

(2001) 08 MAD CK 0014

In the Madras High Court

Case No : Appeal Suit No. 340 of 1984

The Commissioner, Hindu Religious and Charitable
Endowment Department, Madras-34

APPELLANT

Vs

Kumaraperamal Nadar (died), A. Santhyanam (R.2 brought
has been brought on record as the L.R. of the deceased sole
respondent, as per order of this court dated 2.4.1996 in
C.M.P. No. 2762 to 2764 of 1996)

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Citation : (2001) 08 MAD CK 0014

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

**Advocate : Sugumaran, Special G.P, for the Appellant; T.M. Hariharan, for the
Respondent**

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—This appeal suit is directed against the judgment and decree dated 30.01.1982 rendered in O.S. No. 73 of 1981 by the

Court of Subordinate Judge, Tenkasi, thereby declaring that the plaintiff is the present hereditary trustee of the suit temple, subject to the domain of

the H.R. & C.E. Department and further ordering the parties to bear their own costs, in a suit filed by the first respondent/individual praying to

modify the order of the Commissioner, H.R. & C.E. Department, Madras in A.P. No. 14 of 1980 to the effect that all the members of Nadar

Uravinmurai of Arunachalapuram are the hereditary trustees of the suit temple and that the plaintiff being a member of the said Uravinmurai is also a

heredity trustee of the suit temple and that he manages the same as the Nattanmai. The plaint averments are that the suit temple, viz., Sri

Krishnasami temple, in the hamlet of Arunachalapuram, belongs to the Hindu Nadar Community of Ariyanayagipuram village and the plaintiff being

the member of the said community, is its Nattanmai and it is the entire community, through the plaintiff, managing and their forefathers the temple,

having built the Mani Mandapam and had exercised control for over three generations. It is further averred that the H.R. & C.E. Department has

been, for some times, attempted to interfere with the possession and management of the temple by the plaintiffs community, which led to the filing

of a petition in O.A. No. 34 of 1978 by the plaintiff u/s 63(a) and (b) of the Hindu Religious and Charitable Endowment Act (hereinafter referred

to as "the Act"), before the Deputy Commissioner, Tirunelveli, to declare that the suit temple is a private temple and to recognise the Hindu Nadar

Community of Arunachalapuram as the hereditary trustees of the temple; that since at a later stage, the plaintiff gave up his claim u/s 63 (a) of the

Act and insisted only the relief prayed for u/s 63 (b) of the Act, the same was dismissed, leading to the appeal in A.P. No. 14 of 1980, before

the Commissioner, H.R & C.E. Department and the same also having come to be dismissed by the Commissioner, the plaintiff has come forward

to file the statutory suit u/s 70 of the Act, to modify the order of the Commissioner as aforesaid; that it is the plaintiff's community people who have

been managing the suit temple all along appointing the trustees among themselves, and hence the dismissal of the appeal by the Commissioner is

unjust and irregular, and therefore, to modify the same to the extent of declaring the plaintiff as the trustee of the suit temple.

2. On the part of the defendant/ Commissioner, in his written statement, he would allege that the suit is barred u/s 108 of the Act, and therefore,

the suit is not maintainable; that inter alia, the order passed in A.P. No. 14 of 1980 has been done properly and it requires no modification as

claimed in the suit. Further disputing that the suit temple is the plaintiffs exclusive temple, suggesting private character for the same, the defendant

would ultimately pray to dismiss the suit with costs.

3. Based on these pleadings by parties, the trial Court would frame five issues, viz., (i) whether the order passed in A.P.14 of 1980 is liable to be

modified?, (ii) whether the suit temple is the exclusive temple of Hindu Nadars of Arunachalapuram?, (iii) whether the suit is barred u/s 108 of Act

22 of 1959?, (iv) whether the suit is not maintainable?, (v) to what relief, the plaintiff is entitled? and has conducted trial into the facts and

circumstances encircling the whole case, in which, on the part of the plaintiff, one witness would be examined for oral evidence, but no witness

would be examined on the part of the defendant. So far as the documentary evidence is concerned, the plaintiff would mark 18 documents, in

support of his case, as Exs.A.1 to A.18. Exs.A.1 to A.14 being the receipts for the payment of electricity charges issued in favour, of the plaintiff,

ranging from the year 1974 to 1980. Exs.A.15 and A.16 are the registered gift deeds respectively dated 14.12.1925 and 1.12.1932 for the values

of Rs. 100/= and Rs. 50/= Ex.A.17 dated 31.1.1950 is the registered sale deed for Rs. 50/= and Ex.A.18 dated 31.1.1981 is the order in A.P.

No. 14 of 1980. On the part of the defendant, three documents would be marked as Exs.B.1 being the file relating to O.A.34 of 1978, Ex.B.2

being the counterfoil covering the period from 1.9.1969 to 1.3.1979 and Ex.B.3 dated 14.6.1979 is the list of articles belonging to the temple.

4. The trial Court, in due consideration of the facts and circumstances relating to the suit as put forth by parties, having regard to the evidence

placed on record and appreciating the same in the manner required by law, and having its own discussions on them adhering to the issues framed,

would ultimately arrive at the conclusion to decree the suit to the extent extracted supra, thus declaring that the plaintiff is the hereditary trustee of

the suit temple, subject to the domain of the H.R. & C.E. Department and requiring the parties to bear their own costs. Aggrieved, the

defendant/Commissioner has come forward to prefer the above appeal suit, on grounds such as (i) that the suit is barred u/s 108 of the Act and the

lower court ought to have dismissed the suit on that ground; (ii) that having found that the plaintiff himself has given up the claim u/s 63(a) of the

Act, the Subordinate Judge ought to have dismissed the other claim that the plaintiff is the hereditary trustee of the suit temple; (iii) that the trial

Court has not properly appreciated the evidence of C.W.1 in O.A.34 of 1978 and (iv) the trial Court has failed to see that the judgment reported

in 1975 II MLJ 178 is not applicable to the facts of the case, thus praying to set aside the Judgment and decree passed by the lower Court.

5. During arguments, the learned Special Government Pleader appearing on behalf of the appellant, besides tracing the history of the case to the

effect that the suit temple had been built by one Arumuga Nadar, claim to be the grandfather of the plaintiff and he was to founder trustee of the

same and thereafter, the plaintiffs father Shankara Nadar was managing the temple as the hereditary trustee of the same and now the plaintiff

claiming that he is the "Nattanmai" of the Hindu Nadar Community and that himself and the management electing such men as trustees among the

members of the community have been managing the entire affairs of the temple and its properties and the land measuring 535 acres endowed by

plaintiffs father and the other belongings that the Nadar Community has contributed; that the accounts have been audited by the Department; that

the Department has further appointed 3 persons on 11.9.1973 as the trustees of the temple; that when this is the case, the plaintiff had filed

OA.34/78, praying for reliefs both u/s 63 (a) and (b) of the Act, for declaration that the suit temple is the private temple of the Hindu Nadar

Community, represented by the plaintiff and that the plaintiff, as the Nattanmai of the entire community, is the hereditary trustee of the said temple

and the same having been dismissed by the Deputy Commissioner, H.R. & C.E. Department, the appeal u/s 69 of the Act in A.P. No. 14/80 had

been preferred before the Commissioner, H.R. & C.E., the defendant in the suit and he dismissed the same on 31.1.1981, as a result of which, the

plaintiff has come forward to file the statutory suit u/s 70 of the Act, praying for modification of the order.

6. The learned Special Government Pleader would further extract certain points from the evidence and would submit that there is no sufficient

evidence let in on the part of the respondent to the minimum requirement of the proof that he is the descendant of the founder trustee, that though

the respondent claims to be the hereditary trustee, he did not choose himself to be examined as a witness and the person who has been examined

as P.W.1, does not even know as to who was the founder trustee of the temple, that. There is absolutely no evidence placed as to how the

founder trustee's successors were managing the suit temple and how the present plaintiff came to act as the hereditary trustee; that no genealogical

tree has been attached to the plaint; that the learned Special Government Pleader would submit that it is a denomination temple and the plaintiff

refraining to adduce evidence, the suit suffers from absence of the best of evidence available. Commenting on Exs. A.15 and A.16, the two

registered gift deeds, the learned Special Government Pleader would say that they are all in the name of the temple with no independent document

denoting the founder who is to manage the temple and further who is to manage the temple after himself, etc., that the list of successors-in-office to

the founder trustee should have been maintained, which is not seen to have been taken care of regarding the affairs of the suit temple; that in such

lacuna that prevails, the plaintiff has come forward with the suit and the same has been decreed to an extent in an erroneous manner and without

sufficient evidence placed in support of the case of the plaintiff. On such arguments, the learned Special Government Pleader would ultimately pray

to allow the appeal setting aside the judgment and decree of the lower Court.

7. In reply, the learned counsel appearing on behalf of the respondent would, at the outset, consider the entire arguments advanced on the part of

the learned Special Government Pleader to be faulty; that there is no denying of the fact on the part of the appellant that the temple is belonging to

the Hindu Nadar Uravinmurai Community of Arunachalapuram and the same has been properly pleaded in the suit; that in spite of the entire file

belonging to the Department having been placed, the learned Special Government Pleader has failed to note that the plaintiff has been examined by

the Deputy Commissioner and cross examined by the other side and his evidence has been recorded and the same forms part of the file marked as

Ex.B.1 i.e. connected to O.A.34/78 on the file of the Deputy Commissioner, H.R. & C.E. Department, Tirunelveli and in spite of such glaring

evidence made available by the Department itself, the learned Special Government Pleader has come forward to depose to the effect that the

plaintiff has not examined himself as a witness.

8. The learned counsel would further submit that it is categorically admitted that the report submitted by the Inspector, H.R. & C.E. Department is

in favour of the plaintiff. Extracting certain passages from the materials placed on record, the learned counsel would ultimately cite from a judgment

delivered in Ramaswami Iyer v. Commissioner, H.R. & C.E. reported in 1975 (II) MLJ 178 = 88 L.W. 801 wherein it is held that there is nothing

in the definition of the word "trustee", which would deprive a body of persons of their right to trusteeship merely because that body is likely to

fluctuate from time to time. The learned counsel relying on the above proposition

of law, would submit that the lower Court is right in holding that the plaintiff is the hereditary trustee, and therefore, the interference sought to made is unwarranted in the circumstances of the case.

9. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, the only point that arises for determination in the above appeal suit is, whether the judgment and decree as passed by the trial Court in O.S. No. 73 of 1981 on its file could be sustained or does it require any interference by this Court?

10. A careful study made into the judgment of the lower Court would reveal that the trial Court has not only considered and properly traced the facts and circumstances of the entire case as pleaded by parties, but also framing proper issues, would answer that the suit is not barred u/s 108 of the Act, but would hold that it is maintainable since it is a statutory suit filed u/s 70 of the Act as against the order passed by the Commissioner on appeal, and therefore, there is absolutely no necessity to entertain the least doubt thus answering issue No. 3 in favour of the plaintiff regarding the maintainability of the suit.

11. The lower Court would also deal with the main aspect of the case pertaining to the order passed in A.P. No. 14 of 1980 by the appellant/defendant, and in consideration of the evidence placed on record and applying the same to the facts pleaded as extracted supra, the lower Court would find that the plaintiff's community people have been managing the affairs of the temple as the trustees as has been spoken about not merely by P.W.1 in this case, but also in the previous proceeding in O.A.34 of 1978 before the Deputy Commissioner, H.R. & C.E. as a whole as evidenced by Ex.B.1 file, wherein the plaintiff has examined himself as P.W.1 and the Village Munsif as P.W.2 who is belonging to a different community and both these versions would unequivocally show that the community people have been managing and administering the affairs of the temple, as its trustees and even the enquiry held by the Inspector, H.R. & C.E. Department, had revealed that only the members of the plaintiffs community were managing and administering the affairs of the suit temple, which is revealed from the examination of the very Inspector, viz., Viswanathan as C.W.1 in the O.A. proceedings, and therefore, in

the absence of any evidence adduced contra to the pleadings of the plaintiff to the effect that the temple has been managed throughout by the Hindu Nadar Community of the village Arunachalapuram, and citing the judgment reported in 1975 (II) MLJ 178 = 88 L.W. 801 (supra), the lower Court would arrive at the final conclusion to hold that the trusteeship devolved on the heirs of the founder trustee as the hereditary trustee and since there is nothing in the definition of the word "trustee" to deprive a body of persons of their right of trusteeship merely because the body is likely to fluctuate, and hence holding that the Hindu Nadar Uravinmurai of Arunachalapuram are the members of the hereditary trustee within the ambit of the decision cited above.

12. The lower Court, at the same time, would also go into the question as to whether the temple is within the domain of the control of H.R. & C.E.

Department or not and assessing that the plaintiffs themselves have given up their claim of declaration to the effect that the temple is a private

temple and no longer any emphasis has been made or evidence placed on record, or even by the learned counsel appearing on their behalf to the

extent of declaration that the suit temple is the private temple, and therefore, would hold that the hereditary trusteeship of the Community people of

Hindu Nadar Uravinmurai Community of Arunachalapuram does not take away the domain of the H.R. & C.E. Department from having control

over the suit temple and answering the issues in the said manner, thus decreeing the suit to a limited extent of declaring that the plaintiffs are the

present hereditary trustee of the suit temple, subject to the domain of the H.R. & C.E. Department, further requiring parties to bear their own

costs. Absolutely, no inconsistency or infirmity is found not only in the conclusions arrived at by the lower Court, but also the manner in which the

conclusions have been arrived at, following the procedures established by law and with due opportunity for the parties to be heard and

appreciating the evidence in the manner required by law in the context of the facts pleaded by parties, and since no patent error or perversity in

approach has crept in to the judgment and decree passed by the lower Court, this court is of the firm view that the interference sought for on the

part of the appellant to be made into the well considered and well merited judgment of the lower Court, is not only unnecessary, but also uncalled

for as well. The point is answered accordingly.

In result, the above appeal suit is without merit and the same is. dismissed. The judgment and decree dated 30.01.1982 rendered in O.S. No. 73

of 1981 by the Court of Subordinate Judge, Thenkasi, is hereby confirmed.

However, in the circumstances of the case there shall be no order as to costs.