

(1984) 01 MAD CK 0009

In the Madras High Court

Case No : App. No's. 2677 and 2678 of 1983

N. S. Parthasarathy and N. S. Srinivasan

APPELLANT

Vs

S. Varadachariar and Others

RESPONDENT

Date of Decision : 31-01-1984

Acts Referred:

Citation : (1984) 01 MAD CK 0009

Hon'ble Judges : Sengottuvclan, J

Bench : Single Bench

Advocate : N. K. Ramaswamy, for the Appellant; Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Sengottuvclan, J.—This application is filed for a declaration that the first respondent is not entitled to hold office as a trustee of Sri Vedanta

Desikar Swami Temple, Mylapore. The facts of the case are briefly as follows:-- A scheme of administration was framed by this Court in C.S. No.

253 of 1907 for the administration of Sri Vedanta Desikar Swami Temple in Mylapore which provides among other things (1) for the management

of the Devasthanam by the Vadagalai sect of Vaishnavites; and (2) for the election of an electoral Committee among the Vadagalai Vaishnavites

for the purpose of appointing trustees belonging to Vadagalai sect for the administration of the temple.

2. An Electoral Board has to be elected every three years and the said Board has to appoint trustees. The first respondent was duly appointed by

the Electoral Board. The applicants allege that the father of the first respondent originally belonged to Tergalai sect and that he changed his namam

into Vadagalai since he began to serve in a Vadagalai institution and only since

then the first respondent's father and afterwards the first respondent had begun to wear the Vadagalai namam. The case of the applicants is that the Vadagalai status cannot be acquired by acquisition. The first respondent still continues to be a Tengalai sect and as such he is disqualified to act as a trustee in respect of the abovesaid temple. Hence the application is filed under Cl. 16 of the Scheme praying for a declaration that the first respondent is not entitled to act as a trustee.

3. In the counter statement the first respondent denied the allegation that he belonged to Tengalai sect and asserted that he is a Vadagalai

Vaishnavite by birth and that his selection by electoral Committee is perfectly valid. An objection is also taken with reference to the maintainability

of this application on the ground that under S. 118 of Act 22 of 1959 all the powers vested with the Court in pursuance of the scheme stand

automatically transferred to the appropriate authority under the Act. The case of the first respondent is that in respect of the scheme framed for the

abovesaid temple also the powers vested with the court can be exercised only by the appropriate authority under the Act.

4. We will have to consider the preliminary objection regarding the maintainability of the application before embarking upon an enquiry as to

whether the first respondent belongs to the Vadagalai sect or not. Cl. 16 of the Scheme reads as follows :--

The Trustees or any of them or any two voters registered for the time being shall have liberty to apply to the High Court by Judge's summons

entitled in this suit for such directions as may be required for carrying out the purposes of this scheme or for effecting any modifications that may be

considered necessary in the interests of the said temple.

According to S. 118(b)(ii) of Act 22 of 1959 all the powers conferred and all duties imposed by such scheme on any court are transferred to the

appropriate authority. The said section reads as follows :--

18(b)(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a

trustee or trustees or an honorary Officer or servant of the religious institution or endowment, shall be exercised, and discharge by the

Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act.

The effect of S. 118 of Act 22 of 1959 on the Scheme framed by a civil Court was considered by a Division Bench of this Court in Krishnaraju

Chetty v. Commissioner of Hindu Religious and Charitable Endowments Board, Madras 90 L.W. 432. In that case this Court held that the words

Any Court"" occurring in S. 118 will include the High Court as well as that as per S. 118 the burden and responsibility of civil Courts are taken

away and they are passed on to the statutory authorities functioning under the Act for the specific purpose of administering and governing Hindu

Religious and Charitable Institutions and Endowments in the State. Mr. Srinivasan, learned counsel for the respondents, contends that in view of

the conclusion arrived at by a Division Bench of this Court in the above case this application is not maintainable. Mr. N. K. Ramaswamy, learned

counsel for the applicants, contends that the relief of declaration that the first respondent is not entitled to hold office as a trustee is not a relief that

can be granted by the appropriate authorities under S. 53 or any other section of the above said Act and as such that power still continues to vest

with this Court and as such this application is maintainable. In support of this contention be cited a Bench decision of this Court reported in The

Commissioner, Hindu Religious and Charitable Endowments Vs. Vaithinatha Gurukkal and Others, where the Bench in interpreting old S. 57(b)

corresponding to new S. 63(b) by which the Deputy Commissioner is empowered to declare that the trustee holds office or held office as

hereditary trustee, took the view that according to S. 63(b) the Deputy Commissioner is empowered to decide whether a trustee holds or held

office as a hereditary trustee and the said section does not empower the Deputy Commissioner to adjudicate upon the disputes inter se between

two persons and decide as to who is hereditary trustee and such function can be exercised only by the Civil Court. Relying on this principle Mr.

N.K. Ramaswamy contends that the power to declare that the first respondent is not entitled to hold office as a trustee is a power which cannot

be exercised by the Deputy Commissioner and hence that power is still exercisable by this Court under S. 16 of the Scheme.

5. The contention on behalf of the applicants cannot be accepted since there cannot be a piece-meal transfer of powers exercisable by this Court

under S. 118 retaining certain residuary powers. Even S. 118 says that all the powers vested with the Court shall be transferred to the Deputy

Commissioner. When all the powers are transferred the power to declare that the first respondent is not entitled to hold office as a trustee cannot

be retained by this Court. Hence the only remedy available to the applicants is to institute appropriate proceedings before the appropriate authority

for appropriate reliefs. As far as this application is concerned the contention of the respondents that this application is not maintainable has to be

accepted. In the result the application is dismissed. However, there will be no order as to costs.

Application No. 2677 of 1983.

In view of the orders passed in Application No. 5677 of 1983 this application is also dismissed.