

(2010) 06 MAD CK 0141

In the Madras High Court

Case No : Appeal Suit No. 1009 of 2001

K. Devarajan and K. Adhikesavan

APPELLANT

Vs

The Commissioner HR and CE Admn. Dept., The Deputy
Commissioner HR and CE and The Asst. Commissioner HR
and CE Mitta Ananda Rao St.

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 55,
55(1), 55(2), 6(11), 6(18)

Citation : (2010) 4 LW 171

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

**Advocate : T.R. Rajaraman, for the Appellant; M.R. Murugesan, Spl. Govt.
Pleader, for the Respondent**

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—This appeal has been filed u/s 70(2) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. The plaintiffs in O.S. No. 175 of 1989 on the file of the learned Subordinate Judge, Vellore are the appellants herein. The Commissioner, Hindu Religious and Charitable Endowments Admn. Department, Chennai, the Deputy Commissioner, Hindu Religious and Charitable Endowments, Chennai and the Assistant Commissioner, Hindu Religious and Charitable Endowment, Vellore Town, who figured as the defendants in the original suit are the respondents herein.

2. The appellants herein are the sons of Late B.D. Sundararasa Pattachariar. The said Sundararasa Pattachariar moved an application before the Deputy Commissioner, Hindu Religious and Charitable Endowment, Chennai u/s 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 for recognizing him to be the founder-cum-hereditary trustee of the suit temple by name "Sri Veera Anjaneyar Temple" situated within the campus of Vellore

Municipality, Vellore. It was claimed by him in the said application that he alone founded the temple and was functioning as its founder and hereditary trustee-cum-Archaka. The said original application filed before the Deputy Commissioner, Hindu Religious and Charitable Endowments as O.A. No. 33 of 1979 was dismissed after enquiry by an order dated 09.3.1981 by the Deputy Commissioner (Judicial). As against the order of dismissal of the said original application, the said Sundararasa Pattachariar preferred an appeal u/s 69 of the Hindu Religious and Charitable Endowments Act, on the file of the Commissioner, Hindu Religious and Charitable Endowments, Admn. Department, Chennai as A.P. No. 81 of 1982. During the pendency of the appeal, Sundararasa Pattachariar died and his sons B.S. Sampathkumaran, B.S. Narayanan and the appellants herein viz., K.Devarajan and K. Athikesavan were impleaded as appellants 2 to 5 in the said appeal before the Commissioner, Hindu Religious and Charitable Endowments, Admn. Department, Chennai as legal heirs of deceased Sundararasa Pattachariar. After hearing, the said appeal was dismissed by the Commissioner, Hindu Religious and Charitable Endowments, Admn. Department, Chennai confirming the order of the Deputy Commissioner (Judicial), Hindu Religious and Charitable Endowments Department, Chennai dated 09.3.1981. The said order of the Commissioner was passed on 13.9.1988.

3. Aggrieved by the same the appellants herein, who are two out of the 4 persons who persuaded the appeal before the Commissioner, Hindu Religious and Charitable Endowments Admn. Department, Chennai, filed the suit O.S. No. 175 of 1989 on the file of the Court of Subordinate Judge, Vellore u/s 70(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Besides the prayer for setting aside the order of the Commissioner, Hindu Religious and Charitable Endowment Department dated 13.9.1988 made in A.P. No. 81 of 1982, the appellants as plaintiffs had also prayed for the following reliefs:

1) A declaration that they were the hereditary trustees of the suit temple entitled to be in management thereof or in the alternative a declaration that they were the Archakas of the suit temple entitled to perform daily poojas and to be in the management of the affairs of the suit temple

2) A permanent injunction restraining the respondents/defendants in any manner interfering with the appellant's supposed right of management of the suit property or preventing them from performing the day-to-day poojas to the deity of the suit temple and from taking any proceedings for disposing the plaintiff until the rights of the parties could be finally determined.

4. It was the contention of the plaintiffs made in their plaint that the suit temple viz., Sri Veera Anjaneyar Temple was founded by their father Sundararasa Pattachariar, who alone founded the temple by installing the deity and putting up a small thatched shed over it and later on constructing a pucca building and conducting Kumbabishekam. It was also their contention that right from the beginning Sundararasa Pattachariar was the sole Archaka doing Poojas in the suit temple and he was also looking after the management of the temple. The

appellants/plaintiffs had thus made an attempt to show that deceased Sundararasa Pattachariar was functioning as the Founder Trustee-cum-Archaka of the suit temple. Based on the above said pleading, the appellants/plaintiffs had prayed for the reliefs pointed out supra.

5. The suit was resisted by the respondents/defendants denying the plaint allegations and on the other hand contending that the suit temple was a public temple constructed by the employees of Vellore Municipality; that deceased Sundararasa Pattachariar was doing Poojas in the suit temple only on the authorisation of the employees of Vellore Municipality and as an employee of the temple maintained by the employees of Vellore Municipality and that at no point of time, the deceased Sundararasa Pattachariar was in the management of the temple.

6. Based on the respective pleadings made on either side, the learned Subordinate Judge, Vellore framed seven issues which are as follows:

- 1) Whether Sundararasa Pattachariar was the founder/hereditary trustee of the suit temple?
- 2) Whether the plaintiffs are entitled to be the hereditary trustees?
- 3) Is the order of the Commissioner, HR & CE to be set aside?
- 4) Whether the plaintiffs are entitled to the relief of permanent injunction?
- 5) Whether the suit is not maintainable for non-issuance of notice u/s 80 C.P.C.?
- 6) Whether the plaintiffs are entitled to get the relief of declaration?
- 7) To what relief the plaintiffs are entitled?

7. In the trial that followed settlement of issues, 4 witnesses were examined as Pws 1 to 4 and seven documents were marked as Exs.A1 to A7 on the side of the appellants herein/plaintiffs, whereas one witness was examined as DW1 and a single document was marked as Ex.B1 on the side of the respondents herein/defendants.

8. The learned trial Judge, who considered the respective pleadings made by the parties and the evidence adduced on either side in the light of the arguments advanced by the counsel appearing on both sides, came to the conclusion that the plaintiffs failed to substantiate their contention that the suit temple was founded by Sundararasa Pattachariar or that he was the founder or hereditary trustee of the temple. The learned trial Judge also came to the conclusion that the stand taken by the respondents/defendants that Sundararasa Pattachariar was only an employee of the temple and that the management of suit temple, which initially rested with the employees of Vellore Municipality, was subsequently taken over by the Hindu Religious and Charitable Endowments Department. In line with the above said findings, the Court below non-suited the appellants herein/plaintiffs for the reliefs sought for in the plaint and thus

dismissed the suit with cost by its judgment and decree dated 07.9.2001.

9. Aggrieved by and questioning the correctness of the decree passed by the trial Court in the said suit viz., O.S. No. 175 of 1989 on the file of the Sub Court, Vellore, the appellants herein who figured as the plaintiffs in the said suit, have brought forth this appeal u/s 70(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 on various grounds set out in the memorandum of appeal.

10. The points that arise for consideration in this appeal are as follows:

1) Whether the appellants/plaintiffs are entitled to a declaration that they are hereditary trustees of the suit temple?

2) Whether the appellants/plaintiffs are entitled to a declaration that they are hereditary Archakas of the suit temple?

3) Whether the order of the Commissioner, Commissioner, Hindu Religious and Charitable Endowment Admn. Department dated 13.09.1988 made in A.P. No. 81 of 1982 should be set aside?

4) Whether the appellants/plaintiffs are entitled the relief of injunction?

11. The arguments advanced by Mr. T.R. Rajaraman, learned Counsel for the appellant and by Mr. M.R. Murugesan, learned Special Govt. Pleader for the respondents/defendants were heard. The entire materials available on record were also perused.

Point No. 1

12. The plaintiffs in the original suit are the appellants herein. The original suit was filed as a statutory suit u/s 70(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 challenging the order of the Commissioner, Hindu Religious and Charitable Endowments Admn. Department, Chennai(the first respondent herein) dated 13.9.1988 made in A.P. No. 81/82 confirming the order of the Deputy Commissioner (Judicial), Hindu Religious and Charitable Endowment Department, Chennai (the 2nd respondent herein) dated 09.3.1981 made in O.A. No. 33 of 1979, a petition filed u/s 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The original application viz., O.A. No. 33 of 1979 was filed by Sundararasa Pattachariar while he was alive, claiming that he was the founder trustee-cum-Archaka of the suit temple and hence he was entitled to a declaration u/s 63(b) of the Act. It is pertinent to note that the plaintiffs themselves and even Sundararasa Pattachariar was not having any clear idea as to the status of the position of Sundararasa Pattachariar in the suit temple. As per the plaint allegations, it was claimed before the Deputy Commissioner, Hindu Religious and Charitable Endowment in O.A. No. 33 of 1979 that Sundararasa Pattachariar should be declared to be the founder/hereditary trustee of the suit temple or as the hereditary Archaka of the suit temple entitled to be in management of the affairs of the temple. The pleading itself makes it

clear that the plaintiffs are in a dilemma as to whether their father Sundararasa Pattachariar was a trustee of the suit temple or was an Archaka simpliciter of the suit temple. A person who claims to be a hereditary trustee of a Hindu religious institution as defined u/s 6(18) of the Act is bound to prove his contention. There is no difference of opinion regarding the fact that the suit temple viz., Sri Veera Anjaneyar Temple, situated within the campus of Vellore Municipality, is a public religious institution as defined in Section 6(18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The term hereditary trustee is defined in Section 6(11). The Sub-section is reproduced here under:

11. "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.

A reading of the said provision shall make it clear that the founder of a temple is placed on par with a hereditary trustee and even on a high pedestal in so far as he can specifically provide for the devolution of the office of trusteeship of the temple founded by him. In this case, the claim of the appellants/plaintiffs is that the suit temple was founded by Sundararasa Pattachariar, the father of the appellants/plaintiffs and hence, he was the founder trustee. There was also an attempt made on the part of the appellants/plaintiffs to show that the succession to the office of the trusteeship was specifically provided for by Sundararasa Pattachariar in his registered Will dated 20.3.1979, a certified copy of which has been marked as Ex.A7. No credence can be attached to the said Will as the same was made by him after the dispute had arisen.

13. Of course, it is true that in the Said Will, Sundararasa Pattachariar incorporated a recital to the effect that he was the founder of the temple having founded the same in 1963 and was looking after the management and services like doing poojas right from its inception in 1963. He had chosen to prescribe the line of succession regarding the suit temple by nominating the 2nd appellant/2nd defendant alone as his successor. The other sons of Sundararasa Pattachariar were excluded. However, the suit and the appeal happened to be filed not only by the 2nd appellant/2nd defendant Adhikesavan but also by the first appellant/first defendant Devarajan claiming that both of them are the hereditary trustees-cum-archakas of the suit temple. This is an inbuilt contradiction found in the case of the appellants/plaintiffs themselves.

14. The evidence adduced on the side of the appellants/plaintiffs are not capable of substantiating their contention that the suit temple was founded and maintained by Sundararasa Pattachariar. On the other hand, there are materials in the evidence adduced on the said of the appellants/plaintiffs themselves that Sundararasa Pattachariar was doing poojas in the suit temple with the permission and authorisation of the employees employed in the office of Vellore Municipality. Exs.A1 to A4 are the orders of defendants which are impugned in the suit and the connected notices. Ex.A5 is an article published in 1998

Dinamalar Deepavali Malar at page 16 of the said issue. The deity of the suit temple is described in the said article as Municipality Anjaneyar. The history of the temple as found in the said article is to the effect that the Sage Vyasara installed 365 idols of Anjaneyar at various forts and one such idol had been installed at Vellore fort and was worshiped by him; that during the invasion of India by foreigners all the idols found in the fort had been removed and installed at various places; that the present deity of the suit temple had been left in the agazhi (trench around the fort) of Vellore fort; that after several years the same was retrieved from the said place by one Sanjeevi and was installed at Salavanpettai, Kollakara Street; that the same was then thrown under a tree (Arasa tree) as there was a dispute among the inhabitants of Salavanpettai; that the sanitary workers of Vellore Municipality took the said idol to the Municipal office and kept there; that in 1935 Swaminatha Pillai and Ranganatha Mudaliar, both employees of the Municipality, installed the same in a shed within the campus of the Municipality Office and were offering worship; that one Duraisami Mudhaliar was also helping them in their efforts; that thereafter the father of the plaintiffs Sundararasa Pattachariar (mentioned as Sundara Rahava Pattachariar alias Kuppusami instead of Sundararasa Pattachariar) accepted the job of doing poojas in the temple and was doing poojas initially on Sundays alone and later on two days a week and subsequently daily and that after the death of Sundararasa Pattachariar, his sons are doing the poojas in the suit temple.

15. A reading of the said article will show that the temple was not founded by Sundararasa Pattachariar, the father of the appellants and that he was nominated by the employees of the Municipality to do poojas in the temple. Therefore, Ex.A5 shall not lend any help to the appellants/plaintiffs in establishing their contention that the suit temple was founded by Sundararasa Pattachariar. Ex.B6 is the 7th Edition of the Book by name "mangai" in which an article relating to the suit temple, namely Vellore Sri Veera Anjaneyar Temple is found at pages 48 to 50. Therein also the deity is described as Municipality Anjaneyar. The history of the temple found in Ex.A6 corresponds to the one found in Ex.A5 which was discussed supra. As such Ex.A6, besides lending no support to the case of the appellants/plaintiffs that the suit temple was founded by Sundararasa Pattachariar, is capable of destroying the said contention raised by the appellants/plaintiffs. In addition, there is a document in the form of Ex.B1 signed and submitted by Sundararasa Pattachariar to the Executive Officer, Arulmigu Tharageswaraswami Temple, Thottapalayam, Vellore as a reply for the demand made by him for handing over the management of the suit temple pursuant to his appointment as fit person. In the said letter, Sundararasa Pattachariar has described himself as Archagar of the suit temple. He has also admitted in categorical terms that he was doing poojas continuously for about 15 years in the suit temple as per the request made by the employees of Vellore Municipality and that as such he was not having any authority or right to hand over the temple or the other articles found in the temple to the fit person appointed by the Department. The said letter marked as Ex.B1, was dated 22.12.1978.

Sundararasa Pattachariar himself, in the said letter, candidly admitted that he was not having the Administration or management of the temple and that he was doing poojas only on the request of the employees of Vellore Municipality. The unambiguous admission that he did not have the power or right to hand over the temple or the articles found therein and that he was doing only poojas will make it clear that he had not claimed any trusteeship either as a founder trustee or as a hereditary trustee. It was not even his contention that he was otherwise in management of the suit temple so that he could hand over the temple to the fit person. The same is enough to reject the contention of the plaintiffs that the deceased Sundararasa Pattachariar was the founder trustee of the suit temple and that hence, the appellants/plaintiffs, being his sons, are hereditary trustees of the temple.

16. Though the first appellant/first plaintiff, who deposed as PW1, has stated in his chief examination that the suit temple was founded by his father Sundararasa Pattachariar, during cross examination, he has admitted that they are having no document to show that the suit temple was built by their father. He has also admitted during cross examination that he did not know who brought the idols to the temple. When a specific suggestion was put to him that one Veeraraghavalu who was employed as the Commissioner of Vellore Municipality in 1962 brought the Anjaneyar idol to the campus of Vellore Municipality and installed it there, PW1 was not in a position to deny it. He pleaded ignorance. Similarly the other suggestion that one Swaminathapillai had arranged for the daily pooja in the suit temple was also not denied. It was also suggested that employees of Vellore Municipality initially installed the deity in a thatched shed and that subsequently in 1963 they put up a big structure after removing the shed. The said suggestion was not denied by PW1.

17. The 2nd appellant/2nd plaintiff, who deposed as PW2, in his cross examination, has also admitted that he did not know when the suit temple was built and who brought and installed the idols found in the temple. He was also not in a position to deny the suggestion that one Swaminathapillai collected money from public and that the employees of Vellore Municipality constructed the temple. He was also not in a position to deny the suggestion that Swaminathapillai and other employees of Vellore Municipality appointed Sundararasa Pattachariar as the Archaka of the suit temple. The above said Swaminathapillai, who was working as an employee in Vellore Nagaratchi between 1954 and 1962, has been examined on the side of the plaintiffs as PW3. An attempt was made by him during his chief examination to show that one day he found the idol of Anjaneyar lying on ground within the Municipality premises and he put it in the upright position; that thereafter he gave the responsibility of doing poojas and other formalities to Sundararasa Pattachariar and that Sundararasa Pattachariar who did pooja and abishekam for the idol, upto 1962 put up a pucca building for the temple after 1962. However, during cross examination he would state that in 1962 after finding out the idol, he was doing poojas by collecting funds from the employees of Vellore, Municipality; that he

also put up a thatched shed protecting the idol with the help of the employees of his office and that subsequently the temple with a pucca building was constructed with the help of the funds collected from the employees of Vellore Municipality and public. It was also his admission that Sundararasa Pattachariar was appointed for doing pooja services in the temple. It was also his admission that one Arumuga Mudhaliar donated the gate for the temple and the annual temple festival was being conducted by one Ranganathan, who was the Chief Sanitary Conservator of the Municipality. Similarly, one Sampath who was examined as PW4 on the side of the Plaintiffs, as against his initial attempt made in his chief examination to show that the suit temple was founded by Sundararasa Pattachariar, has admitted during cross examination that one Veeraragha Raju, who was employed as Commissioner of the Vellore Municipality in 1962, brought and installed Veera Anjaneyar idol in the Municipality campus. He was also not in a position to deny the suggestion that the thatched shed for the protection of the idol was put up by the employees of the Municipality and that in 1963 the thatched shed was replaced by a tiles structure by the employees of Vellore Municipality. He was also not in a position to deny the suggestion that initially one Swaminathan was doing poojas and that after he resigned his job Sundararasa Pattachariar was appointed as Archaka to the suit temple. He has also admitted the fact that one Arumuga Mudhaliar had provided the iron gate for the suit temple. It has also been admitted by PW4 that one Ranganatha Mudhaliar who was working as Health Inspector in the Municipality was conducting the annual festival of the temple.

18. The above said admissions made by all the witnesses examined on the side of the plaintiffs would be more than enough to negative the contention of the plaintiffs and to arrive at a conclusion that Sundararasa Pattachariar was neither the founder trustee nor a hereditary trustee of the suit temple and on the other hand he was only an Archaka appointed by the employees of Vellore Municipality who were looking after the management and other affairs of the suit temple. The learned trial Judge, on a proper appreciation of evidence, has arrived at a correct conclusion that the claim of the appellants/plaintiffs that their father Sundararasa Pattachariar was the founder/hereditary trustee of the temple and after him the appellants/plaintiffs became the hereditary trustees of the temple could not be sustained and on the other hand the same should be rejected. There is no defect or infirmity in the said finding warranting any interference by this Court.

Point Nos. 2 to 4

19. The learned Counsel for the appellant made a feeble attempt to contend that though the deceased Sundararasa Pattachariar would not have been proved to be the founder trustee or the hereditary trustee of the suit temple, he was the hereditary Archaka of the suit temple and hence the appellants/plaintiffs do have a right to function as hereditary Archakas of the suit temple. The said contention is untenable. First of all, there is a clear admission by the witnesses examined on the side of the plaintiffs that the deceased Sundararasa Pattachariar was doing

poojas in the suit temple, as he was appointed by the employees of Vellore Municipality to do poojas in the suit temple. As such, factually the above said contention of the appellants is erroneous and untenable. Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has been amended by Tamil Nadu Act 2 of 1971 deleting all references to the nature of service under the religious institutions as hereditary or otherwise. In fact Sub-section (1) of Section 55 as it originally stood, had been made applicable to office holders or servants of a religious institution in case where the office or service was not hereditary. By the said amendment, besides deleting the reference to the office or service as hereditary or non-hereditary, an explanation has also been added to the effect that the expression of "office-holders or servants" shall include Archakas and Pujaries. Sub-section (2) as it originally stood was intended to be applicable in cases where the office or service was hereditary and it had also been incorporated in the said unamended section that the person next in line of succession would be entitled to succeed to the office or service. By the above said amendment not only the same was deleted, but also a clause was substituted in the said section to the effect that no person shall be entitled to appointment to any vacancy referred to in Sub-section (1) merely on the ground that he is next in line of succession to the last holder of the office. Sub-sections (1) and (2) as they stand amended by Tamil Nadu Act 2 of 1971 has made the service under the religious institution including one as Archakas and Poojaris to be non-hereditary in all cases. The amended sub-section, in conjunction with explanation appended to Sub-section (1), makes it clear that no one can claim to be entitled to be recognized or appointed as hereditary Archaga or Poojari to a religious institution. On that ground also the claim of the appellants that they are entitled to be in the service of the temple as hereditary Archakas also deserves to be rejected as untenable. In line with the above findings, this Court also holds that the Court below has rightly rejected the prayer for the consequential relief of injunction. There is nothing wrong in the decision made by the Court below that the appellants/plaintiffs are not entitled to any of the reliefs sought for in the plaint. There is no scope, whatsoever, to interfere with the decree passed by the trial Court dismissing the suit filed by the appellants u/s 70(1) of Hindu Religious and Charitable Endowments Act challenging the order of the Commissioner, Hindu Religious and Charitable Endowments Administration Department, Chennai dated 13.9.1988 made in A.P. No. 81 of 1982. There is no merit in the appeal and the same deserves to be dismissed with cost.

20. In the result, the decree passed by the trial Court in O.S. No. 175 of 1989 on the file of Subordinate Judge, Vellore is confirmed and the appeal is dismissed with cost.