

(2008) 06 MAD CK 0042
In the Madras High Court
Case No : A.S. No. 847 of 1996

Ravi

APPELLANT

Vs

The Commissioner, H.R. and C.E., (Admn. Department) and
The Assistant Commissioner, H.R. and C.E., Department

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 22, 63, 64, 65, 67

Citation : (2008) 06 MAD CK 0042

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : Srinath Sridevan, for R. Ramesh, for the Appellant; M.R. Murugesan,
Spl. G.P for R1 and M.V. Krishnan, for R2, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This appeal has been preferred against the Judgment and Decree dated 28.06.1996 made in O.S. No. 152 of 1990 on

the file of the Principal Sub-Court, Nagapattinam, whereby the suit filed by the appellant, u/s 70(2) of the H.R. & C.E., Act was dismissed.

2. The appellant herein was the plaintiff before the trial court. He filed the suit, seeking a declaration that the plaintiff is the hereditary trustee of Sri

Mariamman Temple of Kundalur Village, Nanilam Taluk with its poojariship and all of its proprietary and other consequential relief. The suit was

resisted by the respondents herein as defendants. The trial court, after considering the oral and documentary evidence and the arguments advanced

by both sides, held that the appellant herein is not entitled to the relief sought for and accordingly, dismissed the suit. Aggrieved by which, this

appeal has been preferred.

3. It is not in dispute that Arulmigu Mariamman Temple, situated at Kundalur Village, Nanilam Taluk, within the jurisdiction of the Court below

was constructed nearly 150 years ago, prior to the date of filing of the suit. According to the appellant, his forefathers had built the temple,

performed Kumbabishekam and maintained the temple. The appellant and his forefathers had kept the temple under their lock and key and no one

in the village has claimed any proprietary or managerial interest in the temple. The temple owns about 64 cents of dry land, having coconut grow

planted nearby the temple.

4. In the written statement filed before the trial court by the respondents herein, the plea of the appellant that the temple had been constructed by

the forefathers of the appellant has been disputed. According to the respondents, the appellant cannot claim hereditary trusteeship. Since an

outsider, one Subramania Iyer had also endowed some properties to the temple, it cannot be a private temple of the appellant. As per the

document, the appellant and his ancestors were stated only as poojaris to the temple. In the written statement, it has been further stated that the

temple has some enam lands and some third persons have also endowed properties. As found by the trial court, the appellant and his great

grandfather could not speak about the construction of the temple. Further, it was contended that the suit filed u/s 70 of the H.R. & C.E., Act is

barred by limitation.

5. Based on the grounds of appeal and the impugned Judgment, points for determination arising in this appeal are framed as follows:

1. Whether the suit filed by the appellant was barred by limitation, as decided by the trial court ?

2. Whether the appellant has established that he is the hereditary trustee of the suit temple and as such entitled to declaration and other

consequential relief sought for in the suit ?

6. It is not in dispute that as per Section 70 of the H.R. & C.E., Act, being aggrieved by the order passed by the Commissioner, H.R & C.E., first

respondent could have instituted the Statutory Suit within 90 days from the date of receipt of the copy of the order. Section 70 of the H.R. & C.E.,

Act reads as follows:

70. Suits and appeals - (1) Any party aggrieved by an order passed by the Commissioner-

(i) under Sub-section (1) or Sub-section (2) of Section 69 and relating to any of the matters specified in Section 63, Section, 64 or Section 67; or

(ii) u/s 63, Section 64 or Section 67 read with Sub-section (1) (a), 2 or 4 (a) of Section 22 or u/s 65 may, within ninety days from the date of the

receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order, but it shall have no

power to stay the order of the Commissioner pending disposal of the suit.

(2) Any party aggrieved by a decree of the Court under Sub-section (1), may, within ninety days from the date of the decree, appeal to the High

Court.

7. It is an admitted fact that the Assistant Commissioner, H.R. & C.E., Nagapattinam, initiated proceedings in Rc. No. 4748/83, dated

06.04.1983 for appointment of non-hereditary trustee to the suit Mariamman Temple. Hence, Natesan Chettiar, had filed petition in O.A.32/83 on

the file of the Deputy Commissioner, Mayiladuthurai, u/s 63(b) of Tamil Nadu Act 22/58 to declare him as hereditary trustee of the temple.

According to the appellant, the said Natesan Chettiar is his Great grandfather. After enquiry, the Deputy Commissioner, H.R & C.E., held that

there is no proof to establish that the suit temple was managed by three generations of Natesan Chettiar. The petition filed u/s 63(b) was

accordingly dismissed on 27.12.1984. Aggrieved by which, Natesan Chettiar preferred an appeal before the first respondent in A.P.18/1988.

During the pendency of the appeal, Natesan Chettiar died and the plaintiff, who was then a minor, was brought on record, as per a Will, dated

22.06.1981, executed by Natesan Chettiar. The first respondent dismissed the appeal on 02.06.1990, after hearing both sides on merits.

Aggrieved by the order, the Statutory Suit u/s 70 of H.R. & C.E., Act was filed.

8. As per the impugned decree, it is seen that the suit was filed on 09.11.1990, though the order of the first respondent was passed on

02.06.1990. The appellant had filed copy application on 18.06.1990 and obtained certified copy on 02.07.1990 itself. Admittedly, the appellant

filed the suit only on 09.11.1990, though it could have been filed, as per Section 70 of the H.R. & C.E., Act, on or before 02.10.1990, within 90

days from the date of receipt of the copy of the order. The trial court, considering the aforesaid facts and circumstances, has held that the suit was barred by limitation.

9. Mr. Srinath Sridevan, learned Counsel appearing for the appellant contented that the appellant had to issue notice u/s 80 CPC, before filing the suit and it was given on 28.08.1990, under the original of Ex.A.6. He was waiting for two months for the reply and therefore, 60 days should be added with the period of 90 days limitation, prescribed u/s 70 of H.R. & C.E., Act. In support of his contention, the learned Counsel relied on the decision, T.P.K. Nair Vs. The Union of India (UOI) and Others, . The said decision is not related to a suit filed under the H.R. & C.E., Act.

10. Per contra, Mr. M.R.Murugesan, Special Government Pleader, H.R. & C.E., appearing for the first respondent contented that for a statutory suit filed u/s 70 of the H.R. & C.E., Act, no notice u/s 80 CPC is required as mandatory. Even if such notice is given, the suit could have been filed within 90 days, as per the said Act and hence, according to the respondents, the suit filed by the appellant after 90 days is barred by limitation. He further contended that the decision cited by the learned Counsel for the appellant is not applicable to the facts and circumstances of this case. He submitted that in the aforesaid decision, suit was filed by the appellant, claiming that he was entitled to provident fund and gratuity, making the Union of India, as one of the defendants in the suit. Since the Union of India was the party to the suit, Section 80 CPC was mandatory. In the instant case, no statutory notice u/s 80 CPC is mandatory, as the statutory suit was filed u/s 70 of the H.R. & C.E., Act.

11. Division Bench of this Court in Tholappa Iyengar etc., v. Executive Officer, Sri Kallalagar Devasthanam etc and 7 Ors. reported in 1993 (2) LW 537 has held that Notice u/s 80 C.P.C is not necessary for instituting a suit u/s 70 of the Act, seeking for a decree to set aside the order passed by the Commissioner or Deputy Commissioner, H.R. & C.E., wherein it has been made clear by this Court, that a statutory suit filed u/s 70 of the Act, cannot be equated to a suit filed against a public officer, for which notice u/s 80 C.P.C is a mandatory requirement. As such, provision of Section 80 C.P.C is not intended to be used as booby traps against illiterate persons, but are intended to advance justice, as ruled in the

decision reported in State of Gujarat Vs. Shantilal Mangaldas and Others, .

12. In the decision, National Coal Development Corporation Ltd. Vs. Union of India (UOI) and Another, , it has been held by Patna High Court,

that the period of notice issued u/s 80 C.P.C runs concurrently and therefore, there cannot be any further time after 90 days of limitation

prescribed under the Act.

13. In the light of the above decisions referred above, I am of the considered view that the notice u/s 80 CPC is not mandatory for filing a statutory

suit u/s 70 of the H.R. & C.E., Act. Even if such notice is sent, that will not extend the period of limitation prescribed u/s 70 of the H.R., C.E., Act.

It is not in dispute that the first respondent, Commissioner, H.R & C.E., Chennai had passed the order in A.P.18/88 on 02.06.1990. Though the

copy was received by the appellant on 02.07.1990, the suit was not filed within 90 days, since it was filed only on 09.11.1990. In the aforesaid

circumstances, I could find no error in the finding of the court below that the suit was barred by limitation, in view of Section 70 of the H.R. &

C.E., Act and I answer the first point for determination in this appeal against the appellant and in favour of the respondents.

14. In the plaint, the appellant / plaintiff has averred that the suit Mariamman Temple was constructed 150 years ago. There is no documentary

evidence to establish that the suit temple was constructed by the forefathers of the appellant, 150 years ago. The appellant, who was examined as

P.W.1 and other witnesses could not speak about the construction of the Mariamman Temple. The appellant has further stated that his forefathers

have done Kumbabishekam, for which except the oral testimony of the appellant, there is no documentary evidence available on record. It is a

settled proposition of law that the plaintiff, who claims the relief has to establish his case. However, there is no evidence available on record to

show that the temple was constructed by the forefathers of the appellant / plaintiff.

15. Mr. M.R.Murugesan, learned Special Government Pleader, H.R. & C.E., appearing for the first respondent drew the attention of this Court to

the evidence of the appellant's witnesses. P.W.2, who was examined on the side of the appellant has deposed in his cross-examination that the

temple festivals were being performed by all the villagers. He has further stated

that he did not know who constructed the temple. P.W.4 has admitted that he is a relative of the appellant, however, in his cross-examination, he has admitted that Kumbabishekam and other festivals of the temple were performed along with all the people of the village. P.W.5 has stated that the account books relating to the suit temple are with the village people and the temple functions and other decisions relating to the temple were being taken by the important persons of the village.

16. An Inspector of H.R. & C.E., of the Division was examined as D.W.1. According to him, Natesan Chettiar was only performing the poojas in the temple. As he had no supporting documents to establish that he was a hereditary trustee of the temple his claim was rejected by the first respondent herein.

17. The respondents have stated that one Subramaniya Iyer, a third party has also endowed some properties to the temple, the same was not disputed by the appellant. As per Ex.A.4, dated 11.08.1938, Subramniya Iyer, S/o Vengappa Iyer, endowed certain property to the Mariamman Temple. In the said gift settlement deed, Veerabadhra Chettiar has been stated as temporary manager and trustee of Sri Mariamman Temple and not a hereditary trustee, as alleged by the appellant.

18. Ex.A.1 is a registered Will, dated 13.02.1908, executed by one Mari Chettiyar S/o. Chidambaram Chettiar in favour of his brother's son, Veerabadhara Chettiar. In this document, he has stated that he bequeathed certain properties and pooja right of the Mariamman Temple (Pooja Pathiyam). In the said document, he has also stated about the 64 cents of land, dedicated to the temple. The income from the trees available in the land could be spent for maintaining the Mariamman Tempel and the coconut grow on the 64 cents of punja land was leased out under Exs.A.2 and A.3.

19. It is seen that Ex.A.5 is the certified copy of the order passed by the first respondent. The first respondent has held in the said order that V. Natesan Chettiar had filed application u/s 63 (b) of the H.R. & C.E., Act to declare him that he was holding the office as hereditary trustee of Arulmigu Mariamman Temple, Kundalur Village in Nanilam Taluk, Thanjavur District. Since he died on 05.12.1984, by virtue of the registered Will, dated 22.06.1981, executed by the said Natesan Chettiar, the appellant

herein was impleaded. However, there is no evidence to establish that the suit temple was constructed by the ancestors of the appellant, 150 years ago, as alleged by the appellant. As per the order, it has been held that in the Inam Fair Register extract (I.F.R), Chidambaram was the forefather of Natesan Chettiar, the petitioner in O.A.32/83. The Certified copy of the Inam Fair Register extract was not produced by the appellant therein. According to Col.14 of the I.F.R, it is stated as a Sarvamanyam"" land. In Col.16 and 17 of I.F.R, it is mentioned as Mariamman Temple at Kundalur and its worshipper one ""Chittambalam"". In Col.11, under the heading, by whom it was granted and in what year, it is stated as not known and therefore, the first respondent has held in the order, dated 02.06.1990 made in A.P.18/1988 that the temple was in existence even before the confirmation of grant. The grandfather of Natesan Chettiar was said to be Chidambaram Chettiar, though as per the I.F.R, one Chittambalam Chettiar is mentioned as worshipper and as per the documents marked only performance of pooja was done by Veerabadhra Chettiar, which was bequeathed under a Will and in lieu of that, the lands were being enjoyed by the aforesaid person.

20. In the decision, Venkataraman Vs. L.A. Thangappa Gounder, , this Court has held that there is nothing illegal in the hereditary poojariship and the trusteeship vesting with the same person, since the temples therein were small temples, having a meagre income. As contended by Mr. Srinath Sridevan, learned Counsel for the appellant, if there is a small temple, one may be a hereditary trustee, as well as poojari of the temple, for which there is no statutory bar. In the instant case, it is not in dispute that the appellant and his ancestors were performing the poojas, but to consider them as hereditary trustees of the suit temple, there is no legally acceptable evidence, as held by the court below.

21. The evidence both oral and documentary available on record would clearly show that the appellant has not established that the suit temple had been built up 150 years ago by his forefathers. It has been established that as per Ex.A.4, one Subramaniya Iyer, a stranger had also endowed certain properties to the temple. Even the appellant's witnesses have categorically stated that Kumbabishekam and other festivals of the temple are being conducted by all the people of the village and the account books, relating

to the temple are with the village people. It has been admitted by the appellant's witnesses that the decisions regarding the temple are being taken by the important persons of the village. In such circumstances, I am of the view that the appellant is not entitled to declare him as hereditary trustee of the temple u/s 63 (b) of the H.R. & C.E., Act and answer the second point for determination in this appeal against the appellant and in favour of the respondents.

22. The appellant has established that his ancestors were performing only poojas to the temple. The document marked as Ex.A.4, on the side of the appellant would clearly show that Subramaniya Iyer, a stranger had also made some endowment in favour of the temple. The evidence of the appellant's witnesses, as discussed earlier would show that all the village people are collectively performing Kumbabishekam and other festivals of the temple and further, the plea of the appellant that the temple was constructed 150 years ago by his ancestors has not been established by the appellant. In such circumstances, I could find no error or infirmity in the impugned Judgment and Decree, rejecting the claim of the appellant, to declare him as hereditary trustee of the suit temple. Hence, the appeal fails.

23. In the result, confirming the Judgment and Decree passed by the court below, the appeal is dismissed. However, there is no order as to costs.