
(1970) 03 MAD CK 0020
In the Madras High Court

The Deputy Commissioner for Hindu Religious and Charitable
Endowment Board and Others

APPELLANT

Vs

K. Sidhdhivinayaga Mudaliar

RESPONDENT

Date of Decision : 18-03-1970

Acts Referred:

Citation : (1971) ILR (Mad) 588 : (1970) 83 LW 720 : (1971) 1 MLJ 422

Hon'ble Judges : R. Sadasivam, J

Bench : Division Bench

Judgement

R. Sadasivam, J.—Appeal by the defendants in O.S. No. 46 of 1961 on the file of the Subordinate Judge's Court. Nagapattinam, against the decree and judgment of the learned Subordinate Judge of Nagapattinam upholding the claim of the respondent-plaintiff K. Sidhdhivinayaga Mudaliar that he is the hereditary trustee of the temples of Sri Venugopalaswami and Sri Ramaswamiperumal at Madapuram, hereinafter referred to as the suit temples, and setting aside the order of the Commissioner for Hindu Religious and Charitable Endowments Board, Madras, confirming the order of the Deputy Commissioner for the Hindu Religious and Charitable Endowments Board, Thanjavur.

2. The several prior proceedings with regard to the suit temples are relevant in deciding the claim of the respondent-plaintiff. The suit temples are ancient temples. It appears from the order, Exhibit A-5 that the earliest document in which the suit temples find a place is the Paimash Account for fasli 1239, which contains an entry showing that the suit temples must have been in existence even prior to fasli 1216, corresponding to the year 1805. The defendants relied on Exhibits B-1 to B-14, which are cash security bonds and muchilikas executed in favour of the East India Co., and the Collector of Thanjavur in respect of the temple properties between the years 1831 to 1926. The plaintiff has also filed the lease deeds Exhibits A-11 to A-16 executed between the years 1831 to 1905 in favour of Viswanathan Chettiar and the succeeding trustees of the suit temples in respect of the lands belonging to the temples. Exhibit A-1 is the will

executed by Viswanathan Chettiar on 20th January, 1885, in which he has claimed that he is the hereditary trustee of the suit temples and he has appointed Sabapathy Mudaliar as the person who should succeed him as the trustee. Exhibit A-2 is the trust appointment deed dated 19th July, 1897, executed by Kanakasabai and Somasundar a, two of the sons of Sabapathi Mudaliar along with one Narayanaswami Pillai, who got the trusteeship right under a document from Dakshinamurthi Mudaliar, the third son of Sabapathi Mudaliar. Under this document, one Bava Krishnaswami Mudaliar was appointed as the Adhina Parambarai Dharmakartha. Exhibit A-18 is a registration copy of the trust appointments deed executed on 14th May, 1900 by Bava Krishnaswami Mudaliar in respect of the management of the suit temples. Bava Krishnaswami Mudaliar has mentioned in that document as to how he got the trusteeship and he has provided for a scheme of succession. He has appointed Sabapathi Mudaliar and Shanmugha Mudaliar, the Nattamaikars of Sengunthar Community of Madapuram, to succeed him as trustees and further provided that thereafter the trustees shall be appointed; by the Nattamaikars of Sengunthar community. It is clear from the oral and documentary evidence in this case that from 1900 onwards the Nattamaikars of Sengunthar community alone have been the trustees of the suit temples and this is made clear even in the order Exhibit A-5. The plaintiff Sidhdivinayaga Mudaliar is the present Nattamaikar of Sengunthar community and he claims to be the hereditary trustee of the suit temples.

3. The several documents produced by the plaintiff show that the trustees of the suit temples have been styled as Adhina Parambari trustees. Thus in the lease deed Exhibit A-11 of the year 1866, Viswanathan Chettiar has described himself as Adhina Dharmakartha of the suit temples. We have already referred to the will Exhibit A-1 of, Viswanathan Chettiar, in which he has asserted that he is the hereditary trustee of the suit temples by stating that he is the Adhina Dharmakartha of the suit temples. In *S. Appasami v. Nagappa* I.L.R.(1894) Mad. 499 a Bench of this Court has observed that when the trusteeship is hereditary, it is ordinarily described in Southern India as Adhina and the trustee as Adhina Dharmakartha. In *Ganapathi Iyer's Law relating to Hindu and Mahomedan Endowments*, 2nd Edn. p. 472, the above decision is relied on as authority for the position that in Southern India where the trusteeship is hereditary the trustee is ordinarily described in public and other documents as Adhina Dharmakartha. The plaintiff has alleged in the plaint that the suit temples are ancient temples called Adhina temples meaning that trusteeship thereof was hereditary and was regulated by usage within the meaning of Hindu Religious and Charitable Endowments Act.

4. The defendants relied on the fact that in several proceedings the Government did not recognise the hereditary trusteeship in the suit temples. The question whether the suit temples are excepted temples came up for consideration in O.A. No. 84 of 1926 on the file of the Hindu Religious Endowments Board and the Board passed the order Exhibit A-5 recognising the suit temples¹ as excepted temples. A brief history of the temples is found in that order. Regarding the

muchilikas obtained by the Government, it was held in that order that it could be attributed to the general power of superintendence exercised by the Government over all classes of temples irrespective of the fact whether trustees were hereditary or not. It is clear from the order that though the Nagapattinam temple Committee prepared a register in 1868 in respect of temples which came under its control in pursuance of Act (XX of 1863) and the suit temples were included in the register, the Committee did not exercise any control over them. The suit temples were in the management of one Viswanathan Chettiar till his death in 1885 and the said Viswanathan Chettiar claimed to be the hereditary trustee of the suit temples. The order Exhibit A-5 refers to the attempted exercise of the right of control by the temple Committee by appointing trustees for the suit temples in 1914. But this resulted in proceedings u/s 145, Criminal Procedure Code. The order Exhibit A-3 passed by the Joint Magistrate ended in favour of Ramaswami Mudaliar, who claimed to be the trustee of Sri Venugopalaswami temple as Nattamaikar of Sengunthar community. Exhibit A-3 shows that though this temple was handed over after 1963 to the Tanjore Devasthanam Committee by the Board of Revenue, the Committee did not exercise any control over it. It is clear from the order Exhibit A-5 that the suit temples were not subject to the control of the Committee. It was held in that order that the right of nomination to trusteeship did not depend upon the Government. This order Exhibit A-5 was passed u/s 80 of the Madras Hindu Religious and Charitable Endowments Act (I of 1925) which provided that:

If any dispute arises as to whether the math or temple is one to which this Act applies or as to whether a temple is an excepted temple, such dispute shall be decided by the Board.

5. Under Clause (2) of Section 80, the decision is final subject to the result of any suit that may be filed in a civil Court within one year. But the definition of an excepted temple in Clause (5) and that of a hereditary trustee in Clause (6) of Section 5 of Act (I of 1925), differ considerably from the definitions of those terms in the subsequent Acts. u/s 5 (5) of Act (I of 1925), excepted temple means:

(a) a temple which before 1801, was, and since 1863 has continued to be, under the sole management of a trustee whose nomination did not vest in, nor was exercised, by the Government or of any public officer, or

(b) a temple founded since 1842, the right of succession to the office of a trustee whereof is "hereditary or specially provided for by the founder.

6. u/s 5(6) a hereditary trustee has been defined as follows:

Hereditary trustee means the trustee of a religious endowment, succession to whose office devolves by hereditary right or by nomination by the trustee for the time being, or is otherwise regulated by usage or is specially provided for by the founder, so long as such scheme of succession is in force.

7. In *N.K.R.M. Rajagopala Chettiar Vs. Hindu Religious Endowment Board and Others*, it has been held that where the question of the status of the temple is raised by the trustee for the purpose of getting the decision of the Board, there is a dispute which the Board is competent to decide u/s 14(1) of the Madras Hindu Religious Endowments Act, 1927, that if the Board decides that the temple was an excepted temple according to the law then prevailing and the trustee being satisfied with this decision no application is made to the Court to set aside or modify the Board's order, the order of the Board becomes final and that the Board has no jurisdiction to reverse its order after the amendment of the definition of excepted temple in 1930. But in the subsequent Full Bench decision in *The Board of Commissioners for the Hindu Religious Endowments Vs. P.V.R. Ratnasami Pillai and Others*, the above decision was overruled. It has been held by the Full Bench that a decision by the Endowments Board in 1927, that the temple in question was an excepted temple within the meaning of the definition of that expression as it stood in the Hindu Religious Endowments Act of 1927, does not preclude the Board from subsequently holding after the Amending Act of 1930, came into force that under the new definition of that expression in the 1930 Act, it is not an excepted temple. It is pointed out in the decision that there is no scope for the application of the rule against retrospective operation because there is really no question of any interference with a vested right or impairing obligations which have come into existence under a previous state of the law, but only a grouping of temples in one manner at a particular stage of legislation and in a different manner at a later stage of legislation. It is also pointed out in the decision that the finality attaching to a decision of the Board by Section 34 of Act (II of 1927), can only have relation to the definition then obtaining and not to a later legislative variation of the definition.

8. The question for consideration in this case is whether the plaintiff is a hereditary trustee as defined in Section 6(11) of the Madras Hindu Religious and Charitable Endowments Act (XXII of 1959), which is as follows:

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.

9. Though the order Exhibit A-5 is not conclusive on the question it is relevant as one recognising the hereditary right to trusteeship put forward in 1926 by the then trustee of the said temples.

10. The learned Subordinate Judge has found that the evidence in this case established beyond doubt that the plaintiff is the hereditary trustee by usage as laid down in Section 5(11) of Madras Act (XXII of 1959). The reason for the above decision is obvious as it is not the plaintiff's case that the founder of the suit temples specifically provided for a scheme of succession of trusteeship in the suit temples, and there is no claim that the trusteeship devolved by virtue of any

particular hereditary right. The main difficulty in this case is that the usage by which the Nattamaikars of the Sengunthar community became entitled to be trustees of the suit temples started only in 1900. The question is whether such a usage is of sufficient antiquity and has been acquiesced in for a sufficiently long period. The learned Subordinate Judge has relied on the decision in *Palaniandi Thevan v. Puthirangonda Nadan* I.L.R.(1897) Mad. 389, where it has been held that no fixed period of enjoyment is laid down by law as necessary to establish a customary right and that usage over 30 years openly is sufficient for the acquisition of customary right.

11. We have already pointed out that the suit temples have been called as Adhinam temples and the trustees have been described as Adhina Dharmakarthas in a series of documents commencing from 1866. There is clear evidence in this case that Viswanathan Chettiar claimed rights as a hereditary trustee of the suit temples and exercised the power of appointment of his successor under Exhibit A-1 dated 20th January, 1885. From 1900 onwards, the Sengunthar community people have been exercising the rights in the suit temples by appointing their Nattamaikars to manage the suit temples. It is true that the origin of this could be traced to the trust appointment deed Exhibit A-18 dated 4th May, 1900. It may be that this deviation could not affect the rights of the hereditary trustee, who was legitimately entitled to succeed to the management of the suit temples. But it is clear from the decision in *Addepalli Venkatarama Ayya Vs. Sait Khial Dass Topandoss* by power of attorney Agent, Jathanand and Others, , that a trustee-ship with power to appoint a successor is an estate well known to and recognised by law and may be prescribed for. It is necessary to refer to the facts of that case to understand the principle of that decision.

12. The trusteeship of certain public temples was handed down from M to his son and then to his grandson, after which the younger brother of the grandson succeeded to the office. He, by will appointed his sister and her husband as trustee to succeed him and authorised them to appoint their own successors, thus diverting the devolution of the office from the family of the original trustee. The sister and her husband assumed office, but the husband died soon after. The sister continued to hold the office of trustee for over 24 years. She, by will, appointed as her successor her sister's son, who held office for 20 years, and by will, appointed his son-in-law, the defendant as his successor. The defendant was the great-grandson of M and he assumed the office of trustee. A suit having been filed by plaintiffs on behalf of themselves and their worshipers for a declaration that the appointment of defendant as trustee was illegal and void, it was held that the defendant was the rightful trustee, having been appointed by one who had acquired a valid title to the trusteeship with power to appoint a successor. It was held in that decision that the sister had acquired a valid title to the trusteeship by prescription and had entered upon it under a will which contained a provision for the appointment of a successor; and she had, acting under that provision, appointed a successor, giving him a similar power to appoint his, own

successor. It is clear¹ from the decision that it is possible to acquire by prescription trusteeship of a temple with power to appoint a successor. In this case there can be no doubt that by long lapse of time the Nattamaikars of the Sengunthar community have acquired prescriptive title to manage the suit temples.

13. It should be noted that u/s 6(11) of Madras 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 that by virtue of his having become a Nattamaikar of Sengunthar community of Madapuram Village, he became the hereditary trustee of the suit temples. The evidence in this case has established the usage pleaded in the plaint that only persons appointed as Nattamaikars by the Sengunthar community have been functioning as hereditary trustees of the suit temples since 1900. Thus the various persons mentioned in paragraph 3 of the plaint who succeeded Bava Krishnaswami Mudaliar as trustees of the temples did so by virtue of an usage which for over half a century has been regulating the succession to the office of trusteeship of the suit temples. Though such usage has come into existence in this case only in 1900, it has to be upheld on the strength of the decision in *Addepalli Venkatarama Ayya Vs. Sait Khial Dass Topandoss* by power of attorney Agent, Jathanand and Others, . In *Juggomohan Ghose v. Manickchand* (1859) 7 M.I.A. 263 : 4 W.R. 8 the distinction between custom and usage has been clearly explained in the following words in dealing with a case of mercantile usage.

It remains now to consider the other ground on which the plaintiff relied; the evidence of mercantile usage. To support such a ground, there need not be either the antiquity, the uniformity or the notoriety of custom, which in respect of all these becomes a local law. The usage may be still in course of growth; it may require evidence for its support in each case; but in the result, it is enough if it appear to be so well known and acquiesced in, that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract.

14. The distinction between custom and usage as brought out in this decision has been clearly expressed in the following passage at page 15 of "Hindu Law" by N.R. Raghavachariar, 5th Edn:

Though usage and custom are often, used as convertible terms, the antiquity, the uniformity and the notoriety which are required in the case of a custom are not necessary in proving a valid usage. It is sufficient if it is shown that the usage is so well-known and acquiesced in that it may be reasonably presumed to have been tacitly imported by the parties into their transactions.

15. For the forgoing reasons, we uphold the finding of the learned Subordinate Judge that the plaintiff is the hereditary trustee of the suit temples. The decree and judgment of the learned Subordinate Judge are, therefore, confirmed¹ and the appeal is dismissed with costs.