(1990) 09 MAD CK 0066

In the Madras High Court

Gurunatha Pandithan APPELLANT

Vs

The Commissioner, Hindu Religious and Charitable Endowments Departments and Others RESPONDENT

Date of Decision : 10-09-1990

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : (1992) 1 LW 140 : (1991) 2 MLJ 409

Hon'ble Judges : Abdul Hadi, J

Bench : Division Bench

Judgement

Abdul Hadi, J.—Against the dismissal of O.S. No. 536 of 1977 on the file of Sub Court, Madurai, the plaintiff has preferred this appeal. This suit is u/s 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 for setting aside the order of the Commissioner under the said Act dated 10.2.1977 in the plaintiffs own appeal in A.P. No. 153 of 1975. The said order of the Commissioner confirmed the dismissal of O.A. No. 15 of 1973 by the Deputy Commissioner under the said Act. The said O.A. was filed by the plaintiff u/s 63(b) and (c) of the above said Act for a declaration that the charity mentioned in the will dated 12.12.1937 executed by one Ammakutti Ammal was not a "religious endowment" (as defined u/s 6(17) of the said Act) and that, even assuming the said charity, was a religious endowment, the plaintiff was the hereditary trustee of the said endowment.

2. The Deputy Commissioner, while dismissing the said O.A. No. 15 of 1973, held that the said charity would come under the definition "specific endowment" u/s 6(19) of the said Act and that the plaintiff was not the "hereditary trustee of the said endowment as defined u/s 6(11) of the said Act. The Commissioner under the Act, in the above said appeal, confirmed the said order of the Deputy Commissioner. The trial Court, while dismissing the above suit, also held it was a specific endowment, but did not go into the other question whether the plaintiff was hereditary trustee on the ground that there was no specific prayer regarding

the same in the suit. Hence, the present appeal by the plaintiff.

3. The 1st respondent is the said Commissioner. The 2nd respondent is the Madurai Maruthuvar Sangam, which, according to the plaintiff, is the Sangam which was responsible in the Deputy Commissioner framing a scheme in a suo motu action, for the other admitted specific endowment created by the same Ammakutti Ammal in the year 1928 under a deed dated 11.2.1928 for performing mandagapadi of Sri Meenakshisundareswarar on the fourth day of Chithrai festival. The 3rd respondent, one Ganapathy, is said to be the then existing office - bearer of the said Sangam. But the learned Counsel for the 2nd respondent now says that the 3rd respondent is no longer the office - bearer of the said sangam. Anyway the 3rd respondent remains ex parte. Respondents 1 and 2 are represented by different counsel.

4. The above referred to 1928 document has not been exhibited, but the succeeding will dated 12.12.1937 is Ex. A-1. The testatrix Ammakutti Ammal belongs to the same barber Community or Maruthuvar community. At the time of the execution of the said Will Ex. A-1, the testatrix Ammakutti Ammal was aged 72 as per the very recital in Ex. A-1. Even though there seems to be no specific evidence that she had died, all the parties proceeded on the footing that she died subsequent to the execution of the Will and the Will had come into force on her death.

5. The said Will of 1937 speaks about the earlier endowment of 1928 by the same Ammakutti Ammal and the material portions of the said Will run as follows:

Under the said deed, she has also appointed 5 trustees, the 5th of whom, is the plaintiff, who was a minor then. Of the other four, one is from another community, viz., Konar community. Regarding the trustees, the will also recites as follows:

6. The Commissioner, in his order has held that the charity under the abovesaid 1937 document and the earlier charity of 1928 constitute a single charity and that since the earlier one is admittedly a specific endowment, it must follow that the endowment of 1937 is also a specific endowment. The trial Court also concurred with the said view and also held that the expression used in Ex. A-1 (1937 document) referred to the entire community, to which the testatrix belongs and that hence the endowment is of public nature and not a private one, as claimed by the plaintiff.

7. The learned Counsel for the appellant contends that the above said charity under Ex. A-1 was only of private nature and so, it would not be a specific endowment under the above said Act. The term "specific endowment" is defined u/s 6(19) of the said Act as follows:

Specific endowment means any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to Clause (17);

In this connection, the learned Counsel contended that the endowment in question is not any property endowed "for the performance of any other religious charity" within the meaning of Section 6(19). The term "religious charity" is defined u/s 6(16) as a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math of temple or not. According to the learned Counsel, the endowment under Ex. A-1 is not such a public charity and hence not a "specific endowment."

In this connection, he cited the following passage in Mulla''s Hindu Law, Fifteenth Edition in Section 424, which gives the distinction between the public and private endowment:

The essential distinction between a public and a private endowment is that in the former the beneficial interest is vested in an uncertain and a fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private endowment the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained, Vide also Ram Saroop Dasji v. Sahi AIR 1959 S.C. 1951 (to the same.

8. The submission of the learned Counsel is that the expression used in Ex. A-1 means only the relatives of the testatrix Ammakutti Ammal and that those relatives-beneficiaries are" definite and ascertained individuals or who within a definite time can be definitely ascertained; and that, therefore, the endowment in question under Ex. A-1 is only a private endowment and that hence it would not come under the definition "specific endowment" read with the definition of the term "religious charity". But, this submission cannot be accepted for the following reasons: First of all, it is borne out from evidence that the said Ammakutti Ammal had no relatives. Even P.W. 1, the plaintiff in cross-examination deposed as follows:

So, even the plaintiff only says that persons belonging to Ammakutti Ammal''s community alone are in existence and he d id not assert that there was or is any relative as such for Ammakutti Ammal. Even in Chief-examination he did not assert that she had relatives. Further, though P.W. 2 deposed in chief-examination, that there were relatives to Ammakutti Ammal, in cross-examination, when a specific question was put, he could not even name one such relative. So, his version that she had relatives cannot be believed, particularly in the light of P.W. 1''s evidence. Further, even P.W. 1 did not say that Ammakutti Ammal had relatives at the time of executing Ex. A-1 will, though subsequently the said relatives became extinct. So, in such a situation it has only to be concluded that she had no relatives even to be concluded that she had no relatives even at the time when she executed Ex. A-1. If that is so, when she used the words in Ex. A-1, she would have meant only her community people and not her relatives generally or bandhus "under Hindu law who come after sabindas and Samanodakas". Further, in fact, the learned Counsel for the 1st respondent even pointed out that the expression used in Ex. A-1 is. and that according to him the use of the word in plural would mean herself and the five trustees who were appointed by her under Ex. A-1. Already it has been noted that among the five trustees, there is also one trustee belonging to Konar community, which is a different community from the community to which Ammakutti Ammal belonged. So, the learned Counsel for the 1st respondent said that the expression means the community of both barbers community, to which the testatrix Ammakutti Ammal and four of the trustees belonged and also the caste people of the Konar community, to which the other one trustee belonged. He even points out that when she provides under Ex. A-1 for co-option of trustees, she does not stipulate that the co-opted trustees should belong to her community alone. Anyway, I need not go to such an extent as the said counsel contends. It is clear, in view of the fact that she had no relatives, she would have meant, by using the term at least her own community people. If that is so, then the charity under Ex. A-1 cannot be considered as a private endowment, but only as a public endowment, because, her community people are certainly a "considerable portion the public answering a particular description." Therefore the conclusion of the trial Court and the authorities below that the endowment under Ex. A-1 is a specific endowment is correct. In this view of the matter, I think I need not go into the other question whether Ex. A-1 endowment and the proceeding 1928 endowment are parts of the same endowment.

9. But the learned Counsel for the appellant has also argued that the trial court erred in negativing the other claim of the plaintiff that he is a hereditary trustee of the endowment under Ex. A-1 on the ground that there is no specific prayer for such a relief in the suit. No doubt the trial Court is not, correct in hot considering the said relief on this technical ground that there is no specific prayer. Though expressly there is no such prayer, since the prayer for cancellation of the order of the Commissioner, is there, it is implicit in that prayer itself that the plaintiff also wants a declaration that he is the hereditary trustee. It is only such a declaration that he sought for before the authorities under the above said Act. That apart, Order 7, Rule 7, C.P.C. provides as follows:

Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to be same extent as if it had been asked for....

Therefore, this technical objection of the trial court is not correct.

10. According to the learned Counsel for the appellant the plaintiff comes under the definition of the term "hereditary trustee" defined u/s 6(11) of the Act, which runs as follows:

"Hereditary trustee" means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force.

(According to Section 6(18); religious institution'' includes specific endowment)

So according to him, where the succession to office of religious institution is specifically provided for by the founder, the trustee of such a religious institution shall be hereditary trustee. Ex. A-1 specifically provides for devolution of trusteeship by saying that if a trustee dies, the other trustees can co-opt another person as trustee in his place. So, according to the said counsel, since the devolution of trusteeship is provided under Ex. A-1, the trustees are hereditary trustees as per the said definition. He also drew my attention in M.S. Venkataraman and Others Vs. V. Nataraja Iyer, , where the wider meaning of the artificial definition of the term "hereditary trustee" has been pointed out. In the said case the Supreme Court dealt with the definition of the term "hereditary trustee" as found in Section 6(9) of the old Act, Viz., Madras Hindu Religious and Charitable Endowments Act, (XIX of 1959). But the definition u/s 6(9) of the old Act is the same as Section 6(11) of the above said present Act. In the above decision, the Supreme Court referred to the following two passages in the decision of this Court reported in Sri Mahant Paramananda Das Goswami Vs. Radhakrishna Das and Others, :

If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest upon independent title. I am inclined to the view that the office cannot be said to be hereditary,

Where succession is by nomination by the holder in office of his successor it seems to be impossible to contend that it is a hereditary succession. Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the choice of any individual.

After referring to those two passages, the Supreme Court however finds as follows:

It is true that the artificial definition of hereditary trustees in Section 6(9) of the Act would include even such cases.

But the election to the office of trustee in the present case is for a fixed period of one year and not for life. It is, therefore, difficult to hold that the office of the appellant is hereditary within the meaning of Section 6(9) of the Act.

11. So, according to the Supreme Court, the artificial definition of the term "hereditary trustee" would include even cases referred to in the above said two passages of the decision of this Court in Sri Mahant Paramananda Das Goswami Vs. Radhakrishna Das and Others, referred to above, But, only because, on the

facts of the case before the Supreme Court, the election to the office of the trustee was for a fixed period of one year and not for life, the Supreme Court, held that the trustee is question before the Supreme Court was not hereditary trusted. But, in the present case, as per Ex. A-1, the trustees under the said document are for life and only if any one of them dies, the surviving trustees have to co-opt another trustee in the place of the deceased trustee. So, in the present case, per the above ruling of the Supreme Court, each of the trustees under the above said document, would be a hereditary trustee, coming within the meaning of Section 6(11) of the above said present Act In this Connection, on doubt the learned Counsel for the 1st respondent drew my attention to Y.R. Natarajan v. The Commissioner H.R. &. C.E. (Administration) Department, Madras 34 1988 T.L.N.J. 402. But, there, the mode of succession to trusteeship was not prescribed in the original deed of endowment by the founder himself. But, it was prescribed long after by another person who was managing the endowment. In that context, the above said Supreme Court decision and the earlier decisions of this Court in Sri Mahant Paramananda Das Goswami Vs. Radhakrishna Das and Others, were referred to in the said Y.R. Natarajan v. The Commissioner H.R & C.E. (Administration) Department Madras - 34, 1988 T.L.N.J. 402.

The above referred to passage of the Supreme Court was also specifically referred to therein. However, in view of the above said fact distinguishing feature, the Division Bench did not apply the above said ruling of the Supreme Court contained in the above referred to passage of the Supreme Court. Therefore the abovesaid Y.R. Natarajan v. The Commissioner H.R & C.E. (Administration) Department, Madras - 34 1988 T.L.N.J. 402 can be of no assistance to the learned Counsel for the 1st respondent for contending that the plaintiff is hot a hereditary trustee as per Section 6(11) of the Act.

12. It was also pointed out by the learned Counsel for the 1st respondent that according to Ex. A-1, there must be five trustees and the plaintiff alone could not be declared the hereditary trustee of the said endowment. But the learned Counsel for the appellant states that all the other four trustees appointed under Ex. A-1 are no longer alive and there is no bar for declaring the trustee, who is alive, viz., the plaintiff, as hereditary trustee. Though there may be irregularity in not having co-opted another four trustees In the place of the trustees, who are dead, I do not think that there can be any bar in declaring the plaintiff as hereditary trustee, if as per Ex. A-1, he is also one of the hereditary trustees. So, in the above circumstances, I hold. that the plaintiff is the hereditary trustee of the endowment created under Ex. A-1.

13. In the result, the appeal is allowed in part, the Judgment and decree of the trial court are set aside and the suit is decreed, declaring that the plaintiff is the hereditary trustee of the specific endowment under Ex. A-1 dated 12.12.1937 executed by Ammakutti Ammal and accordingly the order dated 10.3.1975 of the Deputy Commissioner, Hindu Religious and Charitable Endowments Department,

Madurai, as confirmed by the order dated 10.2.1977 of the Commissioner of the above said department, Madras is modified. However, in the circumstances of the case, there will be no order as to costs.

