and upkeep. Therefore, it is evident from the order of the

Settlement Tahsildar (Minor Inams) dated 5.10.1966, that the respondents herein as claimants did not produce any material evidence to establish

that they are the descendants of Manicka Gounder mentioned in Ex.A-1 even on 5.10.1966 in the equiry and their claim for ryotwari patta has

been negatived and ryotwari patta was issued in the name of Arulmigu Kannimar Temple for its upkeep and maintenance. The said order has

become final and the said order cannot be assailed by the respondents herein at this stage stating that the Settlement Tahsildar (Minor Inams) is not

competent to decide the descendantship of the respondents herein i.e. as not the descendants of Manicka Gounder mentioned in Ex.A-1. This

Court holds that the Settlement Tahsildar (Minor Inams) is the competent authority to decide the descendantship in the light of the evidence let in

by the respondents herein to hold as to whether the respondents herein are entitled to claim ryotwari patta to the lands as against Arulmigu

Kannimar Temple or not. The fact of paying kist as seen in Exs.A-3 and A-4 and the fact of paying tax for tree as seen in Ex.A-5 for the above said lands will not in any way alter the situation to hold that the respondents herein are the descendants of late Manicka Gounder and after him, the

respondents herein have continued to manage the affairs of the Arulmigu Kannimar Temple either as poojaries or as hereditary trustees.

17. If really the respondents herein were doing poojas as poojaries and managing the affairs of temple as hereditary trustees for long many years,

they should have maintained bank account and account books for the income and expenditure of the administration of the temple. The festivals of

the above said Aulmigu Kannimar Temple ought to have been celebrated for which publication should have been made by means of pamphlets,

etc., and expenditure should have been incurred after collecting donations, etc., from others. Service of various persons should have been engaged

for cleaning and white washing, etc., of the temple and also for conducting festivals in the said temple. No documentary evidence or oral evidence

was produced before the trial Court to establish the above said facts.

18. As already pointed out, an audit party had inspected the temple and submitted an audit report as seen in Ex.A-12 to the Assistant

Commissioner of Hindu Religious and Charitable Endowment, Administration Department, Madurai-1. A perusal of Ex.A-12 would disclose that a

general account was opened only in the fasli 1383 with nil balance and the same was closed with balance of Rs. 203/- at the end of fasli 1390. The

financial position of the said temple is fairly satisfactory and the financial position of the institution can be improved by finding out ways and means

as seen from the audit report. It is also evident that budget estimates for the faslis from 1383 to 1390 were not prepared and got approved by the

Assistant Commissioner of Hindu Religious and Charitable Endowment, Administration Department, Madurai-1. There is also no material to prove

the income out of leasing the lands to various parties. While commenting about the ways in which the lands were leased out, the audit party has

found that there is no Miscellaneous Demand Register in prescribed form for being audited by the Department. There is also no maintenance of

Property Register u/s 29 of the Act and got approved by the Deputy Commissioner, Hindu Religious and Charitable Endowment Administration

Department, Madurai. There is also no Dhittam Register u/s 58 of the Act and got approved by the Assistant Commissioner, Hindu Religious and

Charitable Endowment, Administration Department, Madurai. There is also no register showing the stock of jewels belonging to the temple for

inspection. A report has to be obtained from the Special Deputy Collector for Temple lands for audit purpose. It will show that the above said

lands of the temple were not treated as temple lands by the respondents herein and were treated as if the lands are theirs. 1 to 18 statements

required to be prepared as per Commissioner''s instruction in R.C. No. 32452/78/ C1 dated 2.6.78 were also not prepared and sent to the

Assistant Commissioner referred to above for approval. No schedule was prepared and got approved by the Assistant Commissioner referred to

above for incurring expenditure of a total sum of Rs. 170/- per fasli towards the pay of Establishment. For want of preparation of the said

schedule, the correctness of the amount paid could not be effectively checked up by the audit Department. The moneys collected should have been

deposited in scheduled bank and withdrawn as and when required. But the moneys collected were said to have been directly utilised for

expenditure without following procedure as pointed out above. There is no Miscellaneous Deposit Register, Advance Register, Deposit Register,

Paditharam Stock Register, etc., in the temple as seen in Ex.A-12. It would disclose that there is no administration with regard to the affairs of the

temple in the hands of respondents herein and therefore the respondents herein cannot claim that they are managing the affairs of the temple as they

are in possession of the temple lands.

19. Even though, the Deputy Commissioner (Judicial), Hindu Religious and Charitable Endowment Department, Madras-34 has declared that the

respondents herein are hereditary trustees for Arulmigu Kannimar Temple, in O.A. No. 129 of 1979, the said order has been set aside after issuing

notice as seen in Ex.A-8 to the respondents herein by the second appellant. While setting aside the order of the first appellant, the second appellant

has taken into consideration of the facts that there are no documents to show for the continuous management of the temple by the family of the

respondents herein, that Manicka Gounder was mentioned in Ex.A-1 only as worshiper and not as trustee or poojari, that the respondents herein

had not proved the genealogy and the same has not been taken into consideration by the Deputy Commissioner, that there is no evidence regarding succession to the alleged trusteeship and that the names of one Kanniappan and Ramanathan, whose names have been mentioned in document

Ex.A-4 produced before the Deputy Commissioner, has not been mentioned in the genealogy trees produced by the respondents herein. Since the

order of hereditary trusteeship passed by the Deputy Commissioner (Judicial), Hindu Religious and Charitable Endowment Department has been

cancelled only on valid grounds by the second appellant, the said order cannot be set aside as unsustainable as claimed by the respondents herein.

20. The learned counsel appearing for the respondents herein contends that this temple is a small temple with meagre income and that therefore

there is nothing illegal in the hereditary poojariship and trusteeship vesting in the same individuals. In Muthusamy Gurukal - vs. - Aiyaswami Thevar

and sixteen others 1964 (2) M.L.J. 560, a Division Bench of this Court has held as follows:-

There is nothing illegal in hereditary trusteeship and poojariship being combined in the same person, especially in the case of small temples where

there has been no interference of control by any of the villagers of the place. In the case of small village temples, where the temple property is of

insignificant value and the income is hardly sufficient even to meet the routine expenses of the temples, if the archaka or the poojari is left in

management of the temple lands and the affairs of the temple without any interference by any of the villagers for a long number of years, it has to be

presumed that with the consent and acquiescence of the worshippers of the village the poojari is the trustee as well. In such a case it must be held

that the poojari managing the lands and affairs has made out his right to hereditary trusteeship and the interests of the temple are not likely to suffer,

when the person concerned admits that the lands, are temple lands and has never set up any rights to them as his own property.

In Venkataraman - vs. - L.A. Thangappa Gounder, 84 Law Weekly, 695, a Division Bench of this High Court has also observed following the

decision referred to above that there is nothing illegal in the hereditary poojariship and trusteeship in the same individuals in small temples with

meagre income. In this case there is no proof, as already pointed out, that the respondents herein are the descendants of Manicka Gounder

referred to in Ex.A-1. There is also no proof that Manicka Gounder was at any time recognized as poojari or hereditary trustee so as to lay a claim by the alleged descendants of the said Manicka Gounder as hereditary poojaries and hereditary trustees of the temple. There is also no evidence

on the side of the respondents herein to establish that they were doing poojas holding hereditary trusteeship by managing the affairs of the temple.

It is relevant to point out that the respondents herein had laid a claim for issue of ryotwari patta in their names for the lands claiming as descendants

of Manicka Gounder mentioned in Ex.A-1 and their claim was negatived for want of proof on the side of the respondents herein and ryotwari patta

was issued in the name of Arulmigu Kannimar Temple for its maintenance and upkeep. The above said facts would disclose that the respondents

herein had started acting against the interest of the temple lands even at the time of issue of ryotwari patta in the name of Arulmigu Kannimar

Temple. Ex.A-11 dated 13.7.1981 is the registered sale deed executed by one Kunjaram Ammal in favour of Dhavamani, the third respondent

herein for Rs. 3,060/-. A perusal of Ex.A-11 would disclose that Kuppayandi Gounder, the father of the third respondent herein and grand son of

Perumal Gounder who is said to be the son of Manicka Gounder mentioned in Ex.A-1, had sold 36 cents out of 5.45 acres in Survey No. 90/1 for

which ryotwari patta was issued in the name of Arulmigu Kannimar Temple, Chinnapatti village, to Kunjaram Ammal on 1.6.1968. The said

property, which is the property owned by Arulmigu Kannimar temple, was purchased in the name of third respondent from Kunjaram Ammal

under Ex.A-11 wherein it was described that the third respondent herein is the absolute owner of the said property. There is nothing to show that

the said property was purchased by third respondent herein in the name of Arulmigu Kannimar Temple, but only in his name as absolute owner

thereof. The above said transactions would disclose that the father of the third respondent herein had sold the temple property in the name of third

party and from the said third party, the property was again got back in the name of the third respondent herein as absolute owner thereof. This will

clearly show that the respondents herein are acting against the interest of the temple property and creating documents with regard to the properties

owned by the temple throughout. Therefore, the respondents herein are not competent persons to administer the affairs of the temple by remaining

either as poojari or as trustee, even in the light of the decision already rendered by a Division Bench of this Court. Therefore, the contention raised by the learned counsel for the respondents herein that there is nothing illegal in the hereditary poojariship and trusteeship vesting in the same

individuals if the temple is a small temple with meagre income, cannot be sustained.

21. It has been held in T.P. Srinivas Chariar and another - vs. - C.N. Evalappa Mudaliar, AIR 1922 PC 325 as follows:-

It will now be seen how serious is the position of the respondent as a claimant for the continuance of the trusteeship of this temple and its

endowments. The doubts in the minds of the Courts below, on the subject of this being allowed to continue in office, are sufficiently plain. But

when it is now decided that the whole of this litigation has substantially been occupied by an unfounded assertion, supported by the concoction of

accounts - an assertion by the trustee of private ownership in himself and a powerful resistance to the recovery of these properties for the trust

which he administers - it does not appear to their Lordships to be open to them, on any sound principles either of administration or of law, to

permit the continuance of the respondent in the office of Dharmakartha.

In this matter even at the initial stage the respondents herein had claimed issue of ryotwari patta in their names for the lands of Arlmigu Kannimar

Temple instead of claiming for issue of ryotwari patta in the name of the said temple. The said claim of the respondents herein was negatived. Now

as pointed out above, a sale deed was created with regard to 36 cents out of the lands owned by the temple in favour of third party and again in

favour of the third respondent herein. If the said facts are taken into consideration, in the light of the principles laid down by the Honourable Privy

Council, there can be no doubt that the respondents herein cannot be permitted to continue in the office as poojaries or hereditary trustees of the

said temple.

22. In view of the foregoing reasons this Court is not able to concur with the findings of the trial Court that the respondents herein as plaintiffs are

entitled to the relief sought for in the suit. Therefore, the judgment and decree of the trial Court have to be set aside and accordingly set aside. The

points are answered accordingly in favour of the appellants.

23. The appellants are hereby directed to take steps immediately to recover the property sold and transferred in the name of third respondent

herein as absolute owner thereof with regard to the portion of the properties to which ryotwari patta was issued in the name of Arulmigu Kannimar

Temple, Chinnapatti, without further loss of time.

24. In fine, the judgment and decree of the trial Court are set aside thereby dismissing the suit and the appeal stands allowed with costs.

