
(1975) 07 MAD CK 0008
In the Madras High Court

The Commissioner for Hindu Religious and Charitable
Endowments

APPELLANT

Vs

The Maligai and Shop Varthagar Sangam and Others

RESPONDENT

Date of Decision : 31-07-1975

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 70

Citation : AIR 1976 Mad 67 : (1976) 89 LW 256 : (1976) 1 MLJ 17

Hon'ble Judges : M.M. Ismail, J

Bench : Single Bench

Judgement

M.M. Ismail, J.—The third defendant in O.S.No. 24 of 1963 on the file of the Court of the Subordinate Judge of Salem is the appellant

herein and the appeal lies in a very narrow compass even though much judicial time has been spent on matters which are not strictly relevant for the

resolution of the controversy raised before the trial Court. The acts which are admitted or established by the evidence and which are not disputed

before me are as follows: From time immemorial there had been a temple for Sri Gana Dhandayuthapaniswamy situated in the hillock called

Kariaperumal Karadu, situated in Nethiedu, a suburb of Salem. The temple became a dilapidated one and its renovation was done about 50 years

back by the brother of P.W. 1, one Nagappa Chettiar. From 1924 onwards there had been a sangam called The Maligai and Shop Varthagar

Sangam, Shevapat. The said Nagappa Chettiar, was the moving spirit behind this Sangam. For the purpose of renovating the temple in question, he

spent considerable moneys of his own and he also collected donations from others. In addition to renovating the temple, a site was purchased from

the Municipality whereon buildings were constructed for the purpose of deriving

income for the maintenance of the temple. The Sangam which was an unregistered body came to be registered under the Societies Registration Act, in 1957. When the Area Committee functioning under the Hindu Religious and Charitable Endowments Act, 1951, took steps for appointment of non-hereditary trustees for the temple in question, the Sangam filed an application, namely O.A.No. 125 of 1958, before the Deputy Commissioner, Hindu Religious and Charitable Endowments to set aside the appointment of the Area Committee and for declaring it as hereditary trustees, of the temple in question. That petition was dismissed and the appeal preferred by the Sangam against that order was also dismissed, and thereafter the present suit was instituted u/s 70 of the Hindu Religious and Charitable Endowments Act, 1959 for setting aside the order of the Commissioner confirming the order of the Deputy Commissioner, and for declaring the first respondent as hereditary trustee of the temple.

2. The suit was resisted by the appellant herein as well as the non-hereditary trustee appointed for the temple by the authorities functioning under the Act. Though several questions as to who effected renovation, whether the first respondent Sangam was functioning throughout at all and whether it managed the temple have been considered, I am of opinion that a finding on all these question is not strictly relevant for the disposal of the appeal in view of the statutory definition of the term "hereditary trustee". Section 8(11) of the Hindu Religious and Charitable Endowments

Act, 1959, defines the expression "hereditary trustee" as meaning:

a 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.

The term "trustee" has been defined in Section 6(22) of the same Act as meaning:

any person or body by whatever designation known in whom or in which the administration of a religious institution is vested, and includes any

person or body who or which is liable as if such person or body were a trustee.

It is in the light of these definitions. The question has to be considered whether the first respondent herein can be said to be a hereditary trustee of

the temple in question. For the purpose of deciding this controversy, I am assuming that the first respondent herein renovated the temple and was in

management of the temple. As a matter of fact, the learned Subordinate Judge in paragraph 17 of the judgment states that the Sangam had been managing the temple for the past about 33 years prior to the suit. In fact, this statement of the learned trial Judge cannot be strictly correct. As I pointed out already, the Sangam was registered under the Societies Registration Act, in, the year 1957, even though the unregistered body might have been in management prior to that date. Notwithstanding this assumption, still the question is whether the first respondent Sangam can be said to be a hereditary trustee within the statutory definition. I am clearly of the opinion that it cannot be called a hereditary trustee. From the definition of the term "hereditary trustee" contained in Section 6(11) of the Act, it is clear that three possibilities are contemplated. The first is, the succession to the office of the trusteeship must devolve by hereditary right; the second is, the succession to the office of trusteeship must be regulated by usage; and the third is, the succession to the office of trusteeship must be specifically provided for by the founder. The common feature to all these three situations is that there is a succession to the office of trustee-ship. As far as the present case is concerned, from the very nature of the case the first respondent could not claim that the succession to the office of trusteeship devolved on it by hereditary right. Equally, since the temple was an ancient temple and it is not known who founded the temple, and all that the first respondent could claim was that it renovated the temple, the third contingency contemplated also does not arise in the present case because there is nothing to show that succession to the office of trusteeship was specifically provided for by the founder. Therefore, if at all, the first respondent could claim to come within the scope of the second contingency enumerated by me already, namely, the succession to the office of trusteeship is regulated by usage. In this case, there is absolutely no evidence as to who was the trustee before the Sangam took over the renovation work and therefore the first respondent Sangam itself is not in a position to say that it succeeded to the office of the trusteeship by a particular method or manner. As far as the Sangam itself is concerned, it is still in existence and it is in management of the trust property and therefore there is no question yet of the succession to the office of trusteeship being regulated by usage. The "usage" can have relevancy, meaning and significance only if a particular method of succession has been proved to be in

existence over a long period during which more than one succession had been taken place. In this case, as I pointed out already, all that has been established is that the first respondent Sangam, before its registration, having renovated the temple, continues to be in management of the temple even after the registration. From this alone it is not possible to hold that the succession to the office of trusteeship is regulated by usage, and by such usage the first respondent Sangam has become the trustee and therefore it is the hereditary trustee of the temple in question. In view of this conclusion of mine it is immaterial whether the first respondent was a registered body or an individual because the definition of the term "trustee" also included a body. of persons, but so far as the present case is concerned, even on the basis that a body can be hereditary trustee, still the crucial requirement, namely that the succession to the office of the trusteeship must be regulated by usage, has not been established in the present case. In view of this the first respondent Sangam cannot be said to be a hereditary trustee of the suit temple within the meaning of that expression occurring in Section 8(11) of the Act, and consequently the first respondent was not entitled to the declaration it prayed for. Unfortunately, the learned Subordinate Judge has not borne this aspect in mind. In paragraph 17 of his judgment he has considered this question and appears to have proceeded merely on the basis of equitable considerations without reference to the statutory provisions themselves. In that paragraph, the learned trial judge extracted the definition of the term "hereditary trustee" occurring in Section 6(11) of the Act and also stated that it could not be said, that the office of trusteeship devolves by hereditary right in this case and that the founder of the suit temple was not known and so there was no provision by any founder for succession to the office of trusteeship. Notwithstanding this conclusion, he proceeded to state:

But it can be said that in the present case, the right to the office of trusteeship is regulated by usage, because for a very long period of 33 years the plaintiff Sangam through its Office bearers has been managing the affairs of the suit temple. As mentioned earlier when the suit temple was in a ruined condition, uncared for by anybody, the plaintiff, Sangam had taken the pains of renovating it and had provided a permanent source of income for the upkeep of the suit temple by purchasing a site and by constructing buildings thereon and utilising the rental income therefrom for that

purpose. There is no evidence on record to show if the suit temple has any other source of income excepting, the buildings put upon through the efforts of the plaintiff Sangam, in the site purchased from the Municipality. Even the third parties who had provided some buildings in that site purchased from the Municipality had left them with the plaintiff Sangam to utilise the income therefrom for the upkeep of the suit temple which is evidenced by Exhibits A-134 and A-135. Therefore it is just and equitable that the plaintiff Sangam should be recognised, as the hereditary trustee of the suit temple, in the interest of the suit temple.

Thus it is clear that the learned trial Judge proceeded merely on the basis of equitable consideration, but I am of the opinion that such consideration are foreign to the scope of the suit because it is a statutory one instituted u/s 70 of the Act XXII of 1959 for the purpose of setting aside the order dated 7th September, 1967, in Hindu Religious and Charitable Endowments. Appeal No. 6 of 1962 passed by the trial Judge exercising the powers of the Commissioner and for declaring the Sangam as the "hereditary trustee" of Sri Gnana Dhandayuthapani Temple within the scope of the expression contained in the Act itself. In these circumstances the conclusion of the trial Court cannot be sustained and the appeal is therefore allowed and the judgment and decree of the learned subordinate Judge are set aside and the suit instituted by the first respondent will stand dismissed.

3. Having regard to the fact that the first respondent Sangam had taken the pains of renovating the temple and had provided a permanent source of income for the upkeep of the suit temple by purchasing a site and by constructing buildings thereon and managing the temple without any complaint, I think this is a fit and proper case in which I should direct the parties to bear their respective costs both in this Court as well as in the trial Court.