Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 10/09/2026

(1957) 04 MAD CK 0017

In the Madras High Court

Case No : Writ App. No. 17 of 1953

The State of Madras — APPELLANT

Vs

M. Ramakrishna Naidu and Others — RESPONDENT

Date of Decision : 12-04-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 — Section 39(1), 42, 6(9)

Citation : AIR 1957 Mad 758 : (1957) ILR (Mad) 1084 : (1957) 70 LW 643

Hon'ble Judges : Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : A.G. and Special Govt. Pleader, for the Appellant; K.S. Champakesa Aiyangar, for the Respondent

Judgement

Rajamannar, C.J.—This is an appeal against the judgment of Subba Rao J. in W. P. No. 840 of 1951 which was filed under Article 226 of

the Constitution for the issue of a writ of certiorari or other appropriate order to quash the order of the Commissioner, Madras Hindu Religious

and ""Charitable Endowments dated 19th October 1951 appointing one C. Subramania Chetti as a trustee of Sri Parthasarathiswami Devastanam,

Triplicane, in the vacancy caused by the expiry of the term of the trustee. Sri V. Ranganadham Chetti. The petitioners are two Thengalai

worshippers interested in the said temple.

2. Sri Parthasarathiswami temple is a famous and ancient vaishnavite temple in Triplicane in Madras city. The administration of the temple has been

in accordance with a scheme framed by this Court in C. S. No. 527 of 1924. The scheme inter alia provides that the management, and affairs of

the temple shall be carried on by a body of dharmakarthas under the supervision and control of a Board of Supervision. The dharmakarthas shall

be three in number, of whom one shall be a Brahmin, one an Arya Vysia (Komatti) and one a non-brahmin not Arya Vysia.

The dharmakartha shall hold office for a period of five years from the date of his appointment. The retiring dharmakartha is however re-eligible for

office provided he is at the time of his re-appointment eligible for such office under the other provisions of the scheme. The dharmakarthas shall be

elected by persons whose names are included on the date of the election in the list of voters maintained at the temple.

The qualifications necessary for a perspn to be registered in the list of voters are that he should be (a) a Vaishnavite of the Tengalai sect, (b) of the

male sex, (c) of the age of 21 years or upwards, (d) residence of Triplicane within the Specified boundaries for at least six months immediately

preceding the publication of the year''s preliminary electoral roll and (e) able to sign his name. The qualifications for being appointed as

dhamakartha are also mentioned in the scheme as well as the disqualifications. Elaborate rules for the conduct of the elections are laid down in the

scheme.

3. The Madras Hindu Religious and Charitable Endowments Act, 19 of 1951, came into force on 1st October 1951. The period of office of one

of the dharmakarthas, namely, Rao Bahadur V. Ranganadham Chetti, expired by efflux of time on 12th October 1951. Under the scheme the

vacancy had to be filled up by election. But the Commissioner of the Hindu Religious and Charitable Endowments passed on 19th October 1951

the following order :

In"" exercise of Powers vested in him under Sections 39 (1) and 42 of the Madras Hindu Religious and Charitable Endowments Act, 1951, the

Commissioner is pleased to appoint Sri C. Subramania Chetti as a trustee of the above devastanam, in the vacancy caused by the expiry of the

term of trustee of Sri V. Ranganadham Chetti.

It is this order that the petitioners sought to set aside on several grounds of which, the following were pressed before Subba Rao J. who heard the

petition, namely,

1. The Commissioner has no power to appoint a trustee under S. 42 in a case where the appointment of a member is regulated under a scheme by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-state-of-madras-appellant-hash-...

way of election.

2. Section 42 has no application as the trustees of the temple are hereditary trustees.

3. The order appointing the second respondent as trustee affected the petitioners'' fundamental right to vote, which is property within the meaning

of Article 19(1)(f) of the Constitution of India.

The learned Judge rejected grounds 1 and 3 but upheld the second objection and held that Section 39 and 42 had no application as the trustees of

the temple were hereditary trustees. He quashed the order of the Commissioner and directed him to hold an election to fill up the vacancy in

accordance with the provisions of the scheme. This appeal against that order is by the Commissioner of Hindu Religious and Charitable

Endowments, Madras.

4. The learned Advocate General who appeared for the appellant contended that Sections 39 and 42 were applicable Section 39 (1) of the Act

runs thus :

Where a religious institution included in the list published u/s 38 or over which no Area Committee has jurisdiction, has no hereditary trustee, the

Commissioner shall constitute a board of trustees consisting of not less than three and not more than five persons appointed by him.''''

Section 42 declares that the power to appoint trustees u/s 39 shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under

the Act to have been settled for the institution contains provision to the contrary. It was not disputed that the scheme settled for this institution must

be deemed to be a scheme settled under the Act for u/s 103 (d) of Act all schemes Settled or modified by a court of law u/s 92 C. P. C., shall be

deemed to have been settled by the Court under the Act and shall have effect accordingly.

The scheme settled by this court in C. S. No. 527 of 1924 was a scheme settled u/s 92 C. P. C. That scheme, as mentioned above, provides for

the filling up of vacancies in the office of the trustee of the temple by election. Nevertheless the commissioner will have the power to appoint

trustees if the temple falls within the class of religious institutions mentioned in Section 39 (1) of the Act. It is common ground that the temple is

included in the list published u/s 38.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-state-of-madras-appellant-hash-...

. The only question therefore is whether it is an institution which has no hereditary trustee. ""Hereditary trustee"" is defined in Section 6 clause (9)

thus :

Hereditary trustee means the trustee of a religious institution 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.

It is not the case of the contesting respondents, the petitioners before Subba Rao J., that the trustees of the temple in question are hereditary

trustees because their office devolves by hereditary right or because the succession to their office is specifically provided for by the founder. The

contention on their behalf was, and is, that the succession is ""regulated by usage"" and it is this contention that found fayour with Subba Rao J. The

learned Advocate General, on the other hand, contended that so far as this temple is concerned, there is no succession to the office of trustee.

His argument was that the phrase ""regulated by usage'''' must be read with the expression ""succession to whose office"" and when so read 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. Mr. Champakesa Aiyangar for the respondents contended that ""succession"" should be

construed widely so as to include any method of appointment or selection of the trustee to fill up a vacancy caused by the previous trustee ceasing

to hold office. He relied upon the fact that from time immemorial there was a usage relating to this institution, of a nomination of the dharmakarthas

by the members of the Thengalai sect.

5. There is one formidable obstacle in the way of accepting the contention of Mr. Champakesa Aiyan gar that the trustees of Sri

Parthasarathiswami temple fall within the category of hereditary trustees as defined in the Act. Whatever may be the position before any scheme

was framed by this court, once a scheme has been framed u/s 92 of the Code, and that scheme provides a particular method of filling up vacancies

in the office of the trustee, it cannot be said that the succession to the office of the trustees, even construing it in the widest sense, is regulated by

usage. All that Mr. Champakesa Aiyangar can say is that it was regulated by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-state-of-madras-appellant-hash-...

usage.

It may be that the several schemes framed took notice of the usage and embodied it with such modifications as the court deemed fit but it cannot

be said that the succession continued to be governed by usage when the fact is that it was governed by the provisions of the scheme. This position

is conclusively established by the provisions in the schemes framed in the suits of 1918 and 1924. According to Mr. Champakesa Aiyangar, the

usage was that a trustee, once elected, held office for life; but in the scheme framed by Courts Trotter J., as he then was in C. S. No. 111 of 1918,

the period of the trustee''s office was limited to five years at a time. But the retiring trustee was eligible for re-election.

Likewise, in the scheme which till today is in force, namely, the scheme settled in C. S. 527 of 1924, the period is five years with a like provision

that the retiring trustee is eligible for re-election. That provision is certainly not a pact of usage. It is a provision in the scheme. It is impossible

indeed to contend that on the date of coming into force of Madras Act (XIX of 1951) the succession to the office of the trustee of Sri

Parthasarathiswami temple was regulated by usage. The language ""is regulated by usage"" will not be applicable to a temple, succession to the

trusteeship of which was regulated by usage but is no longer regulated by usage. The temple, therefore, certainly falls within Section 39 (1) of the

Act

6. This is sufficient to dispose of the appeal. But as learned counsel on both sides addressed arguments on the construction of the definition of

hereditary trustee'''', we shall briefly express our opinion on this point.

7. Succession in relation to property and rights and interests in property generally implies ''''passing of an interest from one person to another"" Vide

AIR 1941 72 (Federal Court) Inheritance, and succession are often used in juxtaposition justifying the inference that succession is either another

category from or a wider category than inheritance. It is now well-established that the office of hereditary trustee is, in the nature of property,

This is so whether the trustee has a beneficial interest of some sort or not Kidangazhi Manakkal Narayanan Nambudiripad and Others Vs. State of

Madras and Another, , and Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-state-of-madras-appellant-hash-...

Endowments, Madras and Others, . Ordinarily a shebaitship or the office of dharmakartha is vested in the heirs of the founder unless the founder

has laid down a special scheme of succession or except when usage or custom to the contrary is proved to exist. Mukherjea J., in Angurbala

Mullick Vs. Debabrata Mullick, , delivering the judgment of the Supreme Court observed:

''''Unless, therefore, the founder has disposed of the shebaitship in any particular manner and this right of disposition is inherent in the founder or

except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of

inheritance from the founder.''''

In the case of mutts whose heads are often celebrated and sometimes sanyasins, special rules of succession obtain by custom and usage. In Sital

Das Vs. Sant Ram and Others, , the law is taken as well settled that succession to mahantship of a mutt or religious institution is regulated by

custom or usage of the particular institution except where the rule of succession is laid down by the founder himself who created the endowment. In

that case the custom in matters of succession to mahantship was that the assembly of bairagis and worshippers of the temple appointed, the

successor but the appointment had to be made from the disciples of the deceased mahant if he left any, and failing disciples, any one of his spiritual

kindred.

Such a succession was, described as not hereditary in the sense that on the death of an existing mahant, his chela succeeds to the office as a matter

of course, because the successor acquires a right only by appointment and the authority to appoint is vested in the assembly of the bairagis and the

worshippers. In Paramananda Das Goswami v. Radhakrishnadas, 51 M LJ 258: AIR 1926 Mad 1012 (F), a Division Bench took the view that

where succession to the mahantship is by nomination by the holder to office, it is not a hereditary succession. Venkatasubba Rao, J., said:

''If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest

upon independent title, I am inclined to the view that the office cannot be said to be hereditary.

8. Krishnan J., the other learned Judge, game to the same conclusion on the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-state-of-madras-appellant-hash-...

following reasoning:

Where succession is by nomination by the holder in office of his successor it seems to me impossible to contend that it is a hereditary succession.

Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to some

definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and

his successor but the right of the latter should not depend upon the choice of any individual.

9. The present definition in Sec. 6 clause (9), would, however, comprise even such cases.

10. It appears to us to be singularly inappropriate to say that there is a succession of As office to another when on the efflux of the period for

which A was appointed, there is a vacancy and B is selected to that vacancy. It is quite possible that for that vacancy A himself might be re-elected

because a retiring trustee is eligible for re-election. The possibility of A being the successor of A himself is not merely an anomaly, it is an

impossible legal position.

No man can succeed to his own office. Mr. Champakesa Aiyangar recognised this but contended that the word ''''succession'''' in the definition of

hereditary trustee is used in a wide sense and in one sense A may be said ''to be the successor of himself in respect of a subsequent period. We

are unable to accept any construction which will lead to such anomalies and impossibilities. We are, therefore, of opinion that the trustees of the Sri

Parthasarathiswami temple cannot fall within the category of hereditary trustees as defined in Section 6 (9) of Madras Act XIX of 1951.

11. The appeal is allowed and W. P. No. 840 of 1951 is dismissed, But in the circumstances there will be no order as to costs. ''

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-state-of-madras-appellant-hash-…