

(1988) 11 MAD CK 0040
In the Madras High Court

Y.R. Natarajan and Others

APPELLANT

Vs

The Commissioner, Hindu Religious Endowments
(Administrative Department) and Others

RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 6(11)

Citation : (1989) 2 LW 115 : (1989) 2 MLJ 105

Hon'ble Judges : Bellie, J

Bench : Division Bench

Judgement

Bellie, J.—The plaintiffs were the appellants in this Letters Patent Appeal.

2. Sri Kothandaramaswami temple is founded by one P.Venkata Varada Doss in or about 1891 out of his own funds. He, under, a registered Will Ex.B1, dated 9.7.1915, nominated his brother-in-law D.Venkatarangayya to administer the affairs of the temple and accordingly the said Venkatarangayya was in management of the temple till his death on 19.9.1943. The Hindu Religious Endowments Board with whom administration of Hindu temples were vested at that time, in OA. No. 165 of 1935 passed orders Ex.B2, dated 4.10.1935 declaring the temple as an excepted temple under the provisions of Act 2 of 1927 on the ground that succession to the trusteeship had been provided by the founder as contemplated in Section 9(5) of the Act 2 of 1927. The said Venkatarangayya executed a Will Ex.B3, dated 9.8.1941 in respect of administration of the temple including its properties. He vested the administration in a committee of five trustees of whom the first four belonged to a different community. It is provided in the Will that the vacancies arising in the Committee of trustees will have to be filled up by co-opting persons by the remaining trustees from among the worshippers of the temple residing in that locality. While so it appears the Hindu Religious and Charitable Endowments Departments started proceedings for planning a scheme of administration for the temple u/s 64 of Act 22 of 1959. Upon that the three plaintiffs filed O.A. No. 91

of 1966 before the Deputy Commissioner of Hindu Religious and Charitable Endowments Department u/s 63(b) of Act 22 of 1959 for a declaration that they are holding office of trustees of the above temple. This contention of the plaintiffs was negated by the Deputy Commissioner. They filed an appeal before the Commissioner and the appeal was also dismissed. As against this decision of the Commissioner the plaintiffs have now filed the suit u/s 70 of the Act 22 of 1959 (hereinafter referred to as the Act) for cancellation of the order of the Commissioner.

3. The defendant, Commissioner, Hindu Religious and Charitable Endowments Department, resisted the suit repudiating; that the plaintiffs are hereditary trustees.

4. The main question for decision before the trial Court was whether the plaintiffs were the hereditary trustees as pleaded by them. The learned trial Judge found that the plaintiffs who are holding office in terms of Ex.B3 will cannot be said to the hereditary trustees within the definition of "hereditary trustees" provided in Section 6(11) of the Act. However the learned trial Judge further held that in view of Ex.B2 order of the Hindu Religious Endowments Board, 4.10.1935 declaring that the suit temple is an excepted temple the plaintiffs must be deemed to be hereditary trustees.

In this view of the matter the learned trial Judge declared that the plaintiffs are hereditary trustees and ordered cancellation of the order passed by the Commissioner, Hindu Religious and Charitable Endowments Department in A.P. No. of 1971.

5. On appeal by the Commissioner, Hindu Religious and Charitable Endowments Department, Senguttuvelan J. in A.S. No. 379 of 1978 held that the findings of the trial Court that in view of Ex.B2 order of the Hindu Religious Endowments Board declaring the temple as an excepted temple, the plaintiffs must be deemed to be hereditary trustees is erroneous. The learned Judge held that the line of succession provided in the Will Ex.B3 executed by Venkatarangaiah is valid and the learned Judge further held that the trustees appointed as per this succession cannot be said to be hereditary trustees within the meaning of Section 6(11) of the Act. The learned Judge therefore allowed the appeal setting aside the Judgment of the trial Court and dismissed the suit. As against this the plaintiffs have come up with this Letters Patent Appeal.

6. Mr. T.L. Ram Mohan, learned Counsel for the appellants argues that the learned single Judge has rightly held that the line of succession of trustees is validly provided by Venkatarangaiah in his Will Ex.B3, but he erred in further holding that the plaintiffs do not come within the definition of hereditary trustees u/s 6(11) of the Act. Section 6(11) reads thus:

6(11) "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.

As per this Section a trustee will be hereditary trustee when succession to the office of trusteeship devolves by the following three ways:

- (i) Devolution by hereditary right;
- (ii) Regulated by usage; and
- (iii) Specifically provided for by the founder.

According to the learned Counsel, rightly so, succession to the trustee ship in this case is not under the first two ways but it comes in the third way. The learned Counsel submits that in Ex.B3 Will Venkatarangaiah has provided for a scheme for succession and that comes under the third way and therefore whoever comes as a trustee under that will be a hereditary trustee. In this connection the learned Counsel cites a Supreme Court decision in M.S. Venkataraman and Others Vs. V. Nataraja Iyer, in which while approving the view of Krishnan J. of the Madras High Court in Sri Mahant Paramananda Das Goswami Vs. Radhakrishna Das and Others, in; relationship to succession to Mahantship that:

Where succession is by nomination by the holder in office of his successor it seems to be 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.

the Supreme Court has stated that,

It is true that the artificial definition of hereditary trustees in Section 6(9) of the Act would include even such cases" It is true that Section 6(11) in the present Act is artificial definition of hereditary trustee but we have to see whether the founder of the trust has specifically provided for succession to the office of trustees for the plaintiffs to be within the third way of succession said above. For the plaintiffs to claim so they must show that the founder of the trust has provided for succession to the office of trustees and under that provision they are the trustees.

7. Now going to the facts, we have seen above that the founder of the temple was Venkatavarada Doss. He executed a Will Ex.B1 in and by which his brother-in-law Venkatarangaiah has been nominated as manager of the temple. Beyond this the founder has not made any mention about succession to the office of manager or trustee. Only Venkatarangaiah, the manager has (sic) of the temple in the committee of five trustees and he has also provided for succession to the offices of trustees. It is clear therefore that the founder of the temple has not provided for succession to the office of trustee. Therefore the plaintiffs who claim as hereditary trustees under the Will executed by Venkatarangaiah and not the

founder of the temple do not come within, the meaning of the definition u/s 6(11) of the Act.

It is however argued by Mr. T.L. Ram Mohan, learned Counsel for the appellants that in the absence of the scheme by the founder for succession to trustees his heir can provide a scheme and in support of this contention he cites a decision. In that ruling viz., R. Venugopala Reddiar and Others Vs. Krishnaswamy Reddiar and Others, of course it is held that founder of a trust failing to provide for a line of devolution of trusteeship his heir can provide one. But this was rendered in regard to the general Hindu Law of succession and not in relation to the definition of Section 6(11) of the Act. Even otherwise this decision will not help the plaintiffs because by no stretch of reasoning Venkatarangaiah, the brother-in-law of the founder can be said to be heir of the founder. Therefore clearly no question of Venkatarangaiah providing a scheme for line of succession to the trusteeship arises within the definition of Section 6(11) of the Act.

The learned Counsel then contends that Venkatarangiah was an associate founder of the temple and to substantiate his contention he reads out Ex.BI. But this contention appears to have been raised before the learned single Judge and he has rightly rejected it as without substance. The learned Judge has stated that:

A reading of the Will, only show that Venkataranayya Garu was associated with the management and he cannot be termed as the founder in respect of the suit temple.

The learned Judge is absolutely correct.

8. The learned Counsel next contends that the Commissioner of Hindu Religious Endowments by his order Ex.B2, dated 4.10.1935 has already declared in an earlier proceeding that the suit temple is an excepted temple and that would show that the plaintiffs are hereditary trustees, and in view of that order, by the principle of res judicata, now it cannot be held that the plaintiffs are not hereditary trustees. There is no doubt that Section 11 of the CPC dealing with the principle of res judicata will not be applicable to the present the suit because the said order already passed by the Board of Commissioner for Hindu Religious Endowments is not an order passed in an earlier suit. The learned Counsel does not bring to our notice any relevant provision in the Hindu Religious and Charitable Endowments Act XXII of 1959 wherein the principle of res judicata is provided. However the learned Counsel cites a decision by the Supreme Court in Sri Bhava Narayanaswamivari Temple v. Vedapalli Venkata Bhavanarayanacharyulu (1971) 1 M.L.J. 49. But that decision does not at all help the plaintiffs. That decision relates to forming of a scheme by the Board and it has been held that a decision rendered by the Board u/s 57 of the Madras Religious Endowments Act is final subject to the result of the suit contemplated in this section. That is not the case here. Therefore we find no merit in this connection of the learned Counsel.

9. In the result we find nothing that warrants interference with the Judgment of the learned x single Judge and therefore the Letters Patent Appeal is dismissed. No costs.