
(2001) 09 MAD CK 0141
In the Madras High Court
Case No : L.P.A. No. 83 of 1996

The Commissioner, Hindu Religious and Charitable
Endowments (Administration) Department, Nungambakkam
High Road, Madras-600 034 and Others

APPELLANT

Vs

Srimathi and Another

RESPONDENT

Date of Decision : 22-09-2001

Acts Referred:

Evidence Act, 1872 — Section 13, 3, 32(5)

Citation : (2001) 09 MAD CK 0141

Hon'ble Judges : P. Shanmugam, J;A.K. Rajan, J

Bench : Division Bench

Advocate : R. Swaminathan and S.T.S. Moorthy, Special G.P. C.S, for the
Appellant; J. Anandavalli for M.A. Kumaragurubaran, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan. J.

1. This Letters Patent Appeal is against the judgment of the learned single Judge in A. S. No. 157 of 1983.

2. The respondents herein are the legal heirs of the plaintiff in O.S. No. 158 of 1980 on the file of the Subordinate Judge, Tiruvannamalai. The plaintiff in that suit claimed that he was the trustee of Gopal Pillaiyar Temple, Tiruvannamalai. He filed an application before the Deputy Commissioner, Hindu Religious and Charitable Endowments Department in O.A. 53 of 1977 claiming that he was the hereditary trustee of the temple. His claim was rejected by the Deputy Commissioner; against that, he filed an appeal in A. P. No. 172 of 1978 before the Commissioner, H.R.& C.E; that appeal was also dismissed. Thereafter, he filed statutory suit in O.S. No. 158 of 1980 before the Subordinate Judge, Tiruvannamalai to set aside the order passed by the Commissioner as well as the Deputy Commissioner and to declare that the plaintiff the hereditary trustee of the suit temple and for further direction.

3. The case of the plaintiff is that he is the hereditary trustee of Gopal Pillaiyar Temple; the revenue records show that his ancestors were recognised as trustees; in the Jnam Fair Register, the plaintiffs ancestors were shown as the trustees of the temple. But the case of H.R.& C.E. is that the plaintiff is not a hereditary trustee; his forefathers had never been hereditary trustees of the temple. During the pendency of the suit, the plaintiff Chandrasekara Gurukkal died. Therefore, his legal representatives were brought on record. Learned Subordinate Judge, Tiruvannamalai dismissed the suit. The legal representatives filed Appeal Suit No. 157 of 1983 in this Court. The learned single Judge of this Court has allowed the appeal and decreed the suit as prayed for. Against that judgment passed by the learned single Judge, this present letters Patent Appeal has been filed.

4. Counsel for the appellants argued that the case of the plaintiff is that his forefathers were the hereditary trustees from time immemorial. But there is no evidence on record to prove that. The counsel further argued that when a person claims as lineal descendant relying upon a genealogy, the genealogy should be strictly proved. In support of that, he relied upon the decision of the Supreme Court reported in State of Bihar Vs. Radha Krishna Singh and Others, wherein the Supreme Court has held as follows:

"before going to the oral, documentary and circumstantial evidence, it may be necessary to state the well established principles in the light of which we have to decide the conflicting claims of the parties. It appears that the plaintiff's genealogy is the very fabric and foundation of the edifice on which is built the plaintiff's case. This is the starting point of the case of the plaintiff which has been hotly contested by the appellant. In such cases, as there is a tendency on the part of an interested person or a party in order to grab, establish or prove an alleged claim, to concoct, fabricate or procure false genealogy to suit their ends, the Courts in relying on the genealogy put forward must guard themselves against falling into the trap laid by a series of documents or a labyrinth of seemingly old genealogies to support their rival claims.

The principles governing such cases may be summarised thus:

(1) Genealogies admitted or proved to be old and relied on in previous cases are doubtless relevant and in some cases may even be conclusive of the facts proved but there are several considerations which must be kept in mind by the Courts before accepting or relying on the genealogies:

(a) Source of the genealogy and its dependability.

(b) Admissibility of the genealogy under the Evidence Act.

(c) A proper use of the said genealogies in decisions or judgments on which reliance is placed.

(d) Age of genealogies.

(e) Litigations where such genealogies have been accepted or rejected.

(2) On the question of admissibility the following tests must be adopted:

(a.) The genealogies of the families concerned must fall within the four corners of Section 32(5) or Section 13 of the Evidence Act.

(b.) They must not be hit by the doctrine of post litem motam.

(c.) The genealogies or the claims cannot be proved by recitals, depositions or facts narrated in the judgment which have been held by a long course of decisions to be inadmissible.

(d.) Where genealogy is proved by oral evidence, the said evidence must clearly show special means of knowledge disclosing the exact source, time and the circumstances under which the knowledge is acquired, and this must be clearly and conclusively proved.

Applying the above principles to this case, the counsel for the appellants argued that the genealogy as claimed by the plaintiff is not proved. Further, the copy of the Inam Fair Register extract refers the plaintiffs "ancestors" only as "worshippers; worshipper" is not a trustee. Further, the Inam Fair Register does not refer to the alleged ancestors as trustees; nor there is any evidence to show that the trusteeship was succeeded hereditarily. There is absolutely no evidence to prove that the trusteeship was succeeded hereditarily. Therefore, the plaintiff has not proved his case.

5. Counsel for the appellants argued that this conclusion of the learned Judge is not acceptable because the term, "worshipper" does not mean and include the right of management. Therefore, the judgment of the learned single Judge is to be set aside.

6. Counsel for the respondents argued that admittedly, the appellants' forefathers were archakas. D.W.I was also an archaka is admitted. In the Inam Fair Register, the name of the father of the plaintiff has been wrongly stated inadvertently. In Exs. A.3 and A.6, the property for the temple stands in the name of the respondents herein.

7. Counsel for the respondents further argued that in small temples, in the office of Poojari, trusteeship is also combined. In support of that argument, he relies upon the judgment in Muthuswami Gurukkal v. Aiyaswaxmi Thevar, 1964 (77) LW 129, the Division Bench has held as follows:

"In the case of small village temples where the temple property is of insignificant value and the income is hardly sufficient even to meet the routine expenses of the temple, if the archaka or the pujari is left in the management"of the temple lands and the affairs of the temple, without any interference by any of the villagers for a long number of years, it must be presumed that with the consent and acquiescence of the worshippers of the village, the pujari is the trustee as well. In our parts, it is frequently found that the office of archaka and a manager

of trustee are found united in the same person, that is the archaka."

This is a small temple and therefore, the poojariship also includes the trusteeship and therefore, the plaintiff has proved that he was the hereditary trustee and therefore, this appeal is to be dismissed.

8. The Subordinate Judge has categorically stated in the judgment in O.S. No. 158 of 1980 in paragraph-23 as follows:

That is, the Subordinate Judge has stated that the plaintiff has not proved that his ancestors were hereditary trustees. There is evidence only to show that they were archakas of the temple. There is no documentary evidence. They have not filed any genealogy and proved that they are the hereditary trustees. There is absolutely no evidence to prove that for three generations and they were continuing as hereditary trustees. But the learned single Judge had set aside this judgment on the following ground:

"Therefore, I am of opinion that the use of the word, "worshipper" cannot be meant to hold that it was not for the proper administration of the temple. We have to see the entire document under Exs. A.4 and A.5. It goes to show that the proper performance of Pooja and for the proper maintenance of the administration of the temple alone, the Inam should have been granted. Admittedly by the defendants, the plaintiffs predecessor's forefathers have been acting as Poojaries for more than 200 years. Therefore, the remaining part of the word, "worship" viz., for proper administration of the temple and its management can only be to the trustee. Therefore, rejection of the Inam Fair Register as not supporting the plaintiffs claim that the plaintiffs predecessors have been acting as trustees, is not on sound grounds.

The learned single Judge has held that the reference of the plaintiffs forefathers as worshippers in the Inam Fair Register means that they were managing the affairs of the temple and therefore, they were to be construed as trustees.

9. In Ex.A.3, copy of the Inam Fair Register issued by the Inam Commissioner in the year 1862, the title had been granted to the "Manager for the time being of the Pagoda of Gopala Pillaiyar." It is also proved that this Pagoda Inam, i.e., the temple inam is situated in Tiruvannamalai. As per Ex. A.5, the proceedings of Settlement Tahsildar dated 12.9.1969, was communicated to Chandrasekara Gurukkal, son of Natesa Gurukkal. According to the genealogy claimed by the plaintiff, Chandrasekara Gurukkal's father's name is Ramalinga Gurukkal. Therefore, the genealogy as claimed is not proved by the plaintiff.

10. Further, in Ex. A.6, paragraph-3 reads as follows:

"Chandrasekara Gurukkal examined as P.W.I stated that he is in occupation of S. No. 59/5 with kudiwaram rights to rendering the services in Sri Gopal Pillayar temple in Tiruvannamalai. He is requested patta in his name on condition of continuing the service.

In another order dated 13.9.1969, both warams are owned by the temple and the temple was issued patta and nobody was entitled to ryotwari patta. Document No.7 is the patta. The patta for land in S. No. 59/5, stands in the name of the plaintiff whereas S. Nos. 250/1 and 250/3, the patta has been given to Sri Gopal Pillaiyar Koil Dharmakartha. Therefore, from these documents, Exs. A.3, A.6, A.7 and A.8 it is seen that the plaintiff was only a Service Inam Holder. He did not claim as a trustee before the Settlement Tahsildar in the year 1969. Further, his father's name has been referred as Natesa Gurukkal. Now he claims that he is the son of Ramalinga Gurukkal. According to the respondents, the father's name has been wrongly given. Whatever that be, admittedly he claimed only as a Service Inam Holder in the year 1969 before the Settlement Tahsildar. He also got ryotwari patta in respect of one portion of the land. He never claimed as a hereditary trustee in the year 1969. Therefore, there is absolutely no evidence to show that the plaintiff is a hereditary trustee. Ex. A.4 the Inam Register extract shows that the property was owned by Gopal Pillaiyar at Tiruvannamalai; worshipper is shown as Sambasiva Gurukkal. It does not refer Sambasiva Gurukkal as trustee. It appears he is represented before the Inam Registrar on behalf of the temple as a worshipper. The worshipper by no stretch of imagination can be considered as a trustee or a manager. He is just like any other person who comes to worship. Ex. A.4 does not improve the case of the plaintiff. All the other documents filed by the plaintiff are only kist receipts which are not germane to the issue before this Court.

11. Therefore, from the documentary evidence available in this case, plaintiffs ancestor Sambasiva Gurukkal was only a worshipper. But the plaintiff claims that his brother's name is Sambasiva Gurukkal. In the plaint averment it is stated his brother Sambasiva Gurukkal died 15 years ago. Hence in the year 1971, his brother could not have represented. The plaintiff also claims that his great grandfather was Sambasiva Gurukkal. That is not proved by genealogy. Ex. A.4, dated 4.4.1971, is the copy of Inam Register given by the Collector of North Arcot District and the name found in that is, Sambasiva Gurukkal. From these documents, the appellants did not prove the averment in the plaint. There is no other document to prove the claim of the plaintiff.

12. The tower Court has held that the evidence shows that the plaintiff is an archaka and not a trustee. It is true that in small village temples, the office of the trusteeship is also included in the office of the archakas. But on the evidence available in this case, especially from Ex.A.5, the plaintiff was only a poojari and he claimed only as Service Inamdar. Therefore, in the year 1969, the claim of the plaintiff was that he was only a Service Inam Holder. Admittedly, the plaintiff did not claim that he was a trustee in the year 1969. A trustee can never be a Service Inam Holder. Service Inamdar and Trusteeship are mutually exclusive. Therefore, the present claim that he is a hereditary trustee is only an afterthought. There is absolutely no evidence to prove that he is the hereditary trustee.

13. Further, Ex. B.4, a hand bill of the year 1976, in connection with celebration of 4th Vinayaka Chathurthy festival shows that the festival was conducted by a group of worshippers; there is no mention about any trustee. That shows there was no trustee to the temple.

14. Hence, the judgment of the learned single Judge holding that he is the hereditary trustee is not sustainable. Hence, it is liable to be set aside and the judgment of the Subordinate Judge is to be restored.

15. In the result, this L.P.A. is allowed. The judgment of the learned single Judge in A.S. No. 157 of 1983 is set aside. Consequently, judgment in O.S. No. 158 of 1980 is restored.