

(2011) 04 MAD CK 0398
In the Madras High Court
Case No : A.S. No. 683 of 2009

The Commissioner and The Deputy Commissioner both Hindu Religious and Charitable Endowments Administration Department APPELLANT

Vs

P.K. Doraisamy RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 45(1), 6(11), 6(11), 6(9), 63

Citation : (2011) 04 MAD CK 0398

Hon'ble Judges : T. Mathivanan, J

Bench : Single Bench

Advocate : T. Chandrasekaran, Spl. G.P, for the Appellant; W.C. Thiruvengadam, for the Respondent

Final Decision : Dismissed

Judgement

T. Mathivanan, J.—Challenge is made in this appeal, to the judgment and Decree dated 23.04.2008 and made in O.S. No. 998 of 1988, on the file of the First Additional Subordinate Judge, Coimbatore by the Defendants.

2. The brief facts for the disposal of the appeal may be summarised as follows:

The original legal characters of the parties to the suit may not be changed and be it as it is in the suit.

The Plaintiff has filed the suit u/s 70(1) of the Hindu Religious and Charitable Endowments Act 1959 (Tamil Nadu Act XXII of 1959).

The Plaintiff is holding office as Hereditary Trustee in Sri Vinayakar Temple situated at Eachanari Village, Coimbatore Taluk and District under Sections 6(11) and 63(b) of the Act XXII of 1959. The idol in question was brought from Madurai to Perur for installation and while transporting the idol, the hand-cart was broken and the idol of Vinayakar had fallen in sitting posture. The villagers made an

attempt to lift the idol, but they could not do so and with the result, the idol was temporarily installed and worship commenced.

3. The Plaintiff's grandfather had taken interest in the installation of the idol and protected the same by erecting a thatched shed and made it for public worship. Till his death, he was looking after the day-to-day affairs of the temple as Founder-cum-Hereditary Trusee. Thereupon, the Plaintiff's father Krishnaswamy Gounder had succeeded the office of hereditary trusteeship in the temple and continued to hold office as hereditary trustee till his death. After the death of the said Krishnaswamy Gounder, the Plaintiff, being his son, has succeeded to the office of hereditary trusteeship in the temple and has been in active management till date. Thus, it is clear that the office of the trusteeship in the temple in question has always been vested in the family of the Plaintiff and his ancestors, in an unbroken line of succession from father to son. No one outside the family of the Plaintiff has ever functioned as trustee in the temple, and that the office of trusteeship is always hereditary in the family of the Plaintiff within the meaning of Sections 6 (11) and 63 (b) of the Act XXII of 1959.

4. The Plaintiff, though holding office as hereditary trustee, got himself appointed as a trustee at the hands of the Hindu Religious and Charitable Endowments Department, on one or two occasions, during the tiruppani work in the temple. It has been held by the High Court of Judicature at Madras that getting appointment as trustee under the Act XXII of 1959, cannot and will not take away the rights of a person, who has been holding the office as hereditary trustee in religious institution.

5. The Hindu Religious and Charitable Endowments Department has also appointed an executive officer for the temple u/s 45(1) of the Act, which was also accepted by the hereditary trustee in office, without any hindrance to his office. For the purpose of obtaining statutory declaration u/s 63(b) of the Act, the Plaintiff had filed an original application in O.A. No. 1 of 1981 on the file of the Deputy Commissioner, Hindu Religious and Charitable Endowments Administration Department, Coimbatore claiming the office of the trusteeship is hereditary within the meaning of Sections 6(11) and 63(b) of the Act. This application was dismissed on 30.04.1985 on an erroneous application of law and facts.

6. Challenging the order of dismissal, the Plaintiff had preferred a statutory appeal u/s 69(1) of the Act XXII of 1959 in Appeal No. 40 of 1985 on the file of the Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras, which was also dismissed on an erroneous application of law on 11.07.1988. Against the said order, the Plaintiff has filed the statutory suit u/s 70(1) of the Act XXII of 1959.

7. The Defendants have contended in their written statement that the Petitioner had submitted in his petition filed before the Deputy Commissioner on 26.12.1980 that the institution was an ancient one. At the time of trial in O.A.

No. 1 of 1981 before the Deputy Commissioner, Coimbatore the Plaintiff had deposed that the idol of Vinayagar was brought from Madurai for being installed at Perur about 150 years ago and while transporting the idol to Perur, all of a sudden the hand-cart in which it was brought, was broken and that the said Vinayagar idol had fallen in sitting posture at the place, where the idol had now been installed. There is no evidence as to show who had transported the idol from Madurai and who was responsible for the installation of the idol at the site.

8. The Plaintiff had also stated in his deposition before the Deputy Commissioner in O.A. No. 1 of 1981 that his father Krishnasami Gounder and one Nachimuthu Gounder had made arrangements for the poojas prior to 1967. He had also stated that his father Krishnasami Gounder died in the year 1946. When his father was alive Nachimuthu Gounder took interest in the affairs of the temple and that the Plaintiff took part in the administration of temple from 1962. He had also mentioned the names of Ramasami Gounder, his son Palani Gounder, Kuppanda Gounder, then his son Krishnasami Gounder, Nachimuthu Gounder as persons, who were in management of the suit temple and in view of this the claim of the Plaintiff cannot be admitted.

9. It is admitted that the tiruppani committee was formed, in which the Plaintiff was appointed as Vice-President. The Plaintiff never held the office as hereditary trustee at any point of time.

10. Since the Plaintiff had not produced any legal evidence to substantiate his claim, his petition in O.A. No. 1 of 1981 was dismissed on 30.04.1985 by the second Defendant. Consequently, his appeal in A. No. 40 of 1985 was also dismissed by the first Defendant on 11.07.1988 after careful scrutiny of the materials available on record as the Plaintiff had failed to produce acceptable legal evidence to establish his claim.

11. Tiruppani works were completed only with the funds collected from the public. The Plaintiff had advanced money for the tiruppani and reimbursed it later. He had not produced any account to verify the correctness of the fact that the Plaintiff had spent huge amount from his personal funds. The person, who renovated the temple through public funds cannot be declared as hereditary trustee or the founder of the temple.

12. The Plaintiff's association with the temple, only through renovation work and this was consequent on his nomination as an office bearer of the tiruppani committee. His connection with the administration of the temple began only when he was appointed as non hereditary trustee under the provisions of the Act.

13. The Tiruppani committee was constituted in the year 1967 by an order of the Assistant Commissioner, Coimbatore constituting N. Mahalingam of Pollachi as Chairman. Due to non-functioning of the committee the tiruppani committee had passed a resolution on 13.01.1968 in Resolution No. 6 entrusting the tiruppani work to the Plaintiff in his capacity as Vice-President and Treasurer of the committee and not as a hereditary trustee of the temple. The period of

trusteeship automatically expires after three years from the date of his appointment. Hence, the Plaintiff is not entitled to be declared as hereditary trustee as defined u/s 6(11) or 63(b) of the Act.

14. Based on the pleadings of the parties to the suit, the trial Court had formulated the following issues:

1. Whether the Plaintiff is the hereditary trustee of Eachanari Vinayagar Temple?
2. Whether the Order passed by the first Defendant is erroneous and liable to be set aside?
3. Whether the Plaintiff is entitled to a decree as prayed for?
4. To what relief the Plaintiff is entitled?

15. In order to establish their respective cases, the parties to the suit went on trial. The Plaintiff was examined as PW1 and one Aruchami was examined as PW2 and during the course of their examination Exs.A1 to A45 were marked. On the other hand, one K. Venugopal was examined on behalf of the Defendants as DW1 and during the course of his examination Exs.B1 to B4 were marked.

16. On assessing the evidences both oral and documentary and on considering the related materials available on record, the trial Court has dismissed the suit on the ground that the Plaintiff is not entitled to get any relief. Challenging the judgment and decree dated 13.11.1996 the Plaintiff had preferred an appeal in A.S. No. 4 of 1997 before this Court u/s 70(2) of the Hindu Religious and Charitable Endowments Act (Act 22 of 1959).

17. On hearing both sides and on appreciating oral and documentary evidences, this Court had found that

it is clear that even after the appointment of trustee by the Respondents, he can claim hereditary trusteeship, if he is entitled to claim such right, based on the evidence. In the instant case, it is clear that the Appellant is continuously performing his services to the Temple, since 1951, as per the evidence available on record. However, this Court is of the view that there is insufficient evidence from both sides to decide the issues involved in this appeal.

18. With the above finding, this Court had allowed the appeal on 25.01.2008 and consequently the judgment and Decree passed by the trial Court were also set aside and the suit was remitted back to the trial Court for fresh disposal. Further, the trial Court was also directed to provide reasonable opportunity to both sides to adduce further evidence, both oral and documentary and dispose the same in accordance with the law, independently based on the evidence, within three months from the date of receipt of the copy of the judgment. With regard to the administration of the temple, it was ordered that the status-quo should be maintained till then.

19. In pursuant to the Order of this Court, one Palanisamy Gounder was

examined as PW3 on behalf of the Plaintiff and during the course of his examination Exs.A46 to A49 were marked in addition to the exhibits, which were marked already during the time of original trial. No additional evidence was adduced on behalf of the Defendants. On evaluating the evidences and on considering the relevant facts and circumstances, the trial Court had decreed the suit as prayed for by the Plaintiff.

20. Challenging the correctness of the judgment and decree dated 23.04.2008 and made in O.S. No. 998 of 1988, the Defendants 1 and 2 have approached this Court by way of this appeal u/s 70(2) of the Hindu Religious and Charitable Endowments Act (Act 22 of 1959).

21. Section 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 defines the term hereditary trustee in the following manner:

Section 6(11) "Hereditary trustee" means the trustee of a religious institution, the 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.

22. Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 contemplates that if any dispute arose in respect of a religious institution, trusteeship, the property of religious institution or any property or money related to specific endowment, Joint Commissioner or the Deputy Commissioner is empowered to decide those disputes and matters.

23. For better appreciation of the present case on hand it may be relevant to extract the proviso to Section 63 of the of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters. Subject to the rights of suit or appeal hereinafter provided the Joint Commissioner or the Deputy Commissioner, as the case may be shall have power to inquire into and decide the following disputes and matters:

Section 63(b) reads as follows:

Section 63(b) whether a trustee holds or held office as a hereditary trustee;

24. The case of the Plaintiff is that the Plaintiff's grandfather Kuppanda Gounder had taken interest in the installation of the idol and protected the same by erecting a thatched shed and made it for public worship. He was looking after the day-to-day affairs of the temple as Founder-cum-Hereditary Trustee and looked after the Management till his death died. Thereafter, the Plaintiff's father Krishnaswamy Gounder had succeeded the office of the hereditary trusteeship in the temple and continued to hold office as hereditary trustee in the temple till his death and after his death the Plaintiff being his son has succeeded to the office of the hereditary trusteeship in the temple and that he has been in active management till date.

25. It is also the case of the Plaintiff that the trusteeship in the temple in question has always been vested in the family of the Plaintiff and his ancestors, in an unbroken line of succession from father to son and that no one outside the family of the Plaintiff has ever functioned as trustee in the temple and that the office of trusteeship is always hereditary in the family of the Plaintiff within the meaning of Sections 6(11) and 63(B) of the Act XXII of 1959.

26. Since the institution, which is in question has been attracting huge devotees and getting a good income, the hereditary trustee of the temple is solely responsible for the development. The Hindu Religious and Charitable Endowments Department has also appointed an Executive Officer for the temple u/s 45(1) of the Act, which was also accepted by the hereditary trustee in office, without any hindrance to his office and therefore only for the purpose of getting statutory declaration u/s 63(b) of the Act, the Plaintiff had filed an application in O.A. No. 1 of 1981 before the second Defendant Deputy Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Coimbatore claiming the office of trusteeship is hereditary. That application in O.A. No. 1 of 1981 was dismissed on 30.04.1985 on the ground that the Petitioner had not proved his case of hereditary trusteeship by producing available documents to infer about the correctness of the statement. The said order has been marked as Ex.A44.

27. Challenging the order of the second Defendant the Plaintiff had preferred a statutory appeal in A.P. No. 40 of 1985 before the first Defendant. That appeal was also dismissed on 13.07.1988 on the ground that no documentary evidence was produced to show as to who was the founder of the temple. It is also found that even according to the deposition of the Appellant before the Deputy Commissioner, the Vinayagar Idol was worshipped by all at initial stage and he did not say as to who had installed the Idol and who was responsible for the Idol at the site.

28. While dismissing the appeal, the first Defendant had also found that the Plaintiff was appointed as non-hereditary trustee in the year 1972 and again in the year 1975. He was further appointed in the year 1979 along with four others. Further, the first Defendant had also found that the Plaintiff was appointed as fit person to discharge the functioning of the board of trustees and that the temple, which was already in existence was renovated by the tiruppani committee by collecting donations. Therefore, the Plaintiff's association with the temple renovation work was inconsequence of his nomination for a tiruppani committee. He was included in the administration of temple because he was appointed as non-hereditary trustee under the provisions of the Act. He had also found that to acquire any right of the trusteeship there is procedure in office by means of any document. Ultimately, the statutory appeal was dismissed on 11.07.1988 and the said order was marked as Ex.A45.

29. Being aggrieved by the order of the Commissioner dated 07.11.1988 the Plaintiff filed the suit u/s 70(1) of the Hindu Religious and Charitable Endowments Act. Since the suit was decreed after its remittance the Defendants

being the Commissioner as well as the Deputy Commissioner of the Hindu Religious and Charitable Endowments Department are now before this Court with this appeal u/s 70(2) of the Hindu Religious and Charitable Endowments Act.

30. The learned Special Government Pleader appearing for the Appellants has submitted that neither the father of the Plaintiff nor the grandfather had established and maintained the temple. He has also contended that the Plaintiff was appointed as vice-president during the year 1967 and prior to 1967 he had visited the temple only as worshipper and that would not give any right to claim as the hereditary trustee of the temple.

31. Further, the learned Special Government Pleader has added that the claim of the Plaintiff has not supported by any documentary evidence and that the judgment of the trial Court is liable to be set aside.

32. While advancing his arguments, he has also made reference to Exs.A4 and A5 and maintained that both the Commissioner as well as the Deputy Commissioner had categorically dismissed the claim of the Plaintiff and that the trial Court ought to have appreciated the findings of the Commissioner as well as the Deputy Commissioner and the suit also ought to have been dismissed, but, unfortunately the suit had been decreed without any legal evidence.

33. He would submit further that having brought the suit as contemplated u/s 70(1) of the Act, it is the bounden duty of the Plaintiff to prove his case that the trusteeship of the religious institution was vested in his family hereditarily as defined u/s 6(11) of the Act, but, he had miserably failed to substantiate his case.

34. On the other hand, Mr. W.C. Thiruvengadam, learned Counsel appearing for the Respondent has submitted that after remitting back the suit so as to enable the parties to adduce additional oral and documentary evidences one Palanisamy Gounder was examined as PW3 and Exs.A46 to A49 were marked through him and neither oral nor any documentary evidence was adduced in addition on the side of the Appellants.

35. The learned Counsel has also submitted that after delving deep of the evidences of the Plaintiff as well as the Defendants, the trial court had concluded that through the oral evidence of P.W.3 as well as the documentary evidences under Exs.A46 to A49, the Plaintiff had proved the facts that the Idol of the Vinayagar temple at Echanari Village was installed by the grandfather of the Plaintiff viz. Kuppanda Gounder and thereafter the Plaintiff's father was in the administration of his temple as hereditary trustee and after the death of the father, the Plaintiff had now entered in the administration of the temple in the capacity of hereditary trustee.

36. Further, the learned Counsel has also argued that it was admitted by both parties that the temple in dispute was an ancient temple. No contra evidence was adduced on behalf of the Appellants/Defendants to disprove the claim of the Respondent/Plaintiff. Further, the learned Counsel has also argued that since the

temple in dispute was an ancient temple certain documents were not able to be preserved by the Plaintiff.

37. In support of the claim of the Plaintiff, the learned Counsel has placed reliance upon the decision in *Madana Palo v. H.R.E. Board Madras* reported in 46 L.W.787. In this case, the scope and application of Section 9(5) of the Madras Hindu Religious Endowments Act (old Act) has been explained and held that where the management of a temple has been exclusively in the hands of a family for four successive generations, the office of the trustee being held by the head of the family for the time being, the only conclusion possible is that that family possesses the hereditary right of appointing the trustee of the temple which means that the temple is an excepted temple within the meaning of Section 9(5) of the Madras Hindu Religious Endowments Act.

38. Further, the learned Counsel has also placed reliance upon the decision in *Babu Gurukkal Vs. The Commissioner for Hindu Religious and Charitable Endowments Board*, . In this case, it is observed that small temples in South India often have only poojaris who by long custom or usage, look after the affairs of the temples where they serve as gurukkals; they function in a dual capacity, namely poojari-cum-trustee. Such a combination of offices is not necessarily opposed to public policy or contrary to law. In the case of such small temples, there is a presumption that the pujari himself is the hereditary trustee and there is nothing illegal in the hereditary trusteeship and poojariship being combined in the same person in such small temples. When the documentary evidence including the Inam Register shows that for more than three generations the poojariship-cum-trusteeship in a temple was in the same family and descended from father to son and there is no evidence to show that this was not so or could not be so, the presumption is all the greater, and it must be held that the members of the family are hereditary trustees of the temple.

39. On coming to the instant case on hand, the Plaintiff's grandfather Kuppanda Gounder had installed the Vinayagar Idol and protected the same by erecting the thatched shed and made it for public worship and that was also looking after the day-to-day affairs of the temple as Founder-cum-Hereditary Trustee and looked after the management till his death and thereafter the Plaintiff's father Krishnaswamy Gounder had succeeded the office of the hereditary trusteeship and continued to hold office as hereditary trustee in the temple till his death and after his demise the Plaintiff being his son had succeeded to the office of the hereditary trusteeship. According to the case of the Plaintiff he has been in active management till date and that the office of trusteeship in the temple in question has always been vested in the family of the Plaintiff and his ancestors in an unbroken line of succession from father to son as decided in the above cited decision.

40. Further, the learned Counsel has also submitted that the definition of hereditary trustee as contemplated u/s 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act is very wide in its amplitude. Hereditary is not to

be understood as from father to son or son to his son. Having regard to the comprehensive definition, it is enough if a usage is established for a long number of years evidencing exercise of hereditary trusteeship of a particular temple or temples by members of a family. In support of his contention, he has placed reliance upon the decision in *Ranganatha Pillai and Others Vs. The Commissioner for Hindu Religious and Charitable Endowments, Administration Department*, .

41. In *Sambudamurthi Mudaliar v. State of Madras and Anr.* reported in 1970 (2) MLJ 58, it is held that it is not the case of the Appellant that the trustees of the temple of the Kumaran Koil are hereditary trustees because their office devolves by hereditary right or because succession to that office is specifically provided for by the founder. The contention is that the succession is "regulated by usage". It was said that according to the usage of the temple the trustees were elected for a period of one year each at a meeting of the members of the Senguntha Mudaliar Community and so the Appellant must be held to be a hereditary trustee within the meaning of Section 6(9). There is no warrant for this argument. The phrase "regulated by usage" in Section 6(9) must be construed along with the phrase "succession to whose office" and when so construed that part of the definition would only apply where the ordinary rules of succession under the Hindu law are modified by usage and succession has to be determined in accordance with the modified rules. The word "succession" in relation to property and rights and interests in property generally implies "passing of an interest from one person to another".

42. It should be noted that u/s 6(11) of the Hindu Religious and Charitable Endowments Act (XXII of 1959), the trustee of a religious institution, the succession to whose office is regulated by usage, is a hereditary trustee. The Plaintiff claims in the present suit on hand that he had succeeded to the office of hereditary trusteeship in the temple after the death of his father Krishnaswamy Gounder and that the office of the trusteeship in the temple in question has always been vested in the family of the Plaintiff and his ancestors, is an unbroken line of succession from father to son and therefore his hereditary trusteeship in respect of the temple in question has to be declared as rightly decided by the trial court. In support of his contention, the learned Counsel has also placed reliance upon the decision in *The Deputy Commissioner for Hindu Religious and Charitable Endowment Board and Others Vs. K. Sidhdhivinayaga Mudaliar*, .

43. Further, the learned Counsel has also placed reliance upon the decision in *The Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration) Department v. D. Rajagopala Ponnappoondar* reported in 1984 L.W. 764. In this case it is held that the devolution of the office of trusteeship for generations from son to grandson is no doubt prima facie evidence that the office devolves by succession according to the laws of inheritance. So also the fact that members of a particular family held the office Dharmakarthas continuously for more than a century and there was assertion by them that it was hereditary

would be good evidence that the office is hereditary.

44. Besides the above, the learned Counsel has also placed reliance upon the following decisions to fortify his argument. The decision enumerated hereunder are found on the same line of the decision cited supra and therefore they do not require elaborate discussion:

1. S. Subramania Pillai v. Trustees Temple Group reported in 77 LW 198,
2. Chettimal C. Nanjappa Chettiar v. S.K. Kuppuswami Chettiar reported in 1985 (1) MLJ 165,
3. Tholappa Iyengar alias Alagar Iyengar v. The Executive Officer Sri Kallagar Devasthanam etc and 7 Ors. reported in 1993 2 L.W. 37,
4. Devaki v. The Hindu Religious and Charitable Endowments Department etc. and Ors. reported in 1997 1 L.W. 42,
5. The Commissioner, H.R. and C.E. v. T.S. Palanichamy reported in 2003 (1) CTC 65,
6. The Commissioner H.R. and C.E. v. Senthamarai Kannan (died) and Ors. reported in 2004 2 L.W. 695
7. C. Nallasivan Pillai v. The Commissioner, Hindu Religious and Charitable Endowments Admn. Dept. Madras and Anr. reported in 2005 (2) TLNJ 375.

45. On coming to the instant case on hand, on the basis of the additional oral evidence of PW3 and documentary evidences under Exs.A46 to A49, which were marked through PW3 and on analysing the evidences of PW1 and PW2 and other documents, the trial court has unambiguously found that the Respondent/Plaintiff is hereditary trustee of the temple in question and that the orders of the first and second Respondent and made in O.A. No. 1 of 1981 and A.P. No. 40 of 1985 have to be set aside. This Court has also endorsed the conclusion of the trial court as it is found to be unassailable.

46. Keeping in view of the above observation and on appreciation of oral and documentary evidences adduced on behalf of both sides, this Court is of the view that this appeal is liable to be dismissed.

47. In the result, this appeal is dismissed and the judgment and Decree dated 23.04.2008 and made in O.S. No. 998 of 1988, on the file of the learned First Additional Subordinate Judge, Coimbatore is confirmed. No costs.