
(1962) 01 MAD CK 0002
In the Madras High Court
Case No : C.R.P.No. 179 of 1961

P. S. Venkatarama Iyer

APPELLANT

Vs

K. K. Gangadhaka Mudaliar and others

RESPONDENT

Date of Decision : 25-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1962) 01 MAD CK 0002

Hon'ble Judges : Gunapatia Pillai, J

Bench : Single Bench

Advocate : T.K.Subramania Pillai, for the Appellant; Ramaswami, B.V.Viswanatha Ayyar and The Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Gunapatia Pillai, J.—This civil revision petition is preferred by one Venkatarama Iyer against the order of the Subordinate Judge of Vellore

dismissing O. P. No. 23 of 1958 on his file. That proceeding was instituted by the present petitioner under S. 39 (4) of Madras Act XIX of 1951,

which will hereinafter be referred to as the Act, for the purpose of setting aside the order of the Commissioner for Hindu Religious and Charitable

Endowments, Madras, whereby Gangadhara Mudaliar and Ramu Iyer were appointed non-hereditary trustees for two Dharma Chatrams in

Tiruvalam Village. The facts giving rise to the proceeding are the following. One Vaidyam Subba-rama Iyer, the great grandfather of the petitioner

before me, established two chatrams at Tiruvalam Village, Gudiya-tham Taluk, and endowed properties for these charities. One of them situate in

Sannadhi Street was set apart for feeding Brahmins and the other situate in Bazar Street was set apart for feeding non brahmins. A scheme was

framed for these chatrams by the Subordinate Judge, Vellore, in O. S. No. 23 of 1917 under which there was to be a Board of three trustees, one of whom should be selected from the founder's family. The trustee selected from the founder's family was to hold office for his life, while the other two trustees were to hold office for a term of three years. Complaints were made to the Government about the misapplication of the trust funds by the trustee belonging to the founder's family and consequently on 9th August 1957 the Government notified by an order passed under S. 3 of Act XIX of 1951, that the provisions of that Act would extend to the suit charity. Thereupon the Commissioner, purporting to act under S. 39 of the Act, appointed two persons already mentioned above as non-hereditary trustees for a period of five years on 29th January 1958. It is to set aside this order that O. P. No. 23 of 1958 was instituted.

2. It is unnecessary to refer to all the contentions raised in the O. P., except two of them : (1) whether the petitioner was a hereditary trustee entitled to file the O. P., under S. 39(4); and (2) was there a proper notice to the petitioner under S. 39(4) of the Act before the Commissioner took proceedings to appoint the two non-hereditary trustees.

3. If point 1 is answered in the affirmative, the second point may not arise for consideration because, after hearing the argument of Mr.

Ramaswami, learned Counsel for the third respondent, I have come to the conclusion that the petitioner had no locus standi to institute the proceedings under S. 39(4) of the Act. The Subordinate Judge took this view, though he has not discussed the relevant statutory provisions or the contentions of the parties. It is undoubted that on the date when Madras Act XIX of 1951 came into force a scheme settled by the Subordinate

Judge, Vellore, under S. 92, C. P. C., was in force in regard to the suit charity. It is also undoubted that after the Government passed the order

under S. 3 of the Act extending the provisions of the Act to the suit charity, the suit charity came to be governed by the provisions of the Act, and,

the Commissioner could exercise powers under S. 39. The question how far the Commissioner was justified in appointing non-hereditary trustees

under S. 39 must be examined only with reference to the contention that the petitioner was a hereditary trustee and was entitled to notice and

without such notice being given to him the Commissioner could not exercise his

powers under S. 39. Incidentally the right of the petitioner to file a proceeding to cancel the order of the Commissioner depends upon his character as hereditary trustee because S. 39(4) makes it clear that the right to question the order of the Commissioner appointing non-hereditary trustees is conferred only upon the hereditary trustee or the other trustees already functioning.

4. It is clear that the Area Committee had no Jurisdiction over the suit charity. The effect of the Act upon any scheme already settled by a civil

Court under S. 92, C.P.C., has been considered by Rajagopala Aiyangar J, in Chidambaram v. Muthukumar aswami Pillai (1). The learned Judge

held that on the coming into force of the Act the scheme already settled for a religious institution and equally for a charity to which the provisions of

the Act would apply, would still be in force except for the right of the Commissioner to appoint trustees. The learned Judge observed thus:

I am inclined to consider that Ss. 42 and 39 abrogate only the provision in regard to the number and not in regard to the qualifications to be

possessed by persons to be appointed a trustees. If any particular scheme contained provisions which were found later to work to the department

of the institution, the proper mode of removing the hardship would be, not by ignoring the provisions of the scheme but by having the scheme

amended by appropriate proceedings in that behalf.

5. I respectfully agree with this view of the learned Judge especially because it is in accord with the statutory provisions found in the Act. I am

referring to the provisions of S. 103 of the Act and particularly Cls (d) and (e). These statutory provisions provide that all schemes settled or

modified by a Court of law under S. 92, C.P.C., shall be deemed to have been settled or modified by the Court under the Act and shall have

effect accordingly. Cl. (e) particularly provides that in any scheme settled or deemed to have been settled under the Act and in force immediately

before the commencement of the Act, all powers conferred and all duties imposed by such scheme on any Court or Judge shall be deemed to have

been conferred or imposed on the Area Committee or the Commissioner as the case may be, and, the Commissioner or the Area Committee shall

exercise such powers and discharge such duties in accordance with the provisions of the scheme sought to such restrictions and conditions, if any,

specified in the scheme. Thus, though the Commissioner had authority to increase or vary the number of trustees to be appointed to the suit charity,

by reason of the Notification of the Government under S. 3 of the Act he was bound by the other provisions of the scheme and particularly the

qualifications of trustees.

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6. The next question for my consideration is whether the petitioner who claims to be a life trustee under the scheme settled by the Sub Court,

Vellore, could be called a hereditary trustee. The term "hereditary trustee" is defined in S. 6(9) of the Act thus:

Hereditary trustee means the trustee of a religious institution 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.

7. Mr. Subramania Pillai for the petitioner contended that the office of trustee and particularly hereditary trustee, was in the nature of property and

ordinarily such office vested in the heirs of the founder unless the founder had laid down a special scheme of succession or there was a usage or

custom to the contrary. He further contended that the fact that under the scheme the Court was directed to select one from among the members of

the founder's family to be a trustee, would not detract from the nature of the source of title of such trustee. He contended that even after such

selection by the Court the trustee belonging to the founder's family was a hereditary trustee, because he owed his appointment to his connection

with the founder's family and not to the appointment by the Court.

8. It is true in the Act referring to religious endowments prior to 1951 a broad distinction was made between two classes of trustees, those who

were appointed by the Commissioner of the Area Committee and those who were not so appointed. But that distinction has no relevance in

construing the definition which I have got to interpret. There is a direct decision of a Bench of this Court consisting of Rajamannar C.J and

Panchapakesa Ayyar, J. in State of Madras v. Rama-krishna Naidu (1) on this point. There the question arose with reference to the appointment

of a trustee to the famous Sri Parthasarathiswami Devasthanam, Triplicane. A scheme had been settled by this Court in C. S. No. 527 of 1924 with

regard to that temple under which the temple was to be administered by three Dharmakarthas of whom one should(1) The State of Madras Vs. M.

Ramakrishna Naidu and Others, . be a Brahmin, one an Arya Vysia (Komatti) and one a non brahmin, do Arya Vysia. The scheme also provided

that the Dharmakarthas should be elected by the voters from a roll kept in the temple and the office of trustee should be for a period of five years

from the date of election. A retired Dharamakartha was re-eligible for office provided at the time of reappointment he was eligible under the other

provisions of the scheme. The period of office of one Dharmakartha Ranganadham Chetti expired by efflux of time on 12th October, 1951. Under

the scheme the vacant seat had to be filled up by election. But, without conducting any election, the Commissioner passed an order on 19th

October, 1951, appointing one C. Subra-maniam Chetti in the vacancy. This order was questioned in the proceeding out of which the writ appeal

arose. Subba Rao, J. who heard the writ petition, in the first instance held that Ranganadham Chetti was a hereditary trustee and consequently, Ss.

39 and 42 of the Act had no application so far as hereditary trustees were concerned and the Commissioner had no power to appoint

Subramaniam Chetti in the vacancy. The question arose whether Ss. 39 and 42 were applicable, and in answering this question in the affirmative

the Bench had held that Ranganadham Chetti was not a hereditary trustee. In discussing when a trustee could claim to be a hereditary trustee the

Bench held that where the right of appointment is by nomination It could not amount to a right by succession. Mr. Champakesa Ajyengar, Counsel

appearing in that case contended that the word ""succession"" occurring in the definition of ""hereditary trustee"" was used in a very wide sense and it

could apply even to a case of a trustee nominated so long as the qualification of the office was prescribed by the scheme and such qualification did

exclude every one except a designated class. Relying on this argument Mr. Subramania Pillai contends that here also though the nomination was to

be made by the Court the Court was bound to restrict Its choice to the members of the founder's family and consequently the nomination of a

member of the founder's family to be a trustee under the scheme would amount to a right by succession.

9. In Sitaldas v. Santram (1) the question was whether a usage as to succession to the mahantship of a mutt whereby the bairagis and worshippers

of the institution appointed the successor amounted to succession by hereditary right. It was held that this usage did not amount to hereditary

succession because the appointee acquired a right only by appointment though the authority to appoint is vested in the assembly of bairagies and

worshippers. Similarly in *Sri Mahant Paramananda Das Goswami v. Radhakrishna Das* (2) the question arose whether succession to the

mahantship where usage provided that the successor should be nominated by the holder in office amounted to hereditary succession. The learned

Judges held that it did not amount to hereditary succession. The principle of the decision is found in the following passage of Venkatasubba Rao, J.:

If the successor owes his title to nomination or appointment, that is, his succession depends on Use volition of the last incumbent and does not rest

upon independent title I am Inclined to the view that the office cannot be said to be hereditary.

10. Equally the other Judge, Krishnan, J. expressed himself thus:

Where succession is by nomination by the holder in office of his successor it seems to me impossible to contend that it is a hereditary succession.

Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to same

definite rules of descent which by their own force designate the person to succeed.

11. On these principles it is clear that even though under the scheme applicable to the suit charity the Court was bound to select one trustee from

among the members of the family of the founder the right of such trustee to the office was not a right dependent upon hereditary succession. The

title to the office of such trustee must be traced to nomination by the Court. Clearly, therefore the present petitioner is not a hereditary trustee and

was not competent to maintain the proceeding in the lower Court under S. 39(4) of the Act. (1 *Sital Das Vs. Sant Ram and Others*, . In this view it

is unnecessary for me, as already observed to consider the other point arising in the case. The revision petition is dismissed with costs of contesting

respondents, two sets. Advocate's fee, Rs. 50 to each Advocate.