
(1954) 05 MAD CK 0022
In the Madras High Court
Case No : A.A.O. No. 340 of 1951

M.A. Ramaswami Thevar

APPELLANT

Vs

Madras Hindu Religious Endowments Board and Another

RESPONDENT

Date of Decision : 03-05-1954

Acts Referred:

Madras Hindu Religious Endowments Act, 1926 — Section 84, 9(6)

Citation : AIR 1954 Mad 1110 : (1954) 67 LW 942 : (1954) 2 MLJ 759

Hon'ble Judges : Govinda Menon, J;Chandra Reddy, J

Bench : Division Bench

Advocate : P.K. Janakiram, for the Appellant; Govt. Pleader, S. Ramachandra Iyer, B. Seshachalapatty and M. Chockalingam, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon J.

1. This appeal u/s 84 (3) of the Madras Hindu Religious Endowments Act (II of 1927) arises under the following circumstances. The appellant before us, M. A. Ramaswami Thevar, claiming to be a legatee under a will executed by one Paragnana Desika Swamiar applied to the lower court u/s 84 (2) of the said Act to declare that he is the hereditary trustee of two temples and a mutt in Thennangudi village, Tanjore district. The learned District Judge of West Tanjore, after elaborate discussion of the evidence let in, came to the conclusion that the appellant has no such right and dismissed his application. Hence this appeal.

2. One Paragnana Desika Swamiar, an ascetic belonging to the saivite sect, founded two temples, one for Sri Baladandayuthapani and another for Vinayaka. There was also a mutt in which he was living and looking after the worship in the temples. For the purpose of defraying the expenses for "neivedyam, deeparadhara" and other ceremonies not only did Paragnana Desika Swamiar endow properties but he obtained several items of properties from pious and religious minded Hindus belonging to the same persuasion and thereby

augmented the properties belonging to the temples.

On 9th February 1934, under Ex. B. 1, he executed a trust deed appointing five persons as trustees for the mutt as well as the temples. The document recites the history of the institutions and the properties belonging to them and how the five persons shall attend to the charities and other matters relating to the mutt and temples thereafter.

On 15th May 1934 he sent a notice, Ex. A. 25 to the five trustees alleging that they did not con-duet themselves in the manner provided in the trust deed and therefore should no longer function as trustees. This also had the result of cancelling the trust deed, Ex. B. 1. Thereafter, on 15-5-1934 he appointed the present second respondent as trustee of the properties. He was not satisfied with the way in which the matters were proceeding and therefore, he requested the Board of Commissioners for Hindu Religious Endowments to take over the administration of the temple.

On 3-8-1953 under Ex. A. 29 the Hindu Religious Endowments Board, on the application by Paragnana Desikar Swamiar, in the matter of Sri Dan-dayuthapaniswami temple and other institutions passed an order holding that the temples were public temples within the definition of the term in Clause (12) of Section 9, Hindu Religious Endowments Act and that the Act applied to its endowments. There was a further direction that the then trustee, namely, Paragnana Desikar Swamiar, was given the liberty to provide for me line of succession to the office of trustee in the temple. The result of this was that the founder of these institutions was given the right to nominate any successor whom he wanted.

By Ex. b. 3, on 10-2-1936, Pargnana Desikar Swamiar appointed another trustee one Avidalser-vaikarar; but it is common ground that he did not function as trustee. On 16-6-1939 under Ex. A. 26, he appointed the present second, respondent as an agent and asked the Tanjore Circle Devastanam committee to appoint the second respondent as the trustee. An application was also made by the second respondent which is marked as Ex. A. 27. The Devastanam Committee recognised the second respondent's claim and appointed him as a trustee, somehow or other matters did not go on smoothly and therefore the Swamiar, on 26th September 1945, under Ex. A. 24 executed a will by which he nominated the present appellatant as the trustee for the temple.

In that document it is stated that the properties which formed the subject matter of the settlement belonged to him absolutely with complete rights and that the temples were built by him. Therefore in addition to appointing the present appellatant as trustee, he vested the entire rights in the temple in the properties on the appellatant. It is on the basis of this will that the appellatant now claims to be hereditary trustee.

He applied to the Hindu Religious Endowments Board u/s 84 (1) to declare him as the hereditary trustee of the temple by Ex. A. 1 and A. 2, namely, the decretal

order and the Annexure giving the reasons. The Hindu Religious Endowments Board, after considering the large body of documentary evidence placed before it dismissed the application on the ground that the evidence adduced cannot in any manner satisfy the requirements of the definition of a "hereditary trustee" in Section 9(6) of the Hindu Religious Endowments Act. Against the dismissal of the application, the appellant applied to the District Court of West Tanjore in O. P. No. 65 of 1949 to modify or set aside the order of the Board. As stated already, the learned District Judge agreed with the conclusions arrived at by the Hindu Religious Endowments Board and dismissed that application.

3. Mr. P. K. Janakiram appearing for the appellant raised various points. The first of them was that Paragnana Desikar Swamiar having been the founder of the institutions and the owner of their properties had an unfettered discretion in the matter of the appointment of his successor and therefore he having under the will nominated the present appellant as trustee, it is not open to the Hindu Religious Endowments Board or the present second respondent to deny the rights which the appellant has obtained under the will. The learned counsel invited our attention to a passage at page 664 of Ganapathi Aiyar's Hindu Religious Endowments.

We do not think that the observations of the learned author at page 664, which are to the effect that the head of a mutt has no right to change the succession or that he cannot surrender the office, can have any application to the facts of the present case. What the author states is that what ever may be the rule of succession, the head of a mutt has no right to change the succession or impose restrictions on the choice of the successor or annex conditions for the appointment or transfer, or surrender the rights vested in him to another. No such thing has happened here

During the lifetime of Paragnana Desikar Swamiar he was the trustee. The question is whether he has validly appointed the present appellant as trustee. The other cases cited are the well Known decisions in -- "Vidyapurna Tirtha Swami v. Vldyanidhi Tirtha swami", 27 Mad 435 (A); --Ram Parkash Das v. Anand Dag", AIR 1916 PC 256 (B) and -- "Gosami Sri Gridhariji v. Roman-lalji Gossami", 17 Cal 3 (PC) (C). So far as the first of them is concerned, the learned Judges after quoting West and Buhler's Hindu law, observed at p. 449 as follows:

"The idol, deity or the religious object is looked on as a kind of human entity and the successive officiators worship as a corporation with rights of enjoyment but not generally of partition".

We do not think that these general observations can have any application here. But what the learned counsel relies upon more strongly is what is staled at p. 457. wherein the following observations occur:

"As regards succession, it is regulated in the case of mutts by custom or usage of each particular mutt, but in most cases, especially in Southern India, the successor is ordained and appointed by the head of the mutt during his own

lifetime and in default of such appointment the nomination may rest with the head of some kindred institution or the successor may be appointed by election by the disciples and followers of the mutt or in the last Instance by the court as representing the sovereign."

4. We do not think that in -- 17 Cal 3 (PC) (C)" there is any observation relevant to the facts of the present case. If, as a matter of fact, the founder had the right vested in him at the time of his death to nominate a successor, then nothing could be said against that. The Hindu Religious Endowments Board in its order under Ex. A. 29 dated 3rd August 1935 has stated that the trustee was given liberty to provide for a line of succession to the office of the trustee in the temple. But what has happened in this case is that the founder himself has relinquished that right by his action and also by the appointment of the second respondent as the trustee. That he has relinquished his rights is clear unequivocally from the petition Ex. A. 26 to the Tanjore Devasthanam Committee. Therein it is stated as follows:

"With a view to personally witness within my lifetime itself that the aforesaid charities are properly conducted, whatever may be my right with regard to the aforesaid temple and mutt, and whatever be powers given by the Board, I have in good faith handed over my rights and powers to the committee wholeheartedly."

Here we find an unequivocal surrender of the rights which the Swamiar had.

5. That it is possible for the founder of a mutt or institution to efface himself by surrendering his rights in the mutt or institution In favour of an individual or institution can be gathered from the authorities cited to us on behalf of the Commissioner for Hindu Religious Endowments. In Mulla's Hindu law, 11th Edn. at p. 525, Section 421, the learned author states:

"According to the Hindu law, when the worship of an idol has been founded, the shebaitship is held to be vested in the founder and his heirs, unless

(a) he has disposed of it otherwise; or

(b) there has been some usage or course of dealing which points to a different mode of devolution.

This principle applies to private as well as public trusts. The founder may appoint another person to manage the trust on his behalf and when he does so he can supervise his actions and remove him if he misbehaves. But where the founder hands over all his rights to another and divests himself of every vestige of interest in the matter, he cannot subsequently sue for being restored to the right of management."

There are similar observations in a recent book, namely, Hindu law of Religious and Charitable Endowments by Dr. Byjan Kumar Mukherjea now a Judge of the Supreme Court of India at pages. 208 and 209. We need not quote any passages

from the learned author's discussion; but it is clear from the observations contained that once the appointment is made and the line of devolution is laid down, it is not competent for the founder to alter or revoke it afterwards. But if the right of revocation or alteration has been reserved at the time when the grant was made, then he could do it. Here, as we have already stated, under Ex. A-26 dated 16th June 1939 Paragnana Desikar Swamiar has renounced all the rights he had and also his power to nominate a successor In favour of the Devastanam Committee of Tanjore. Therefore we are of opinion that having surrendered the rights he cannot thereafter claim to have any rights vested or inherent in him.

6. The second point on which the appeal has to be dismissed is that in any event the appellant cannot be called a hereditary trustee because u/s 9(6) of Madras Act II of 1927, a hereditary trustee means a trustee succession to whose office devolves by hereditary right which is not the case here -- or is regulated by usage which also is not the case here -- or is specifically provided for by the founder, so long as such scheme of succession is in force. The question is whether the scheme of succession is in force here. Now having divested himself of the right to nominate, it is difficult to say that the scheme of succession is in force at all. For this proposition it may be useful to refer to certain observations of the Privy Council in -- "AIR 1916 PC 256 (B)". Their Lordships of the Judicial Committee say as follows:

"Only one other question remains. It is this: Anand Das is still alive. The deeds on which he granted, which purported to be a transfer during his life of the mahantship to his nephews, defendants Nos. 2 and 3, are unavailing, defendant No. 2 being disqualified for the office, and defendant No. 3 being dead. In these circumstances, does the mahantship not revert to Anand Das? Anand Das is a man now nearing 80 years of age. He has for years relinquished the mahantship. Since at least 1897 he has retired from office and has made over to defendant No. 2 all his duties together with the properties of the "asthal". He has had a mutation of names effected in the Collector's Register in respect of the villages belonging to the "muth". He has thus abdicated all his functions, and, as he admits, his position is no more than that of any other worshipper. The "mahant", in their Lordships' opinion, is not only a spiritual preceptor, but also a trustee in respect of the "asthal" over which he presides. His installation of defendant No. 2 on the "gaddi", and his own retirement from the mahantship, would thus appear to have created a vacancy in the office."

So, by Ex. A. 26 Faragnana Desikar Swamiar having relinquished all his rights has effaced himself from the scene and cannot therefore either claim back the trusteeship or the right to appoint a successor.

7. The third point on which we find the lower court's order could be justified is that according to the Will, Ex. A. 24, as we have already stated, the entire properties are treated as private properties of the Swamiar and the appellant is given absolute rights over them and has also been given the right to manage the

institutions. When once it is found that the properties have been dedicated to the temple, as can be seen from the various documents, Exs. A. 3, A. 6, A. 7 etc, namely settlement deeds and grants made by the testator it is clear that these properties or the temple cannot be considered as private properties of the Swamiar. Under these circumstances when he purported to act as if the properties and the temple are his private earnings, the disposition under the will cannot take effect and would be void. The appellant has not obtained any rights under this invalid will, Ex. A. 24. Therefore on that point also the appellant is not entitled to succeed.

8. The appeal therefore fails and is dismissed with costs, one set.