
(1979) 01 MAD CK 0049
In the Madras High Court

Ranganatha Pillai and Others

APPELLANT

Vs

The Commissioner for Hindu Religious and Charitable
Endowments, Administration Department

RESPONDENT

Date of Decision : 08-01-1979

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 63(b)

Citation : (1979) 2 MLJ 23

Hon'ble Judges : Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—The appeal is directed against Original Suit No. 111 of 1973 on the file of the Subordinate Judge of Chingleput, which is a suit to set aside the order of the Commissioner for Hindu Religious and Charitable Endowments, Madras dated 16th December, 1972 passed in A.P. No. 130 of 1972 and for a declaration that the plaintiffs are the hereditary-trustees of the suit temple. The following geneological tree Would be useful to appreciate the claims of the plaintiff. Roya Raddiar had two sons, Narayanan and Krishnan. Narayanan's son is Munuswami Reddiar, the second plaintiff. Krishnan's sons Doraiswami Reddiar is 3rd plaintiff and Murthy Reddiar is the 4th plaintiff.

2. There was another Vengu Pillai, who had four sons, Anguswamy, Kannaiah, Chinnaswami and Dorai Pillai the 9th plaintiff. Chinnaswami's sons are Ramachandra Pillai, Venkataramanujam Pillai and Chandrasekaran Pillai, Plaintiffs 6 to 8 respectively. Doraiswami Pillai is the 5th plaintiff. There two families claimed among themselves the hereditary trusteeship of the two temples Sri. Mariamman and Sri Pidari Ponniyamman, of Padi Village, Saidapet Taluk. The plaintiffs filed an application u/s 63 (b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter referred to as the Act) pressing their claim to the office of the hereditary trusteeship and that was dismissed. Thereupon an appeal was preferred to the Commissioner u/s 69 (1) of the Act. The Commissioner, by his order dated 16th December, 1972, dismissed the

appeal. Thus, the necessity for the suit.

3. The Commissioner, Hindu Religious and Charitable Endowments Department, in his written statement contended that no portion of the plaint allegation is admitted and he puts the plaintiffs to strict proof of their case that they are hereditary trustees of the suit temples. It was also claimed that they were never in possession and enjoyment of the suit temple. They being periathanakarars, they are the trustees of the temple but that would not mean that they are hereditary trustees.

The following issues were framed:

1. Whether the plaintiffs are the hereditary trustees of the suit temples ?
2. Whether the order of the Commissioner Hindu Religious and Charitable Endowments concerned, is liable to be set aside?
3. To what relief are the plaintiffs entitled?

4. On issue No. 1, the learned Subordinate-Judge, Chingleput, came to the conclusion that the plaintiffs happened to be trustees and Were exercising rights as such, because, they happened to be periathanakarars of the village, but that does not mean that their office could be characterised as hereditary within the meaning of Section 6, Clause (ii) of the Act. On issue No. 2, the learned Subordinate Judge held that the order of the Commissioner is not liable to be set aside, with the result, he dismissed the suit. Plaintiffs have come up to this Court by way of this appeal.

5. Mr. M. Srinivasan, learned Counsel for the appellants urges that in this case, there is no gainsaying that the two families of the plaintiffs alone have been exercising the rights as trustees right from 1865 and no other person had at any point of time caused any hindrance to the right nor that that was ever questioned. Having regard to the long usage of exercising the trusteeship it must be held that the plaintiffs have established their right as hereditary trustees. The finding of the learned Subordinate Judge that merely because none of the documents filed described the predecessors of the plaintiff as periathanakarar or adheenakarhar, their rights could not be characterised as hereditary trustees, is not correct. In support of his submission, the learned Counsel cited an unreported decision in O.S.A. No. 79 of 1951, of a Division Bench of this Court (1954) M.W.N. 141, wherein it was held that when the evidence showed that for a period of at least 70 years, there had been three trustees in the temple, one trustee from each of three families, this was sufficient to establish the hereditary right. Likewise in - V. Ramddos and two others v. K. Hariumantha Rao (1913) 21 M.L.J. 952 : ILR (1913) Mad. 364; Babu Gurukkal Vs. The Commissioner for Hindu Religious and Charitable Endowments Board, . The Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration) Department. Thanjavur and Another Vs. D. Rajagopala Ponnapoondar and Others, ; and Venkataraman v. L. A. Thangdppa (1972) 1 M.L.J. 325: 84 L.W.

695: AIR 1972 Had. 119, where for three generations the trusteeship remained in a family, it must be considered to be hereditary in that family.

6. Miss. N. Vimala, appearing for the Commissioner, Hindu Religious and Charitable Endowments, says that the first and foremost point to be considered is that if the trustees were really hereditary trustees of the temple, as rightly stated by the learned Subordinate Judge, in none of the documents, they were referred to as hereditary trustees. The failure to describe them as Adhinam or hereditary trustees, itself will show the hollowness of their claim.

7. Even otherwise, the earliest document is of the year 1865, i.e., Exhibit A-1. The next document Exhibit A-14 is of the year 1889. There is absolutely no link between the two. Therefore even from that point of view, the claim of the plaintiff cannot succeed. The cases cited do merely lay down the general proposition. But, here there is no evidence to show that the plaintiffs were exercising their rights as hereditary trustees.

8. The only point to be considered is whether the plaintiffs can be called hereditary trustees within the meaning of Section 6, Clause 11 of the Act.

9. The definition of hereditary trustees as contained in Section 6, Clause 11 is as follows:-

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.

Having regard to the comprehensive definition, it is enough if the usage is established for long number of years evidencing exercise of hereditary trusteeship of a particular temple or temples by members of a family. In the instant case, there is no gainsaying that it is the plaintiffs' family (Roya Reddiar's family and Vengu Pillai's family) alone exercise such right. There are very valuable documents like Exhibit A-1 and A. 14 etc. in which description is found that the predecessors of the plaintiffs are the trustees. It also requires to be noticed that no objection is taken to the geneological tree as cited above and the trusteeship ha been continuously exercised by the members of the plaintiffs' family without any objection or hindrance. Hence, it must certainly be held to be hereditary. The learned Subordinate Judge, Chengleput, in my opinion, erred in holding that because of the nondescription as "Parambarai" or "Adheenam" their claim cannot be confined within the four corners of Section 6, Clause 11. As I said above, hereditary trusteeship is not to be understood as from father to son and from son to his son. That is because the definition is very wide in its amplitude. The various documents which have been filed on the side of the plaintiff are all ante litem motem and from that point of view they are all of high evidentiary value. The argument of the learned Counsel for the respondent that there is no link between Exhibit A-1 and. Exhibit A-14 and that it is for the plaintiffs to produce series of documents for every year to prove their case

cannot be accepted. So long as these documents evidence transactions long before the suit, there can be no legal or valid objection for placing reliance upon the same. The judgments cited on the side of the plaintiffs" do support the contention that when a member of a particular family alone was exercising rights of trusteeship, it will fall under the category of hereditary trustee. Vide, the unreported decision in O. S.A. No. 79 of 1951 by a Division Bench of this Court (1951 M.W.N. (S.N.) pages exp. P. IX) and in all the three decisions in Babu Gurukkal Vs. The Commissioner for Hindu Religious and Charitable Endowments Board, , The Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration) Department. Thanjavur and Another Vs. D. Rajagopala Ponnappoondar and Others, , and Venkataraman Vs. L.A. Thangappa Gounder, this Court has taken the view, that when in respect of a temple for the past three generations the members of the family of a person had managed the affairs of the temple, it must be held that the trusteeship was hereditary in the family of that person. The above ratio clearly applies to this case.

10. In the result, the judgment and decree of the Subordinate Judge, Ghengleput are hereby set aside and the appeal is allowed. The suit is decreed as prayed for. However, there will be no order as to costs.