



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.12.2023

Pronounced on : 13.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.30387 of 2023

and

WMP(MD)No.26167 of 2023

Sri Vivekananda Ashrama
Rep.by its President,
Thavathiru Swami Chaitanyananda Ji
Maharaj,
Kalpadi Post,
Kanyakumari District.

... Petitioner

Vs.

1.Indian Bank,
Rep.by its Branch Manager,
165, WCC Road, Nagercoil,
Kanyakumari District.

2.The Branch Manager,
Dhanalakshmi Bank,
Near Nagaraja Kovil,
Nagercoil,
Kanyakumari District.

3.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

... Respondents

(R3 was suo motu impleaded vide
order dated 21.12.2023)



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to change the Account Holder's name as Sri Vivekananda Ashrama at Vellimalai, Kalpadi Post – 629 204 pertaining to SB Account No.431580354 and Fixed Deposit Nos.752171935, 915087360, 852464804, 752171811, 886453054, 886450188 with the first respondent bank and Account No.008400100122836 and Fixed Deposit Nos.008444200004488-7, 008443600001882-3 and 008443600002142-3 with the 2nd respondent based on the petitioner's application dated 21.10.2023 and 30.10.2023 within the period stipulated by this Court.

For Petitioner : Mr.Anand C. Rajesh

For Respondents : Mr.C.Karthik for R1
Mr.M.Sridhar for R2

ORDER

Heard both sides.

2.The writ petitioner is a religious institution. It was established sometime in the year 1940. A formal trust deed was registered in the year 1990. Quite a few ascetics were a part of the petitioner institution. One of them was Swami Karunananda. It is claimed by the petitioner that he was residing in the petitioner Ashram for 23 years and passed away on 22.02.2023. The deceased Sanyasi was having bank account as well as Fixed



Deposits in the respondent banks. He died intestate without executing any Will. The petitioner wrote to the respondent banks for transferring the amounts lying to the credit of the deceased Sanyasi to the bank account of the petitioner. Copies of the representations dated 21.10.2023 addressed to them have been enclosed in the typed set of papers. Since the banks did not respond, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner called upon this Court to grant relief as prayed for.

4.The learned standing counsel for the first respondent bank submitted that in the absence of direction from the court, the bank cannot be expected to act in the matter. Though the second respondent was served, there is no representation on their behalf. In any event, no order adverse to the interest of the second respondent is going to be passed.

5.I am more than satisfied that the one Swami Karunanda was a part of Shri Vivekananda Ashram. He maintained accounts with the respondent banks. He also had Fixed Deposits. The question is whether following his demise, the amounts lying in his accounts/deposits should be transferred to the petitioner's account.



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6. The legal position is well settled. Once a person becomes a Sanyasi, he suffers civil death. Section 6 of the Hindu Minority and Guardianship Act, 1956 states that a Sanyasi cannot be a legal guardian. It has been held in many a decision that the property of a Sanyasi who has died intestate will not devolve on his blood relatives. Once a person becomes a Sanyasi, he acquires a spiritual family. The Hon'ble Supreme Court of India in the decision reported in (1981) 3 SCC 681 (Shri Krishna Singh v. Mathura Ahir) held as follows :

“31. One who enters into a religious order severs his connection with the members of his natural family. He is accordingly excluded from inheritance. Entrance to a religious order, is tantamount to civil death so as to cause a complete severance of his connection with his relations, as well as with his property. Neither he nor his natural relatives can succeed to each other's properties. Any property which may be subsequently acquired by persons adopting religious orders passes to their religious relations. The persons who are excluded on this ground come under three heads, the vanaprastha, or hermit; the sanyasi or yati, or ascetic, and the brahmachari, or perpetual religious student. In order to bring a person under these heads it is necessary to show an absolute abandonment by him of all secular property, and a complete and final withdrawal from earthly affairs. The mere fact that a person calls himself a byragi, or religious mendicant, or indeed that he is such, does not of itself disentitle him to succeed to property. Nor does any Sudra come under this disqualification, unless by usage. This civil death does not prevent the person who enters into an



order from acquiring and holding private property which will devolve, not of course upon his natural relations, but according to special rules of inheritance. But it would be otherwise if there is no civil death in the eye of the law, but only the holding by a man of certain religious opinions or professions [Mayne : Hindu Law and Usage, 11th Edn., pp. 721-22] .

32. Special rules are propounded for succession to the property of a hermit, of an ascetic, and of a professed student. Yajnavalkya states a special rule of succession in regard to the wealth of ascetics and the like: “The heirs who take the wealth of a vanaprastha (a hermit), of a yati (an ascetic) and a brahmachari (a student) are in their order, the preceptor, the virtuous pupil, and one who is supposed brother and belonging to the same order”. The Mitakshara explains thus [Ch. II, Sec. VIII, Sl. 1-6] : “A spiritual brother belonging to the same hermitage (dharmabhratrekatirthi) takes the goods of the hermit (vanaprastha). A virtuous pupil (sacchishya) takes the property of a yati (as ascetic). The preceptor (acharya) is heir to the brahmachari (professed student). But on failure of these, any one belonging to the same order or hermitage takes the property; even though sons and other natural heirs exist”.

33. The property that is referred to is explained in Mitakshara and in the Viramirodaya as consisting of clothes, books and other requisite articles. Practically, however, such cases seldom arise. When a hermit or ascetic holds any appreciable extent of property, he generally holds it as the head of some math or as the manager of some religious or charitable endowment, and succession to such property is regulated by the special custom of the foundation.

35. According to the text of Yajnavalkya referred to above, the property of a lifelong student goes to his preceptor, that of a hermit or vanaprastha



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goes to his religious brother and that of a sanyasi or yati goes to his virtuous disciple. The principle, so far as it affects maths, is shortly this viz. “a virtuous pupil takes the property”. The particular mode in which the virtuous pupil, that is, not merely a chela, or a shishya, fittest to succeed, is ascertained or selected is a matter either of express direction on the part of the founder or of custom in the case of each foundation. There are instances of maths in which the mahantship descends from Guru to chela i.e. the existing mahant alone appoints his successor, but the general rule is that the maths of the same sect in a district, or maths having a common origin, are associated together — the mahants of these acknowledging one of their members as a head who is for some reason pre-eminent; and on the occasion of the death of one, the others assemble to elect a successor out of the chelas or disciples of the deceased, if possible — or if there be none of them qualified then from the chelas of another mahant [Dr. Jogesh Chandra Ghose : Principles of Hindu Law, 3rd Edn., pp. 914-15] .”

7. In the case on hand, no rival claim has been received by the banks. The materials on record indicate that the deceased Sanyasi was a part of the petitioner Ashram. In the fitness of things, the property standing in the name of the deceased Swami Karunanda should devolve on the petitioner-Ashram. Such a course of action alone will be in consonance with the ratio laid down in the aforesaid decision.

8. I direct the respondents 1 and 2 to transfer the amounts lying to the



credit of the deceased Swami Karunanda in the respective bank accounts/fixed deposits to the bank account of the petitioner. In other words, the respondents 1 and 2 are directed to act on the basis of the applications submitted by the petitioner to the first and second respondents respectively. This shall be done immediate and without delay. The writ petition is allowed. No costs. Connected miscellaneous petition is closed.

13.02.2024

Index : Yes/No
Internet : Yes/No
skm

To

The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.



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G.R.SWAMINATHAN, J.

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