

(2011) 07 MAD CK 0280

In the Madras High Court

Case No : Writ Petition No. 14288 of 2004

Maruthupandi

APPELLANT

Vs

Seethalakshmi and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Hindu Succession Act, 1956 — Section 14(1), 14(2), 30, 8

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 54, 54(1)

Citation : (2011) 07 MAD CK 0280

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : V.K. Vijaya Raghavan, for the Appellant; W.C. Thiruvengadam and R. Kannan, Government Advocate, for the Respondent

Judgement

T. Raja, J.—The petition is filed for a writ of certiorari calling for the records of the 2nd respondent in Rc. No. 11248/2003/A1 dated 4.12.2003 as confirmed by the order of the 3rd respondent in Rc. No. AP. No. 19/2003/D2 dated 6.5.2004 and quash the same as illegal, arbitrary and unenforceable.

2. The issue relates to the right to perform hereditary trusteeship and poojari rights in the Arulmighu Pandi Muniswarar Temple situated at Melamadai Village in Madurai North Taluk. The Management of the affairs of the Temple is governed by Hindu Religious and Charitable Endowment Board's order in B.O. No. 2074 of 1935. In view of the Board's order a group of five hereditary trustees are managing the affairs of the said Temple. One among the five hereditary trustees is the petitioner's father. The case of the petitioner is as follows:

The petitioner is the adopted son of one late Pandian Poojari who was a Joint Hereditary Trustee and Poojari for the Arulmighu Pandi Muniswarar Temple. The said late Pandian Poojari had executed a settlement deed on 20.10.2003 laying the line of succession and nomination to his hereditary rights and other prerequisites available to him in favour of the petitioner. As per the settlement deed, the natural father has to manage and receive the rights of the said Temple

till the petitioner attains the age of majority and has to render accounts to the petitioner for the income realised by him during the period of minority of the petitioner and has to pay the first respondent/wife of the petitioner's father a sum of Rs. 10/000/. (Rupees Ten thousand only) from the proceeds of the said Temple. The settlement deed came into effect after the death of the Pandian Poojari on 12.11.2003 and the petitioner filed an application before, the second respondent on 28.11.2003 for recognition of his rights in the above Temple wherein the second respondent directed the petitioner to go to the Civil Court for recognition of his rights, when the right available to the successor.in.interest of a hereditary trustee in the Temple is automatic.

(ii) The first respondent also tiled an application before the second respondent for, recognition of her rights contending that she is the wife of the said Pandian Poojari and the second respondent on entertaining her application passed an order dated 4.12.2003, permitting her to perform the poojari rights in the Temple for a period of one week. According to the petitioner, the first respondent is not a legally wedded wife to Pandian Poojari" as one Anandhavalli was the wife of Pandian Poojari who died on 19.5.1996 and the Will dated 25.8.2003 produced by the first respondent is non est in law. Hence, aggrieved by the order passed by the second respondent, the petitioner filed an appeal before the third respondent who in turn dismissed the appeal by an order dated 4.12.2005. It is against this order, the petitioner has moved this Court by filing the writ petition.

(iii) Pending the writ petition, in W.P.M.P. No. 16392 of 2004 this Court granted interim stay on 19.5.2004 and the same was made absolute 8.7.2004 and the vacate stay petition filed by the first respondent was dismissed as the validity of the settlement deed is outside the scope of power of the Commissioner and also for the reason mat he is empowered to decide the issue only on the basis of the right conferred under the settlement deed. The first respondent also filed a writ appeal against the order of dismissal of the vacate stay petition, the writ appeal was also dismissed. The first respondent filed a writ petition in W.P. (MD). No. 546 of 2005 questioning the validity of the legal heirship certificate issued to the petitioner by the Revenue Divisional Officer and the same was disposed of on 28.1.2008, with a direction to move the Civil Court.

(iv) In the counter affidavit filed by the first respondent, the first respondent claims that she is the legally wedded wife of the said Pandian Poojari and their marriage was solemnized on 10.5.1985 and she is the only legal heir to succeed her husband after his death. It was further submitted by the first respondent mat as she had no issues", her "husband, seemed to have adopted the writ petitioner Marutha Pandi and also permitted him to succeed him in respect of hereditary trusteeship and the poojariship in the Temple. Later, he seemed to have executed a settlement deed, wherein he has made some arrangements in respect of the aforesaid temple."

(v) According to the first respondent, the finding of the Joint Commissioner, on the basis of Section 54(1) of the HR & CE Act, which contemplates that the next

in the line of succession is the only person entitled to succeed to the office of hereditary trusteeship in a Temple, that she has to succeed her husband, requires no interference. Further, according to her, the validity of the adoption deed and the settlement deed executed by late Pandian Poojari itself is under question.

(vi) As an interim arrangement, this Court by its order dated 12.7.2006 in the writ petition and subsequently clarifying the said order on 14.9.2006 in W.P.M.P. No. 17752 of 2006 has stated as follows:

It is made clear that the income whatever the source may be from the temple shall be shared by the petitioner and the first respondent equally.

3. Mr. V.K. Vijaya Raghavan, the learned counsel for the petitioner submits that the first respondent has not at all challenged the adoption of the petitioner and the settlement deed dated 20.1.2003 by which the petitioner has obtained, the right to inherit the hereditary trusteeship and poojari rights of late Pandian Poojari from the Arunghu Pandi Muniswarar Temple. If we assume that the settlement deed is not executed in favour of the petitioner, then the first respondent can claim the right of succession to the late Pandian Poojari as his wife. But, when there exists a settlement deed in favour of the petitioner, wherein the late Pandian Poojari has settled all his rights over the Temple to the petitioner, the validity of which is also not questioned, the petitioner has to succeed his father as his adopted son. The learned counsel also relied on the following judgments to strengthen his arguments that the H.R. & CE. Authorities have no jurisdiction to decide the rival claims of the hereditary trustees u/s 63(b) of the Tamil Nadu Act 22 of 1959.

(i) Karuppa Odayar v. A. Maruda Muthiriar and Another (2000) 1 MLJ 549

(ii) A. Krishnaswami Raja Vs. Krishna Raja and Another,

(iii) Aviyur Mariamman Temple v. T.N. Sundaramoorthi Pillai and Another (1981) MLJ 392

The learned counsel for the petitioner would therefore, submit that in contra to the decision given in the above three judgments that the Commissioner has no jurisdiction to decide with regard to the inter se dispute among rival claimants of a hereditary trustee the Commissioner has directed the petitioner to approach the Civil Court permitting the first respondent to perform the poojari right, exceeding his jurisdiction.

4. In reply, Mr. W.C Thiruvengadam, the learned counsel for the first respondent would submit that as per Section 54(1) of the HR & CE Act, which contemplates that the next in the line of succession is the only person entitled to succeed to the office of hereditary trusteeship in a Temple, the first respondent being elder in age has to succeed her deceased husband. Further, he would submit that by virtue of Section 54(1) no one including the late Pandian Poojari, the father of the petitioner can create a new right of succession against the Hindu Succession

Act and since the first respondent is the Class I legal heir of late Pandian Poojari, she has to succeed her husband and on that basis, the learned counsel for the first respondent would pray for the confirmation of the findings of the second and third respondent in favour of the first respondent. In support of his submissions, the learned counsel would rely upon the following judgments:

(i) In Janaki Ammal Vs. Sanjeevi Chettiar and Others, , it is held that "an alienation or release or renunciation of an office of a trustee not for value in favour of the next or immediate heir is valid; otherwise it is invalid.

(ii) Janaki Ammal v. Sanjeevi Chettiar 53 LW 290

(iii) Raj Kali Kuer Vs. Ram Rattan Pandey, , wherein the Supreme Court held that "a Hindu female has a right to succeed to the hereditary priestly office of a Pujari and Panda held by her husband and to get the duties of the office performed by a substitute except in cases where usage to the contrary is pleaded and established."

(iv) Annaya Tantri v. Ammakka Hengsu and two Others Vol. 41 ILR Mad 866 wherein the female was held to be competent to succeed to the office Archaka in a Temple and the emoluments attached thereto.

(v) Venkataraman v. L.A. Thangappa (1972) MLJ 325

(vi) Profulla chorine Requitte and Others v. Staya Chorone Requitte AIR 1979 SC 1682: (1979) 3 SCC 409

(vii) Chettimai C. Nanjappa Chettiar (Deceased by L.R.) and Another Vs. S.N. Kuppuswami Chettiar and Others, and

(viii) Prem Anand v. The Commissioner, H.R. & C.E. etc. 1990 (1) LW 144 and confirmed by the judgment dated 2.5.1990 in W.A. No. 453 of 1990, High Court, Madras wherein it was held that "Under Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act.

5. From the above background, the issue involved in this writ petition is that the right conferred by the petitioner's father in favour of his adopted son, who is the petitioner herein, by executing a settlement deed dated 20.10.2003 to succeed the office of the hereditary trustee of the said Temple can override Section 14(1) of the Hindu Succession Act, by which the Female Class I heir has the right to succeed, after the death of her husband.

6. The judgment of the Supreme Court in Sadhu Singh v. Gurdwara Sahib Narika and Others in Appeal (civil) No. 1854 of 2003 dated 8.9.2006 answers the above question vividly and it is held thus:

...it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

12. When a male Hindu dies possessed of property after the coming into force of the Hindu Succession Act, his heirs as per the schedule, take it in terms of Section 8 of the Act. The heir or heirs take it absolutely. There is no question of any limited estate descending to the heir or heirs. Therefore, when a male Hindu dies after 17.6.1956 leaving his widow as his sole heir, she gets the property as Class I heir and there is no limit to her estate or limitation on her title. In, such circumstances, Section 14(1) of the Act would not apply on succession after the Act, or it has no scope for operation. Or, in other words, even without calling in aid Section 14(1) of the Act, she gets an absolute estate.

13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems it his will hence could not be challenged as being hit by the Act.

14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act....

16. Here, Ralla Singh has validly disposed of his separate property by a Will. This

is permissible as he has the capacity to so dispose it of. He is also enabled to do so by Section 30 of the Hindu Succession Act, He is thus entitled to interfere with the succession that would have ensued if he had died, intestate. In the context of the will executed by him the question is what has he bequeathed to his wife and whether he had placed any restriction on her estate so bequeathed. The corollary would be whether the appellant is entitled to the decree sought for by him in the context of Section 14(2) of the Hindu Succession Act.

17. We shall now construe the will of Ralla Singh. He says in the will that he is 73 years old. He has no progeny. Only his wife and his two nephews (sister's son) are alive and he wants to dispose of the property during his life time. He was absolute owner of the properties. He wants to provide for management of the properties in such a manner that after his death his wife so long as she remains alive will be the absolute owner and party in possession of all his properties and after her death, the rights over the property would be inherited by his two nephews. He is hence executing the will in favour of his wife in respect of all his properties moveable and immovable so that she will be the absolute owner and party in possession after his death. So long as he was alive he will be the owner of his properties and after his death his wife would be the owner of his properties. So long as his wife was alive she will be owner of the properties and after her death his nephews will take the property in equal shares and during her lifetime his wife Isher Kaur will not transfer the properties to any other heirs by way of any Will. He has also added a note to the effect that his wife after his death will not be entitled to mortgage or sell the properties during her life time.

18. Going by the terms of the will, initially, Ralla Singh has conferred an absolute estate on his wife subject to the restriction that she shall not dispose of the same by a will to any other heirs. The will also says that after the death of Isher Kaur, the two nephews Pritam Singh and Sadhu Singh would take the properties in equal shares. Thus, what is seen is that an apparent absolute estate has been conferred on Isher Kaur but with a stipulation that on her death the property will devolve on his two nephews and with an interdict that she shall not dispose of the property by testamentary disposition in favour of any other heir. It is stated that Isher Kaur will be the owner of the moveable and immoveable properties after the death of the testator. But at the end, the will has also stipulated that Isher Kaur will not be entitled to mortgage or sell the properties during her life time.

19. What the Court has to attempt is a harmonious construction so as to give effect to all the terms of the will if it is in any manner possible. While attempting such a construction, the rules are settled. Unlike in the case of a transfer in presenti wherein the first clause of the conveyance would prevail over anything that may be found to be repugnant to it later, in the case of a will, every effort must be made to harmonize the various clauses and if that is not possible, it will be the last clause that will prevail over the former and giving way to the intention expressed therein.

(Emphasis supplied)

7. Now, let us come to the case on hand. First of all, the adoption deed and the settlement deed executed by the late Pandian Poojari were not at all questioned by the first respondent, in accordance with law. The first respondent was aware of the settlement deed dated 20.10.2003 and the same is vivid as per the averment in the counter affidavit filed by her, which is extracted earlier. In *Palanivelayutham and Others Vs. Ramassamy and Others*, this Court has held that the person aware of a written instrument viz., will or settlement deed is estopped from questioning the truth and validity of the same after efflux of time. Taking into consideration of the ratio laid down by this Court in *Palanivelayutham v. Ramasamy (supra)*, the first respondent cannot question the validity and the genuineness of the settlement deed. Hence, in default, the adoption of the petitioner and the settlement deed are not disputed by the first respondent.

(ii) Secondly, u/s 54(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the first respondent claims that the elder should succeed the deceased male member, whereas Section 54(1) of the Act reads thus:

When a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act.

From the above, it is clear that it is not the elderly person, who should succeed the male member and it is only the next in the line of succession entitled to succeed to the office of the hereditary trusteeship. Even assuming that the Class I heir, the first respondent will be entitled to succeed, the execution of the settlement deed restricts her right to succeed as held by the Supreme Court in *Sadhu Singh v. Gurdwara Sahib Narike and Others (supra)* dated 8.9.2006 by which a Hindu male could testamenteary dispose of his property and when he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Therefore, since the settlor's intention is to settle his hereditary rights only on the petitioner, the petitioner is the only legal heir to succeed late Pandian Poojari.

(iii) Thirdly, in the registered settlement deed dated 20.10.2003, it is stated that the natural father has to manage and receive the poojari rights of the said Temple till the petitioner attains the age of majority and has to render accounts to the petitioner for the income realised by him during the period of minority of the petitioner and has to pay the first respondent/wife of the petitioner's father a sum of Rs. 10,000/- (Rupees Ten thousand only) from the proceeds of the said Temple. Therefore, the settlor upon settling the hereditary rights in the said Temple in favour of the petitioner, had also directed him to pay maintenance to the first respondent. Therefore, the construction of the instrument has been done in a harmonious way.

(iv) Fourthly, it is not disputed by both the parties that there is an interim

arrangement between them to share the income from the Temple by an order of this Court in W.P.M.P. No. 17752 of 2006 dated 14.9.2006. Both the learned counsel would accept to maintain the interim arrangement, but, however, the learned counsel for the petitioner would submit that after the lifetime of the first respondent, the full and the absolute right of the hereditary trusteeship and poojari rights should devolve upon the petitioner alone. To this, the learned counsel for the first respondent raised serious objections. However, this Court, placing reliance on the judgment of the Supreme Court in *Sadhu Singh v. Gurdwara Sahib Narike and Others* (supra) directs the parties to maintain the interim arrangement, whereby the parties share equally the proceeds of the Temple, till the lifetime of the first respondent-P. Seethalakshmi and after her death, the petitioner, will have the absolute right as per the registered settlement deed dated 20.10.2003. By this order, the intention of the settlor both to maintain his wife and to settle the hereditary rights to the petitioner, who is his adopted son is duly considered.

(v) Fifthly, the direction given by the Commissioner, Hindu Religious and Charitable Endowment Board relegating the parties to approach the Civil Court to decide the next in line of succession on the basis of Section 54(1) of the Hindu Religious and Charitable Endowment Act is wholly unwarranted in the light of the judgment of the Supreme Court in *Sadhu Singh v. Gurdwara Sahib Narike and Others* (supra) wherein the Apex Court has settled the issue that the Hindu male could dispose of the property by a testament and when he does that, a right of succession under the Act stands excluded and the property passes to the testamentary heirs. Therefore, the late Pandian Poojari has testamentarily disposed of the hereditary trusteeship and the Poojari Rights of the Temple by executing the settlement deed to the petitioner and hence, the Commissioner, HR & CE has no authority to question the same and also have no jurisdiction to decide the rival claims of the hereditary trustees u/s 63(b) of the Tamil Nadu Act XXII of 1959. In such view of the matter, the orders of the second and third respondents stand quashed.

8. The writ petition is ordered accordingly. However, there will be no order as to costs.