
(1963) 02 MAD CK 0016

In the Madras High Court

Case No : C.S. No. 984 of 1922 and Application No. 1980 of 1962

M. Subramania Achari and another

APPELLANT

Vs

The commissioner, H. R. And C. E. Madras, and another

RESPONDENT

Date of Decision : 22-02-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1963) 02 MAD CK 0016

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : T. R. Ramachandran, for the Appellant; P. Srihivara Iyengar and The Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—The applicants claim to be worshippers at certain temples. In respect of these temples a scheme was framed by this Court in C.S. No. 984 of 1922. The scheme contains certain provisions for the appointment of Dharmakartas. They were to be three in number and to hold office for life. Subsequently attempts we made to modify this part of the scheme by limiting the trusteeship to a period of five years. But that seems to have failed. The Dharmakarthis were also to be chosen by election by registered voters of a certain community. In 1949 the Hindu Religious Endowments Board also approached this Court for modification of this scheme praying that the provision of election of the trustee might be deleted and that the Commissioner might be given a power to appoint trustees. This application also failed. It would appear that of the three trustees one resigned and another died. The surviving trustee, that is, the second respondent, sought to take steps to fill in the vacancy by the method of election set out in the schemes. At this stage the first respondent, the Commissioner, Hindu Religious and Charitable Endowments, Madras, intervened and directed the second respondent not to hold the election. It is in these circumstances that the applicants who claim to be the worshippers interested in

the proper management of the temple have approached this Court for a direction that the Commissioner should be directed to take steps for implementing the provisions of the scheme in so far as the election of the trustees is concerned.

2. It would be sufficient to refer to the counter affidavit of the first respondent, the Commissioner. It is stated that whatever might have been the position, previously under the law as it stands at the present time, the power of appointment of a trustee other than that, of the hereditary trustee is exercisable only by the Commissioner and that even if a scheme framed under S. 92, C.P.C., contains any provision to the contrary, such a provision has to be ignored. That is the only point which calls for consideration here.

3. I am satisfied that the stand taken by the Commissioner is perfectly correct. S. 42 of the Act of 1951 and S. 50 of the Act of 1959 are both equally categorical upon this question. S. 50 of the latter Act clearly lays down that the power to appoint trustees shall be exercisable, by the Commissioner, notwithstanding that the scheme, if any settled, or deemed under that Act to have been settled, contains provision to the contrary. Under S. 118 of the Act also it is laid down that any provision contained in a scheme settled under S. 92, C.P.C., which is repugnant to any provision contained in the Act shall be void. It is clear therefore that in so far as the provision for the election of trustees is concerned, the statute has in unmistakeable terms destroyed the effectiveness of any such provision in a scheme.

4. That this is so is well established by a decision of this Court in W. A. No. 17 of 1953, reported In The State of Madras Vs. M. Ramakrishna Naidu and Others, . There also the question arose whether in the case of Sri Parthasarathi Temple which was governed by a scheme and which scheme contained a provision for election of trustee, the Commissioner was competent to appoint trustees ignoring the method of election. The question was affirmatively answered. That decision relates to a case which is a close parallel to the facts of the present case. It is however argued by the learned Counsel on behalf of the applicants that a scheme framed by the High Court should stand on a different footing altogether for the reason that a Court as defined by Madras Hindu Religious and Charitable Endowments Act does not embrace the High Court so that where the relevant provision of the Act speaks of a scheme framed by a Court, it has to be taken that it does not relate to a scheme framed by the High Court. I am unable to agree. What S. 118 in particular states is that where the scheme settled under S. 92, G.P.C., contains a provision repugnant to any provision contained in the Act, that provision in the scheme shall be void, The section speaks out of a scheme settled under S. 92, C.P.C., and does not in terms make any distinction between schemes framed by the High Court and scheme framed by Courts" other than the High Court. It may also be noticed that in the decision referred to above the scheme was one which had been framed by the High Court. It therefore follows that there is no merit in this application and that the Commissioner is competent to take steps to appoint trustees.

5. The application fails and is dismissed. There will however be no order as to costs. Appln.No. 2285 of 1962 is also dismissed.