



S.A.No.904 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.904 of 2023

V.Mani

... Appellant

Vs.

1.The Commissioner

Hindu Religious and Charitable Endowments
Chennai – 34.

2.The Joint Commissioner

Hindu Religious and Charitable Endowments
Villupuram.

3.The Inspector

Hindu Religious and Charitable Endowments
Vandavasi.

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 22.02.2019 in A.S.Nos.10 and 12 of 2018 passed by the learned Additional District Judge, Arani, confirming the judgment and decree dated 25.10.2017 in O.S.No.100 of 2011 passed by the learned Sub Judge, Cheyyar, Tiruvannamalai.

For appellant

: Mr.C.Venkatesan

For respondents

: Dr.S.Suriya

Additional Government Pleader



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JUDGMENT

The unsuccessful plaintiff in both the Courts below has filed the above second appeal.

2. The brief facts which are essential for disposing of this second appeal are set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.110 of 2011 on the file of the Sub Court, Cheyyar, Thiruvannamalai District seeking for the following reliefs:

“அ) இந்து சமய அறநிலைய ஆட்சித்துறை ஆணையரான 1-ஆம் பிரதிவாதி 21.03.2011 தேதியிட்டு ஏ.பி.எண்.10/2010 என்ற வழக்கில் பிறப்பித்த உத்திரவை ரத்து செய்து தக்க உத்திரவு பிறப்பிக்கும்படிக்கும்

ஆ) திருவண்ணாமலை மாவட்டம், வந்தவாசி தாலுக்கா, தேசூர் மழையூர் சாலையில் அமைந்துள்ள மேற்படி அருள்மிகு காசி விஸ்வநாதர் ஆலயத்தின் பரம்பரை தர்மகர்த்தா வாதி என டிக்ளேர் செய்து தக்க



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உத்திரவு பிறப்பிக்கும்படிக்கும்

இ) மேற்படி தாவா கோயிலான அருள்மிகு காசி விஸ்வநாதர்

ஆலயத்திற்கு வாதியை தவிர வேறு எவரையும் தர்மகர்த்தாவாக

நியமிக்கக்கூடாது என ஒரு நிரந்தர தடை உத்திரவு பிறப்பிக்கும்படிக்கும்

ஈ) தாவா செலவுகளை வாதிக்கு பிரதிவாதிகள் அளிக்கும்படிக்கு

தக்க உத்திரவு பிறப்பிக்கும்படிக்கும்”

2.2. It is the case of the plaintiff that the temple in the suit schedule property was constructed by the children of Kishtappa Mudaliyar viz., Nandagopal Mudaliyar and Govindharaja Mudaliyar. They had also gifted the suit schedule property to the temple and also donated 1.33 acres of land for the management and upkeep of the temple.

2.3. The plaintiff would submit that it was his ancestors who had originally constructed the full-fledged temple. During the lifetime of Kishtappa Mudaliyar, he was acting as the Dharmakarthha of the temple. On his demise, his son Nandagopal Mudaliyar being the eldest



in the family was managing the temple as the Dharmakartha. After his demise, his brothers son Venugopal Mudaliyar was acting as the Dharmakartha. The said Venugopal Mudaliyar is the father of the plaintiff. On his demise, the plaintiff had taken charge as the Dharmakartha of the temple.

2.4. The plaintiff would submit that the suit temple is a private temple and the persons in management have been managing proper accounts and submitting the same to the HR & CE Department. The daily poojas, festivals, *etc.*, were being done by the plaintiff and his ancestors from and out of the income from the lands gifted to the temple.

2.5. While so, the plaintiff had filed an application in O.A.No.5 of 1998 to appoint him as the Hereditary Trustee of the said temple. For a very long time, the said application was not taken on file and was pending in the Department office at Vellore. Thereafter, it



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was sent to the second defendant. The said application was dismissed on 28.07.2009 by the second defendant. As against the same, an appeal under Section 69(1) of the HR & CE Act was filed before the first defendant. The said appeal was taken on file as A.P.No.10 of 2010.

2.6. The plaintiff would submit that the second defendant had not relied on any of the documents and has simply followed the report of the third defendant. The second defendant had further held that already an application with reference to the appointment of the Hereditary Trustee to the suit temple had been disposed of. However, no documents have been produced. Thereafter, the first defendant had also dismissed the said application. Therefore, the plaintiff has come forward with the above suit stating as to how the impugned order was wrong.

2.7. The plaintiff would submit that the temple was being



administered by the plaintiff and his ancestors and the plaintiff would also submit that the defendants were very much aware that the plaintiff is administrating the temple. Therefore, the plaintiff has filed the suit under Section 70(1) of the Act 22/1959 so as to ensure that the plaintiff is able to administer the temple without any hindrance.

2.8. The third defendant has filed a written statement *inter alia* denying the allegations contained in the plaint. The third defendant would submit that the plaintiff has not produced any document to prove that the plaintiff's predecessors had constructed the temple. The third defendant would deny that the properties were being administered by the plaintiff. The third defendant would submit that the places where the public offer their worship have to be considered as the public property and no individual can claim exclusive rights to administer these temples. The plaintiff has not filed any document to show that they have gifted 1.33 acres to the temple. Therefore, the third defendant sought for the dismissal of the suit.



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TRIAL COURT:

3. The Sub Judge, Cheyyar, Thiruvannamalai District, by judgment and decree dated 25.10.2017, dismissed the suit. The learned Judge had taken note of the fact that the plaintiff's father Venugopal Mudaliyar had filed a similar suit in O.P.No.35 of 1970 under Section 63(a) of the HR & CE Act which was dismissed.

4. As against the said dismissal, the said Venugopal Mudaliyar had filed a suit in O.S.No.144 of 1973 on the file of the Sub Court, Vellore. The suit was dismissed by the judgment and decree dated 13.07.1981. Challenging the said judgment and decree, the plaintiff's father had filed an appeal in A.S.No.196 of 1982 on the file of this Court. By judgment and decree dated 18.02.1992, it was also dismissed. No further appeal has been filed. Therefore, the present application is nothing but a case of re-litigation.



LOWER APPELLATE COURT:

5. Aggrieved by the said judgment and decree, the plaintiff had filed an appeal in A.S.No.10 of 2018 on the file of the Additional District and Sessions Court (Fast Track Court), Arani. The Lower Appellate Court has also dismissed the appeal and confirmed the judgment and decree of the Trial Court.

6. Aggrieved by the said judgment and decree, the plaintiff is before this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

DISCUSSION:

8. When the matter came up for admission, this Court has called for the judgment and decree in A.S.No.196 of 1982. A perusal of the said judgment and decree would indicate that the plaintiff's



father had come forward with the very same contention stating that the suit temple was originally managed by his great-grandfather, thereafter, by his grandfather, then, by his paternal uncle Nandhagopal Mudaliyar, then by Nandhagopal Mudaliyar's son of Ramalinga Mudaliar and later by the plaintiff.

9. On 18.03.1970, the Assistant Commissioner of HR & CE Board had called for an application for appointment of Hereditary Trustee to the temple. Therefore, he filed an application under Section 63(b) of the HR & CE Board Act for a declaration that he is the Hereditary Trustee. After a detailed trial, this Court has held that there was no proof to show that the plaintiff and his ancestors were Hereditary Trustees of the temple. The records would reveal that nearly 25 years from 1945 till 1970, the plaintiff therein, was acting as the Trustee of the temple as a person appointed by the Area Committee and not as successors to any of his ancestors. Therefore, this Court held that the plaintiff had not proved his case that he was



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the Hereditary Trustee. The present plaintiff is claiming similar right under him.

10. The judgment and decree passed in A.S.No.196 of 1982 would be a bar to the plaintiff's request for being considered as Hereditary Trustee of the suit schedule temple. Both the Courts below have relied upon this judgment and decree and the fact that the plaintiff has not proved that he or his ancestors are the Hereditary Trustee. Therefore, I see no reason to interfere with the judgments of the Courts below.

Accordingly, this second appeal stands dismissed as it does not give rise to any substantial question of law. No costs.

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Index : Yes/No
Speaking order/non-speaking order
ssa

To

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- 1.The Additional District and Sessions Judge, Arani.
- 2.The Sub Judge, Cheyyar, Tiruvannamalai.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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