

**(1971) 06 MAD CK 0030**

**In the Madras High Court**

**Case No : Appeal No. 387 of 1964**

P.S. Lakshmana Shah and Another

APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable  
Endowments, Madras

RESPONDENT

---

**Date of Decision : 23-06-1971**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80  
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —  
Section 57, 6(15), 6(9)

**Citation : AIR 1972 Mad 319 : (1971) 84 LW 828 : (1971) 2 MLJ 495**

**Hon'ble Judges : V. Ramaswami, J;Sadasivam, J**

**Bench : Division Bench**

---

## **Judgement**

Sadasivam, J.—Appellants filed an application under S. 57(b) of the Madras Hindu Religious and Charitable Endowments Act, XIX of 1951, hereinafter referred to as the Act, before the Deputy Commissioner claiming to be the hereditary trustees of Sri Balasubramaniaswami temple, Narayananaicken St., Komaleswaranpet, Madras-2. The learned Deputy Commissioner has held by his order Ex. B-10, that the office of the trustee of the suit temple is not hereditary and that the appellants are not hereditary trustees. The appellants unsuccessfully appealed to the Commissioner for Hindu Religious and Charitable Endowments, Madras, as seen from the order Ex. B-14. But in dismissing the appeal, the Commissioner made an observation that the Area Committee will select trustees from the members of the Samavamsam Bhuja Kshatriya Kulam. The appellants filed this suit, O. S. 411 of 1960, on the file of the City Civil Court, Madras, for setting aside or cancelling the order of the Commissioner and to recognise their claim to the hereditary trusteeship of the suit temple, to declare that they and other members of the Somavamsam Bhuja Kshatriya Kulam or caste as a religious denomination exclusively own and conduct the affairs of the temple through their representatives and for an injunction restraining the Commissioner for Hindu Religious and Charitable Endowments, Madras, from

enforcing the provisions of the Madras Act 22 of 1959 inclusive of the provisions relating to the appointment of trustees so as to interfere with the rights of the said religious denomination and for costs.

2. The learned III Assistant Judge, City Civil Court, Madras, negated the claim of the appellants that they are the hereditary trustees of the suit temple. He, however, found that the suit temple was a denominational one, having been established by the people of Somavamsam Bhuja Kshatriya Kulam who hailed from Nepal and settled down in Chintadripet and Triplicane, Madras, and founded the suit temple solely for their benefit, but refused to grant a declaration to that effect, as no notice was given under S. 80, C.P.C. In the result, he dismissed the suit with costs and the plaintiffs have preferred this appeal.

3. We have already referred to the fact that the appellants filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments, only under S. 57(b) of the Act, and not under S. 57(a) of the Act as to whether the temple is a religious institution within the meaning of S. 6(15) of the Act. No notice u/s 80, C.P.C. is required in respect of statutory suit to set aside or cancel the order of the Commissioner under the provisions of the Act. Even assuming that such a statutory suit could be combined with a suit in which the applicability of the Act to the suit temple is challenged, the requirements of the valid institution of the later suit should be complied with. Relying on the decision in *Govinda Menon Vs. Union of India (UOI)*, this Court has in *T.K. Santhanagopala Chettiar and Others Vs. Thimmi M. Seetharama Chettiar and Others*, and in the subsequent unreported decision in *S. A. No. 364 of 1964 (Mad)--Rathnavelu Mudaliar v. Commr., H. R. and C. E.--* held that the Commissioner of the Madras Hindu Religious and Charitable Endowments, while functioning under the provisions of Act XXII of 1959, functions only as a public officer or Government servant, and as such the provisions contained in Section 80, C.P.C. will apply to him. In view of these decisions Sri K. E. Rajagopalachari the learned advocate for the appellants, did not question the correctness of the decision of the trial Court that notice u/s 80, C.P.C. is necessary and he confined his arguments in this appeal solely to the question whether the appellants are the hereditary trustees of the suit temple.

4. A hereditary trustee of a religious institution as defined in Section 6(9) of the Act includes three types of cases, namely, (i) succession to the office of trusteeship devolving by hereditary right, (ii) succession to such office being regulated by usage and (iii) succession being specifically provided for by the founder provided the scheme of such succession is still in force. The contention of Sri K. E. Rajagopalachari is that the succession to the office of trusteeship of the suit temple is regulated by usage. In paragraph 3 of plaint, it is stated that Sri Balasubramaniaswami temple was founded about 100 years ago by the members of a section of a community called Somavamsam Bhuja Kshatriya Kulam by donations raised from among them by the ancestors of the plaintiffs whose families also belong to the said community and that ever since the

foundation of the temple, the same is managed by the members of these two families. It is stated in the same paragraph that Chengalraya Shah, the grandfather of the first plaintiff, was the trustee from about 1888 to 1938 and his son Subramania Shah, who succeeded him, managed till his death in 1951 and that his son Lakshmana Shah, the first plaintiff, has been managing the temple after the death of his father. It is stated in the same paragraph that similarly the second plaintiff's father Baba Shah was trustee from 1889 to 1956 when he died and that from then, the second plaintiff has been in joint management with the first plaintiff. In paragraph 7 of the plaint it is stated that the Commissioner should have held that the plaintiffs are hereditary trustees according to the definition given in the Act. In paragraph 8 of the plaint it is stated that the temple is founded and managed by a section of the Somavamsam Bhuja Kshatriya community and that the members of the community have been functioning as trustees from time to time according to well defined usage. But it is not stated as to what the usage is. In the application Ex. B-1 to the Deputy Commissioner it is stated that ever since the inception of the temple about 100 years ago, the properties of the temple have been managed hereditarily by the members of their family who are called Somavamsam Bhuja Kshatriya Kulam and that this is the usage in the community which maintains the temple. When we questioned Sri K. E. Rajagopalachari as to the nature of the usage, he stated that the members of the community used to elect the trustees and that the persons so elected held the office during their lifetime. But it is significant to note that there is no plea or evidence in this case that the trustees of the suit temple were elected by the members of the Somavamsam Bhuja Kshatriya community, or that the persons so elected held the office during their lifetime. In fact, this contention has evidently been put forward in order to sustain the claim of hereditary trusteeship in conformity with the decisions of this Court.

5. In *The State of Madras Vs. M. Ramakrishna Naidu and Others*, the question whether a trustee elected by usage could be regarded as a hereditary trustee was considered. It appears from the decision that succession to an office of trustee by election may well be comprehended by Section 6(9) of the Act. But the following passage in that judgment clearly indicates that where the office of trustees by election can be held for a term of years though by usage, it could not possibly be brought within the purview of the word "succession to hereditary right of trusteeship" regulated by the usage:

"It appears to us to be singularly in-appropriate to say that there is a succession of A's office to another when on the efflux of the period for which A was appointed, there is a vacancy and B is elected to that vacancy. It is quite possible that for that vacancy A himself might be re-elected because a retiring trustee is eligible for-re-election. The possibility of A being the successor of A himself is not merely an anomaly, it is an impossible legal position. No man can succeed to his own office."

Though the above observation is obiter, it has been cited with approval by a

Bench of this Court is *State of Madras v. Sambandamurthy*, ILR (1966) Mad 36 and by the Supreme Court in the appeal from the decision as reported in *Sambudamurthi Mudaliar Vs. The State of Madras and Another*, . It appears from the decision in ILR (1966) Mad 36 that the election to the office of trustee was regulated by usage and if that fell within the ambit of succession, there was no reason to limit its scope to election to an office held for life and not for a period of years. On the same basis it is urged in this case that there is usage in the suit temple under which the trustees are elected for life by the members of Somavamsam Bhuja Kshatriya Community. But, as already pointed out, there is no plea or evidence in support of this attractive legal contention.

6. Sri K. E. Rajagopalachari relied on the decision in *Nilakandan v. Padmanabha*, ILR (1891) Mad 153, where it has been held that when two persons have been in joint management for more than 40 years, the presumption is that they have a joint right of management. But the question in this case is not whether the plaintiffs and their ancestors have been functioning as joint trustees, but whether the plaintiffs are the hereditary trustees within the meaning of Section 6(9) of the Act. Sri K. E. Rajagopalachari relied on the decision in *Dy. Commr., H. R. and C. E. Board v. Siddhivinayaga Mudaliar* 1971 2 MLJ 422, to which one of us was a party. But it is clear from the decision in that case that succession to the trusteeship of the temples in that case devolved by hereditary right, that the Sengunthar community acquired prescriptive title to manage the temples by long usage from 1900, that the Nattamaikars of the said Sengunthar community have been functioning as hereditary trustees and that the claim of the plaintiffs in that case as hereditary trustees in the said circumstances could be upheld. We shall proceed to consider the evidence in this case to find out whether the appellants have by long usage acquired rights to hereditary trustees of the suit temple.

7. We have already referred to the fact that there is no clear plea as to the usage claimed by the appellants. It is not clear either from the pleadings or the evidence in this case as to how Chengalraya Shah, the grandfather of the first plaintiff, became the first trustee in 1888 and the second plaintiff's father Baba Shah became a trustee only from 1889. According to the averments in paragraph 3 of the plaint, the trusteeship vested in the two families ever since the inception of the temple. The appellants examined themselves before the Deputy Commissioner. The first appellant P. S. Lakshmana Shah stated in his evidence before the Deputy Commissioner that his grandfather Chengalraya Shah and Baba Shah were originally the trustees, that his father became a trustee in 1938 after the death of Chengalraya Shah and that he became a trustee in 1951 after his father's death. He stated that after the death of Baba Shah in 1956, the second appellant Thulasi Shah became a trustee. In cross-examination he stated that the community people used to nominate the trustees from his family and the family of the second appellant. The second appellant Thulasi Shah also gave similar evidence before the Deputy Commissioner. Even in chief-examination he stated that his community people used to nominate the trustees. In cross-examination he stated that in 1938 and in 1951 when Subramania Shah and

Lakshmana Shah became trustees, the community people asked them to function as trustees.

8. The appellants examined themselves and one Kuppu Shah as witnesses in the suit. P.W. 1 Thulasi Shah deposed that the temple is 60 years old and that the founders were Chengalraya Shah and Baba Shah. He stated that after the death of his father Baba Shah, he succeeded as trustee. He stated that Subramania Shah succeeded to the trusteeship of the suit temple after the death of his father, Chengalraya Shah, and that the first plaintiff succeeded his father Subramania Shah. In his chief-examination he stated that except the two families of himself and the other plaintiff, no others have any right to manage the temple and that these two families alone were in management from its inception. But he admitted in cross-examination that in the statement Ex. B-7 given by one Sambandam Mudaliar before the Inspector, Hindu Religious and Charitable Endowments, in support of the plaintiff's case, it has been stated that Chengalraya Shah and Baba Shah were the chief Dharmakarthas in whose hands the affairs of the temple were vested by a committee of nine community members. Even in chief-examination he stated that when there were disputes with Musalamans, the two trustees co-opted three others and filed suits. Ex. A-1 is the certified copy of the judgment in O. S. 484 of 1918, on the file of this Court, and Ex. A-1 is a certified copy of the decree relating to that judgment. It is clear from these documents that Chengalraya Shah and Baba Shah and three other persons have been described as trustees and Dharmakarthas of Sri Balasubramaniaswami temple. It is not possible to accept the explanation of P.W. 1 that in order to strengthen the case, three sharers were co-opted as trustees. Exs. A-3 and A-4 are endowments in favour of the suit temple and they mention Baba Shah and some others as trustee. The name of Chengalraya Shah does not find a place in either of these documents. It is not doubt possible to explain these documents as relating to specific endowments. But Exs. A-5 to A-7 are sale deeds in favour of the temple represented by not only Chengalraya Shah and Baba Shah, but also six or seven others. The explanation of P.W. 1 is that others were only nominally added. P.W. 2 Lakshmana Shah, the first plaintiff in the suit, gave evidence that he and P.W. 1 were hereditary trustees. In cross-examination he stated that his community people used to assemble and nominate only members of the families of the plaintiff as trustees, but he pleaded ignorance about such nomination in the earlier days. The evidence of P.W. 3 Kuppu Shah is that the two trustees of the suit temple are hereditary trustees, that he knew their forefathers and that they were not nominated by his community. Thus the evidence is conflicting as to the mode in which the members of the community happened to manage the suit temple as trustees. It appears from paragraph 3 of the plaint that the trusteeship devolved by inheritance from father to son on two persons jointly. But there is evidence to the effect that the selection of the trustees was by nomination. The several documents referred to by us show that apart from the two persons mentioned in the plaint, several others have been functioning as trustees. The contention of Sri K. E. Rajagopalachari is that by

usage by trustees are elected for the suit temple to hold office during their lifetime, but there is absolutely no evidence in support of any such contention. For the foregoing reasons, we see no reason to differ from the finding of the trial Judge that the appellants are not the hereditary trustees of the suit temple.

9. It is really unnecessary for us to go into the question whether the suit temple is a denominational temple. It is clear from the evidence in this case that the temple has been managed only by members of the Somavamsam Bhuja Kshatriya Kulam and that no member outside the said community has made any endowment to the temple. The Commissioner for Hindu Religious and Charitable Endowments has in his order Ex. B-14 made an observation that the Area Committee will select trustees for the suit temple from the members of Somavamsam Bhuja Kshatriya Kulam and we entirely agree with the same as sufficiently protecting the claims of the community.

10. The decree and judgment of the trial Court are confirmed and the appeal is dismissed with costs.