



CNR: KAHC010057202024

NC: 2026:KHC:55954
WP No. 3388 of 2024
C/W WP No. 24820 of 2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 3388 OF 2024 (GM-R/C)

C/W

WRIT PETITION NO. 24820 OF 2025 (GM-R/C)

IN W.P.NO.3388/2024

BETWEEN

SRI PUTTEGOWDA,
S/O LATE HAVALE GOWDA,
AGED ABOUT 70 YEARS,
RESIDING AT HAGARE VILLAGE,
MADIHALLI HOBLI,
BELUR TALUK
HASSAN DISTRICT,
PIN 573 216

... PETITIONER

(BY SMT. SHILPA RANI., ADVOCATE)

AND

1. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
REVENUE DEPARTMENT,
M.S BUILDING,
BENGALURU 560001
2. THE TAHASILDAR
BELUR TALUK,
BELUR,
PIN 573 115



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.... RESPONDENTS

(BY SMT. SARITHA KULKARNI., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO STAY OPERATION OF THE ORDER DTD 11.01.2024 IN NO.D.V.S.18/2023-24 PASSED BY THE TAHSILDAR, BELUR A COPY OF WHICH IS PRODUCED AT ANNEXURE-C, AND ETC.

IN W.P.NO.24820/2025
BETWEEN

1. SRI HULIGOWDA
S/O LATE HAVALE GOWDA
AGED ABOUT 62 YEARS
R/O HAGARE VILLAGE HAGARE POST,
MADIHALLI HOBLI BELUR TAUKE
HASSAN DISTRICT 573 216.
2. SRI. YATHISH
S/O SRI. BEERE GOWDA
AGED ABOUT 43 YEARS
R/O HAGARE VILLAGE HAGARE POST,
MADIHALLI HOBLI BELUR TAUKE
HASSAN DISTRICT 573 216.
3. SRI. LOKESH
S/O SRI. BEERE GOWDA
AGED ABOUT 40 YEARS
R/O HAGARE VILLAGE HAGARE POST,
MADIHALLI HOBLI BELUR TAUKE
HASSAN DISTRICT 573 216.
4. SRI. PUTTE GOWDA
S/O LATE HAVALE GOWDA
AGED ABOUT 64 YEARS
R/O HAGARE VILLAGE HAGARE POST,
MADIHALLI HOBLI BELUR TAUKE
HASSAN DISTRICT 573 216.
5. SRI. SOME GOWDA
S/O LATE HAVALE GOWDA
AGED ABOUT 60 YEARS
R/O HAGARE VILLAGE HAGARE POST,
MADIHALLI HOBLI BELUR TAUKE
HASSAN DISTRICT 573 216.
6. SRI. SHANKARE GOWDA

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S/O LATE HAVALE GOWDA
AGED ABOUT 58 YEARS
R/O HAGARE VILLAGE HAGARE POST,
MADIHALLI HOBLI BELUR TAUK
HASSAN DISTRICT 573 216.

7. SMT. PUTTAMMA
W/O LATE MALLE GOWDA
AGED ABOUT 60 YEARS
R/O DODDAGHATTA VILLAGE
JAWAGAL HOBLI
ARASIKERE TALUK
HASSAN DISTRICT 573 125.
8. SMT. RADHAMMA
W/O LATE MALLE GOWDA
AGED ABOUT 58 YEARS
R/O BARAMDURU POST
BOMMANAHALLI VILLAGE
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT - 577 245.
9. SMT. DAKSHAYINI
D/O LATE MALLE GOWDA
AGED ABOUT 40 YEARS
R/O BARAMDURU POST
BOMMANAHALLI VILLAGE
BHADRAVATHI TALUK
SHIVAMOGGA DISTRICT - 577 245.

... PETITIONERS

(BY SRI. V. LAKSHMINARAYANA., SR. COUNSEL FOR
SMT. ANUSHA.L., ADVOCATE)

AND

1. THE COMMISSIONER
KARNATAKA HINDU RELIGIOUS INSTITUTIONS AND
CHARITABLE ENDOWMENTS,
4TH FLOOR, SRI MINTO ANJANEYA VARTHA BHAVAN,
CHAMARAJPET, BENGALURU 560 018.
2. THE DEPUTY COMMISSIONER
HASSAN DISTRICT HASSAN 573 134.
3. THE ASSISTANT COMMISSIONER

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SAKALESHAPURA SUB DIVISION
HASSAN DISTRICT - 573 134.

4. THE TAHSILDAR
BELUR TALUK, BELUR
HASSAN DISTRICT - 572 340.
5. SRI H.K. KARI GOWDA
S/O LATE HAVALE GOWDA
AGED ABOUT 70 YEARS
R/O HAGARE VILLAGE
HAGARE POSST, MADIHALLI HOBLI
BELUR TALUK
HASSAN DISTRICT - 573216.

6. LATE DEVEGOWDA
REPT BY LR'S

- 6A. SMT. LAKSHMAMMA
AGED ABOUT 67 YEARS,
W/O LATE DEVEGOWDA
R/AT ASHOK NAGAR,
BEHIND GANAPATI MANGALA MANDIRA
GUDDENAHALLI,
JODI HANDINAKERE
HASSAN.

- 6B. SMT. DODDAMMA
AGED ABOUT 44 YEARS
D/O LATE DEVEGOWDA
W/O SRI RAJEGOWDA
DODDAGATTA GRAMA
JOWGAL HOBLI
JOWGAL POST
ARASIKERE TALUK
HASSAN DISTRICT.

- 6C SMT. VANAIAKSHI
AGED ABOUT 35 YEARS
D/O DEVEGOWDA
W/O YOGESH
LAKKE CROSS HOBLI
CHIKKAMAGALUR TALUK
CHIKKAMAGALUR DISTRICT.

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6D. SMT. NAGARATNA
AGED ABOUT 34 YEARS
D/O LATE DEVEGOWDA
W/O KUMARE GOWDA
JOWGAL HOBLI
ARASIKERE TALUK
HASSAN DISTRICT
POST JOWGA.

6E. SRI H.D. SHIVU
AGED ABOUT 33 YEARS
S/O LATE DEVEGOWDA
R/AT ASHOK NAGAR
BEHIND GANAPATI MANGALA MANDIRA
GUDDENAHALLI
JODI HANDINAKERE
HASSAN.

6F. SMT. UMADEVI
AGED ABOUT 31 YEARS
D/O LATE DEVEGOWDA
W/O LATE PRABHAKAR
HOSUR & JODIVACHHALLI GRAMA
SAKKARAY PATTNA
KADUR TALUK
CHIKKAMAGALUR
NAGARAL POST.

.... RESPONDENTS

(BY SMT. SARITHA KULKARNI., AGA FOR R1 TO R4;
SRI. HARISH CHANDRA MOVVAR., ADVOCATE FOR C/R5;
SRI. LIKITH R.P. ADVOCATE FOR R6 (A TO F))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI QUASHING THE ORDER DATED 05.06.2025 PASSED BY RESPONDENT NO.1 BEARING NUMBER ADM/AP 19/2023-24 (ANNEXURE-D) AND ETC.

THESE WRIT PETITIONS COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 28.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

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CAV ORDER

1. The petitioner in W.P.No.3388 of 2024 is before this Court seeking for the following reliefs:

a) ISSUE a writ of certiorari or any other writ or direction quashing the order dated 11.1.2024 in No. D.V.S.18/2023-24 passed by the Tahsildar, Belur a copy of which is produced at Annexure-C and consequently direct the Tahsildar, Belur to handover right of worship of Sri Deviramma Temple, situated at Hagare village, Madihalli Hobli, Belur Taluk forthwith for a period of two months from the date of handing over such a right of worship in the ends of justice.

b) ISSUE a writ of mandamus or any other writ or direction directing the Tahsildar to consider the representation dated 17.1.2024 submitted by the petitioner a copy of which is produced at Annexure-D and dispose the same, in accordance with law.

2. The petitioners in W.P.No.24820 of 2025 are before this Court seeking for the following reliefs:

a. Issue a Writ of Certiorari quashing the order dated 05.06.2025 passed by Respondent No.1 bearing number ADM/AP 19/2023-24 (ANNEXURE D).

b. Writ of mandamus directing the Respondents to continue the rotational achakaship between the Petitioners and Respondent No.5 as per the order of the Tahsildar dated 11.09.2023 (ANNEXURE E)

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and the charge order passed by the Tahsildar (ANNEXURE F) dated 04.12.2023 and Tahsildar dated 16.01.2024 (ANNEXURE G):

c. Grant and order or direction as deemed fit by this Hon'ble Court in the interest of justice and equity.

Facts in WP No. 3388 of 2024:

3. The petitioner contends that Sri Deviramma Temple situated at Hagare Village, Madihalli Hobli, Belur Taluk, Hassan District, is a Muzarai temple. By order dated 05.09.2023, the Deputy Commissioner, Hassan, is stated to have recognised the right of worship in the said temple in favour of the six sons of late Sri Havale Gowda, to be exercised on a rotational basis. Pursuant thereto, the Tahsildar issued a memorandum dated 11.09.2023 prescribing a period of two months for each of the six sons to perform pooja at the temple. The said memorandum further stipulated that, in the event of receipt of any police report or registration of any criminal case, the arrangement permitting such worship would stand cancelled.

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4. The petitioner, in W.P. No. 3388/2024, claims that, in terms of the rotational arrangement, he was entitled to assume charge of the worship with effect from 12.01.2024, upon completion of the tenure of Sri H. Kari Gowda. However, by memorandum dated 11.01.2024, the Tahsildar declined to hand over charge to the petitioner, referring to an adverse police report received against him, and instead handed over charge to the petitioner's next brother, Sri Huligowda.
5. Aggrieved thereby, the petitioner submitted a representation dated 17.01.2024 seeking that charge of the worship be handed over to him. The said request was not acceded to by the Tahsildar. The petitioner thereafter submitted a representation before the Deputy Commissioner contending that the order dated 05.09.2023 passed by the Deputy Commissioner did not prescribe any such condition and that the Tahsildar could not have imposed, by memorandum dated 11.09.2023, a condition restricting the right of worship upon receipt of a police report or registration of a criminal case. It is further contended that the right of worship is a hereditary right and, therefore, no such condition

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could have been imposed so as to curtail or deny the petitioner's right to worship.

6. It is in this background that the petitioner is before this Court challenging the memorandum dated 11.01.2024, whereby the petitioner's claim to assume charge of worship was declined and charge was handed over to Sri Huligowda.

FACTS IN W.P. No.24820 of 2025:

7. It is the case of the petitioners that petitioner Nos. 1, 4 and 5, being the children of late Havale Gowda, along with respondent No. 5, were recognised as Archaks of the C-category Sri Deviramma Temple pursuant to the order of the Tahsildar dated 11.09.2023. The petitioners and respondent No. 5 are stated to be the children of late Havale Gowda.
8. The dispute regarding the hereditary right of Archakship of the said temple dates back to the proceedings in Case No. DVAS (2) CR 1/1996-97, initiated by late Havale Gowda in the year 1999 against his brothers. During the pendency of the said proceedings, Havale Gowda died. Respondent No. 5,

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Kari Gowda, being the eldest son of Havale Gowda, prosecuted the proceedings on behalf of the family.

9. In the course of those proceedings, respondent No. 5 filed a family tree along with an affidavit dated 18.11.1999, stating, inter alia, that the members of the family had no objection to Kari Gowda performing the duties of an Archak of the temple for a period of three years. The said proceedings ultimately came to be allowed by order dated 11.09.2001.
10. It is the contention of the petitioners that the order dated 11.09.2001 was passed on the basis of the aforesaid affidavit and that the order did not confer any exclusive or hereditary right of Archakship upon respondent No. 5. According to the petitioners, although respondent No. 5 had represented the family of late Havale Gowda in the said proceedings, he subsequently began asserting an exclusive right of hereditary Archakship over the temple.
11. The petitioners further contend that the consent affidavit dated 18.11.1999 relied upon by respondent No. 5 is not genuine and that it does not bear the signatures of the petitioners. It is their allegation

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that the said document has been fabricated by respondent No. 5 with a view to asserting exclusive hereditary rights over the archakship. It is also contended that the order dated 11.09.2001 of the Deputy Commissioner contains no finding or direction recognising any exclusive hereditary right in favour of respondent No. 5.

12. In view of the aforesaid dispute, the petitioners submitted a representation before the Tahsildar, which was forwarded to the Deputy Commissioner. The Deputy Commissioner, by communication dated 15.10.2007, directed the Assistant Commissioner to examine the matter. Thereafter, the Tahsildar issued a show-cause notice dated 31.10.2007 to the petitioners and respondent No. 5.
13. Respondent No. 5 challenged the said show-cause notice in W.P. No. 18086/2007. This Court, by order dated 18.01.2008, quashed the show-cause notice on the ground that the power to issue such notice vested with the Deputy Commissioner and not the Tahsildar.
14. Subsequently, respondent No. 5 initiated proceedings before the Commissioner, Karnataka Hindu Religious

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Institutions and Charitable Endowments, against his paternal uncles in ADM/7/RP 1/2008. According to the petitioners, they were not impleaded in the said proceedings despite their claim to hereditary Archakship. The petitioners therefore filed an application seeking their impleadment.

15. Without adjudicating upon the said application, an order dated 15.10.2011 came to be passed directing the Assistant Commissioner and the Tahsildar to examine the complaints and the entitlement of respondent No. 5. Since, according to the petitioners, no effective action was taken pursuant thereto, they submitted a representation dated 19.02.2014 to respondent Nos. 2 to 4.
16. The Assistant Commissioner thereafter initiated proceedings in MUJURAYE 101/2013-14 and, by order dated 15.05.2014, recorded that the Assistant Commissioner did not possess the jurisdiction to adjudicate upon the question of hereditary Archakship. Nevertheless, the parties were directed to maintain status quo. According to the petitioners, respondent No. 5 took charge of the temple pursuant to the said order.



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17. Aggrieved thereby, the petitioners approached this Court in W.P. No. 26618/2014 seeking quashing of the order dated 15.05.2014. The said petition came to be allowed by order dated 23.10.2020, whereby this Court directed the Deputy Commissioner to examine whether the Commissioner or the Deputy Commissioner was competent to decide the dispute between the petitioners and the contesting respondent regarding their entitlement to perform pooja in the temple and to take a decision within three months from the date of receipt of the order.
18. Pursuant thereto, the Deputy Commissioner initiated proceedings in DVS/CR/336/2022-23. Upon consideration of the matter, the Deputy Commissioner passed an order dated 05.09.2023, whereby the right of hereditary Archakship in respect of the turn attributable to the branch of late Havale Gowda was extended to the petitioners and respondent No. 5.
19. Aggrieved by the said order, respondent No. 5 preferred an appeal in ADM/AP19/2023-24 before the Commissioner. The Commissioner, by order dated 05.06.2025, remanded the matter to the Deputy Commissioner for fresh consideration.

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20. It is this order dated 05.06.2025 passed by the Commissioner in ADM/AP19/2023-24 which is under challenge in the present proceedings.
21. The principal grievance of the petitioners is that, after the Deputy Commissioner had considered the dispute pursuant to the directions issued by this Court and had passed the order dated 05.09.2023 recognising the hereditary Archakship of the branch of late Havale Gowda, the Commissioner was not justified in remanding the matter without properly considering the petitioners' claim and the earlier orders passed in the proceedings.
22. The petitioners therefore seek interference with the order dated 05.06.2025 and restoration of the order dated 05.09.2023 passed by the Deputy Commissioner.
23. Sri.V.Lakshminarayana, Learned Senior Counsel appearing for Smt.Shilpa Rani, learned counsel for the petitioners, would submit that,
- 23.1.Insofar as W.P. No. 3388/2024 is concerned, learned Senior Counsel submits that the

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Tahsildar could not have imposed a condition that the right of a person to perform Archakship would stand denied merely upon receipt of a police report or registration of a criminal case. According to him, the order dated 05.09.2023 passed by the Deputy Commissioner did not contain any such condition and, therefore, the Tahsildar could not, by his subsequent memorandum dated 11.09.2023, introduce a condition that would curtail or deny the petitioner's right to perform archakship.

23.2. Insofar as W.P. No. 24820/2025 is concerned, learned Senior Counsel submits that the Deputy Commissioner, while passing the order dated 05.09.2023, had considered all the relevant material placed by the petitioners as well as respondent No. 5, including the letter/affidavit dated 18.11.1999 and the order dated 11.09.2001. Therefore, according to him, the Commissioner was not justified in remanding the matter to the Deputy Commissioner for fresh consideration, since all relevant aspects

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had already been examined by the Deputy Commissioner.

23.3. Learned Senior Counsel further submits that there was never any agreement or consent on the part of the petitioners for respondent No. 5- Kari Gowda to have exclusive hereditary Archakship of Sri Deviramma Temple. The contention that the petitioners had relinquished or abandoned their right of Archakship and had consented to respondent No. 5 being recognised as the exclusive hereditary Archak is, according to him, wholly misconceived.

23.4. It is further contended that respondent No. 5 has sought to assert such exclusive right before the authorities on the basis of documents which, according to the petitioners, are fabricated and do not reflect any consent on their part. Learned Senior Counsel submits that the petitioners have never consented to respondent No. 5 being conferred an exclusive hereditary right of archakship.

23.5. Learned Senior Counsel submits that hereditary Archakship constitutes a right in the nature of

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immovable property and, consequently, any transfer, relinquishment or alienation of such right by way of consent would necessarily require a registered instrument. In the absence of any such registered instrument executed by the petitioners, it is contended that respondent No. 5 cannot claim that the petitioners have relinquished or transferred their hereditary right of Archakship in his favour.

23.6. In this regard, he relies upon the decision of this Court in ***Ramachandra v. Shivaram***, [ILR 2008, Karnataka 4878], more particularly paragraphs 68, 69, 70 and 71 thereof, which are reproduced hereunder for easy reference:

68. In the case of Ram Ratan (Dead) By L.Rs. v. Bajrang Lal, the Apex Court held that hereditary office of Shebait as well as right to worship by turn are immovable property and transfer of such property should be by a registered document. In the course of the aforesaid judgment, the Apex Court also made the following observations.

(3) When a question Concerns the rights of Hindus, generally, it must be taken to include whatever the Hindu law classes as immovable property although not in the ordinary acceptation of the word. The office of the Shebait is hereditary unless provision to the contrary is made in the deed creating the endowment. In the conception of Shebait both the elements of office and property, duties and personal interest are mixed up and blended together and one element

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cannot be detached from the other. Courts in India, with very few exception, have recognized the hereditary office of Shebait as immovable property and it has all along been treated as immovable property uniformly. Therefore, the hereditary office of Shebait, which would be enjoyed by a person by turn, would be immovable property. The gift of such property must be by a registered instrument. Here, the High Court was justified in excluding the document in the instant case from evidence”.

69. *In another decision, the Andhra Pradesh High Court in the case of Ramanujacharyulu v. Panduranghacharyulu , held that the office of an archaka when emoluments are attached to it, is heritable and partible property. In another decision, the very same High Court in the case of Narayan Seshabharyvlu v. Narayanam Venkata Charyulu held thus;*

"A hereditary archaka office is regarded as a species of property which devolves like any other property according to the ordinary law of inheritance. The law recognises hereditary succession to the office and emoluments of archakas as being in consonance with the presumed intention of the grantor or the founder. In the absence of proof of custom or usage of a different nature it is partible and heritable according to the Hindu Law of succession.

The office of archaka with its emoluments has come to be regarded as a species of property; heritable and partible like other private property. In such circumstances, there is no reason why Courts should refuse to recognise transfers by archakas of their right to the office and the emoluments to the remaining archakas or to those standing in the time of heirs so long as the transfers are gratuitous and not made for the pecuniary benefit of the transferrors”.

70. *The learned author Mayne in his commentary "Hindu Law & Usage" (14th Edition), 1998 at page No. 1299, dealing with the office of a poojary (archaks) has this to say, "Where hereditary poojari is appointed for a*

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public temple and emoluments are attached to that office, the right to such office is a right to property and his removal from the office is only by a civil suit and not by a shebait. It is heritable and partible. The hereditary poojari's (archak's) office is property and devolves like any other property according to the ordinary law of inheritance. When it sold the transfer is illegal. (emphasis by me)

71. It is therefore clear from the aforesaid prepositions of law, laid down by the Apex Court as well as by the other High Courts and the observation in Mayne's 'Hindu Law & Usage', that the right to hereditary archaks office is a right to property where the emoluments are attached to the office of the hereditary poojary and such an archak can be removed only by a civil suit.

23.7. By relying on **Ramachandra** learned Senior Counsel submits that the right to hereditary Archakship, where the office carries attached emoluments, constitutes a right to property and is heritable and partible. Such right cannot, therefore, be treated as a mere personal privilege capable of being divested or relinquished informally.

23.8. He submits that, having regard to the principles laid down in the said decision, any alleged relinquishment, transfer or surrender of the petitioners' hereditary right of Archakship in favour of respondent No. 5 cannot be inferred

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merely from the affidavit or letter dated 18.11.1999. In the absence of a valid and legally enforceable instrument evidencing such transfer or relinquishment, respondent No. 5 could not have asserted an exclusive hereditary right over the office of archakship.

23.9. Learned Senior Counsel would further submit that the material relied upon by respondent No. 5 does not establish that the petitioners had permanently surrendered their hereditary rights. At the highest, the document dated 18.11.1999 could relate to the arrangement prevailing at that point of time and could not be construed as a permanent relinquishment of the hereditary rights of the members of the branch of late Havale Gowda.

23.10. It is therefore contended that the Deputy Commissioner was justified in examining the respective claims of the petitioners and respondent No. 5 and, upon consideration of the material including the order dated 11.09.2001, recognising the hereditary Archakship of the descendants of Havale Gowda. The Commissioner, according to learned

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Senior Counsel, ought not to have remanded the matter for a fresh consideration in the absence of any material establishing that the petitioners had relinquished or transferred their hereditary rights in favour of respondent No. 5.

23.11. His submission is that the claim of respondent No.5 being on the basis of a false document, which is not even registered, the question of any transfer or consent would not arise. Respondent No. 5 therefore cannot claim exclusive Archakship over the temple and in this regard he relies upon the decision of the Hon'ble Supreme Court in **Ram Rattan v. Bajrang Lal**, [(1978) 3 SCC 236], more particularly paragraphs 8, 9, 10, 11, 12 and 13 thereof which are reproduced hereunder for easy reference:

8. Serious controversy centered, however, round the question whether right to worship by turn is immovable property gift of which can only be made by registered instrument. Hindu law recognises gift of property to an idol. In respect of possession and management of the property which belongs to the Devasthanam or temple the responsibility would be in the manager who is described by Hindu law as Shebait. The devolution of the office of Shebait depends on the terms of the deed or Will by which it is created and in the absence of a provision to the contrary, the settlor himself becomes a Shebait and the office devolves according to line of inheritance from the

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founder and passes to his heirs. This led to an arrangement amongst various heirs equally entitled to inherit the office for the due execution of the functions belonging to the office, discharging duty in turn. This turn of worship is styled as "Pala" in West Bengal and "Osra" in Rajasthan. Shebaiti being held to be property, in *Angurbala Mullick v. Debabrata Mullick*, this Court recognised the right of a family to succeed to the religious office of Shebaitship. This hereditary office of Shebait is traceable to old Hindu texts and is a recognised concept of traditional Hindu law. **It appears to be heretable and partible in the strict sense that it is enjoyed by heirs of equal degree by turn and transferable by gift subject to the limitation that it may not pass to a non-Hindu.** On principles of morality and propriety sale of the office of Shebait is not favoured.

9. The position of Shebait is not merely that of a Pujari. He is a human ministrant of the deity. By virtue of the office a Shebait is an administrator of the property attached to the temple of which he is Shebait. Both the elements of office and property, of duties and personal interest are blended together in the conception of Shebaitship and neither can be detached from the other (vide *Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*).

10. The question then is whether the hereditary office of Shebait is immovable property. Much before the enactment of the Transfer of Property Act a question arose in the context of the Limitation Act then in force whether a suit for a share in the worship and the emolument incidental to the same would be a suit for recovery of immovable property or an interest in immovable property. In *Krishnabhat bia Hiragange v. Kanabhat bia Mahalbhat* etc. after referring to various texts of Hindu law and the commentaries of English commentators thereon, a Division Bench of the Bombay High Court held as under:

"Although, therefore, the office of a priest in a temple, when it is not annexed to the ownership of any land, or held by virtue of such ownership, may not, in the ordinary sense of the term, be immovable property,

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but is an incorporeal hereditament of a personal nature, yet being by the custom of Hindus classed with immovable property, and so regarded in their law...."

11. *The privileges and precedence attached to a hereditary office were termed in Hindu law as Nibandha, and the text of Yajnavalkya treated Nibandha, loosely translated as corody, as immovable property. Soon thereafter the question again arose in Balvantray alias Tatiaji Banaji v. Purshotam Sidheshvar where, in view of a conflict in decision between Krishnabhat and Baiji Manor v. Dassi Kallianrai Hukmatrai the matter was referred to a Full Bench of 5 Judges. The question arose in the context of the Limitation Act in a suit to recover fees payable to the incumbent of a hereditary office viz. that of a village Joshi (astrologer). The contention was that such a hereditary office of village Joshi is immovable property. After exhaustively referring to the texts of Yajnavalkya and the commentaries thereon, Westropp, C.J., observed that the word "corody" is not a happy translation of term Nibandha. It was held that Hindu law has always treated hereditary office as immovable property. These two decisions were affirmed by the Judicial Committee of the Privy Council in Maharana Fattehsangji Jaswantsangji v. Dassi Kallianraiiji Hakoomutraiji . The principle that emerges from these decisions is that when the question concerns the rights of Hindus it must be taken to include whatever the Hindu law classes as immovable although not so in ordinary acceptance of the word and to the application of this rule within the appropriate limits the Judicial Committee sees no objection. In Raghoo Pandey v. Kesav Parey , the Calcutta High Court held that the right to officiate as a priest at funeral ceremonies of Hindus is in the nature of immovable property. A Full Bench of the Calcutta High Court in Manohar Mukherjee v. Bhupendra Nath Mukherjee , held that the office of Shebait is hereditary and is regarded in Hindu law as immovable property. This Court took note of these decisions with approval in Angurbala Mullick case.*

12. Mr Desai urged that there is a distinct line of authorities which indicate that a Pala or turn of

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worship is movable property. In Mulla's Transfer of Property Act, 5th Ednt., p. 17, the author has observed that a pala or turn of worship is movable property. In *Eshan Chander Roy v. Manmohini Dassi*, it was said that it was not possible to come to the conclusion that the right to worship an idol is in the nature of an interest in immovable property. It is a bare statement with no reference to texts of Hindu law or commentaries thereon. In *Jharula Das v. Jalandhar Thakur* it was held that the office of Shebait is hereditary and that the suit which was brought after a period of 12 years was barred by limitation. This decision does not specify the nature of property termed as turn of worship in Hindu law. The Patna High Court in *Jagdeo Singh v. Ram Saran Pande* has in terms held that a turn of worship is not an interest in immovable property and, therefore, a sale thereof does not require registration. **The decision purports to follow the ratio in Eshan Chunder Roy case which gives no reasons for the decision and also Jharula Das case where this question appears not to have been in terms raised.**

13. The definition of immovable property in Section 3 of the Transfer of Property Act is couched in negative form in that it does not include standing timber, growing crops, or grass. The statute avoids positively defining what is immovable property but merely excludes certain types of property from being treated as immovable property. Section 2(6) of the Registration Act defines immovable property to include lands, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops or grass. Section 2(26) of the General Clauses Act defines immovable property to include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth. It may be mentioned that the definition of immovable property in Registration Act lends assurance to treating Shebait's hereditary office as immovable property because the definition includes hereditary allowances. Office of Shebait is hereditary unless provision to the contrary is made in

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*the deed creating the endowment. In the conception of Shebait both the elements of office and property, duties and personal interest are mixed up and blended together and one of the elements cannot be detached from the other. Old texts, one of the principal sources of Hindu law and the commentaries thereon, and over a century the courts with very few exceptions have recognised hereditary office of Shebait as immovable property, and it has all along been treated as immovable property almost uniformly. While examining the nature and character of an office as envisaged by Hindu law it would be correct to accept and designate it in the same manner as has been done by the Hindu law text writers and accepted by courts over a long period. **It is, therefore, safe to conclude that the hereditary office of Shebait which would be enjoyed by the person by turn would be immovable property. The gift of such immovable property must of course be by registered instrument.** Exhibit I being not registered, the High Court was justified in excluding it from evidence. **On this conclusion the plaintiff's suit has been rightly dismissed.***

23.12. By relying on **Ram Rattan** learned Senior Counsel submits that the hereditary office of worship, including the right to worship by turn, has been recognised as an interest in immovable property for the purposes of Hindu law. Where such hereditary right is sought to be transferred or gifted, the transfer must be evidenced by a registered instrument. In the absence of a registered instrument, no valid transfer of such hereditary right can be claimed.

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23.13. Applying the aforesaid principle to the facts of the present case, learned Senior Counsel submits that respondent No. 5 cannot claim exclusive hereditary Archakship on the basis of the alleged consent contained in the document dated 18.11.1999. Apart from the petitioners disputing the execution and genuineness of the said document, the document is admittedly not a registered instrument and, therefore, could not have operated to transfer, relinquish or extinguish the hereditary right of the petitioners in favour of respondent No. 5.

23.14. He further submits that the order dated 11.09.2001 passed in the earlier proceedings does not recognise any exclusive hereditary right in favour of respondent No. 5. Consequently, the said order cannot be relied upon to establish that the petitioners had permanently surrendered their right to perform Archakship in favour of respondent No. 5.

23.15. Learned Senior Counsel therefore submits that the Commissioner, while considering the appeal, ought to have examined the effect of

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the law declared by the Hon'ble Supreme Court in **Ram Rattan** and ought not to have proceeded on the assumption that the alleged consent of the petitioners in an unregistered document could result in extinguishment or transfer of their hereditary right. The remand of the matter to the Deputy Commissioner, without appropriately considering this legal position and the material already considered by the Deputy Commissioner, is therefore contended to be unsustainable.

23.16. He also relies on the decision of the Hon'ble Andhra Pradesh High Court in **Narayanam Seshacharyulu vs. Narayanam Venkatacharyulu**, [AIR 1957 AP 876], more particularly paragraphs 2, 13 and 15, which are reproduced hereunder for easy reference:

"2. ...A hereditary archaka office is regarded as a species of property which devolves like any other property according to the ordinary law of inheritance...the law recognises hereditary succession to the office and emoluments of archakas as being in consonance with the presumed intentions of the grantor or the founder... in the absence of proof of custom or usage of a different nature, is partible and heritable according to the Hindu Law of succession..."

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13. ...The office of archaka with its emoluments has come to be regarded as a species of property; heritable and partible like other private property...

15. ... In such circumstances, there is no reason Courts should refuse to recognise transfers by archakas of their right to the office and the emoluments to the remaining archakas or to those standing in the time of heirs so long as the transfers are gratuitous and not made for the pecuniary benefit of the transferrors..."

23.17. By relying on **Narayanam Seshacharyulu** learned Senior Counsel submits that a hereditary Archak office, together with the emoluments attached thereto, is recognised as a species of property which is heritable and partible and devolves in accordance with the ordinary law of succession, subject to any established custom or usage to the contrary.

23.18. He submits that the said decision also recognises that a hereditary Archak may, in an appropriate case, transfer his right to the office and the emoluments to the remaining Archaks or to persons who would otherwise be entitled to succeed to the office. However, such principle cannot be invoked to sustain a claim of exclusive hereditary Archakship in favour of

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respondent No. 5 merely on the basis of an alleged and disputed consent of the other members of the family.

23.19. According to learned Senior Counsel, the decision in **Narayanam Seshacharyulu** reinforces the proposition that the right of hereditary Archakship is a heritable and partible right and, therefore, the rights of the respective branches of the family cannot be presumed to have been extinguished merely because one member of the family was permitted to perform the duties of an Archak for a particular period.

23.20. He further submits that, even assuming that the document dated 18.11.1999 is genuine, the same, at the highest, records the consent of the family members to respondent No. 5 performing the duties of an Archak for a period of three years. It cannot be construed as a permanent relinquishment or transfer of the hereditary rights of the petitioners in favour of respondent No. 5, particularly when the petitioners dispute having executed any such document and when there is no material

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demonstrating an unequivocal and legally valid surrender of their hereditary rights.

23.21. Learned Senior Counsel therefore submits that respondent No. 5's claim to exclusive hereditary Archakship cannot be sustained merely on the basis of the aforesaid document, and that the Deputy Commissioner was justified in recognising the hereditary rights of the members of the branch of late Havale Gowda in accordance with the law of succession.

23.22. He submits that the petitioners and respondent No. 5 belong to the same family, if respondent No. 5 can claim hereditary Archakship, such claim would enure to the benefit of the petitioners also.

23.23. Learned Senior Counsel submits that the order dated 11.09.2001 does not confer any exclusive right of hereditary Archakship upon respondent No. 5-Kari Gowda. According to him, no such exclusive right could have been conferred upon respondent No. 5 without the other members of the family, including the present petitioners,

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being heard and their respective rights being adjudicated.

23.24. It is submitted that respondent No. 5, being the eldest son of late Havale Gowda, was prosecuting the earlier proceedings in his representative capacity on behalf of the family and not in his individual capacity. Consequently, any order passed in those proceedings recognising the right of the family to perform Archakship could not, merely because respondent No. 5 was representing the family, be construed as conferring an exclusive right upon him personally.

23.25. He relies on the decision of the Hon'ble Supreme Court in **Nagesh Bisto Desai v. Khando Tirmal Desai**, [(1982) 2 SCC 79] , more particularly paragraphs 19 and 22 thereof, which are reproduced hereunder for easy reference:

19. As observed by Sir Dinshaw Mulla in his celebrated judgment in *Shiba Prasad Singh v. Rani Prayag Kumari Debi* [AIR 1932 PC 216 : (1932) 59 IA 331 : 138 IC 861] :

"The keynote of the whole position, in Their Lordships' view, is to be found in the following passage in the judgment in the Tipperah case

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[Neelkisto Deb Burmono v. Beerchunder Thakoor, (1867-69) 12 MIA 523 : 3 Bengal LR 13 (PC) : 12 WR 21] : "Where a custom is proved to exist, it supersedes the general law, which, however, still regulates all beyond the custom." Impartibility is essentially a creature of custom. In the case of ordinary joint family property, the members of the family have: (1) the right of partition; (2) the right to restrain alienations by the head of the family except for necessity; (3) the right of maintenance; and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility, as laid down in Sartaj Kuari case [Rani Sartaj Kuari v. Rani Deoraj Kuari, (1888) 15 IA 51 : ILR (1888) 10 All 272 (PC)] and the First Pittapur case [Rama Krishna Rao Bahadur v. Court of Wards, (1899) 26 IA 83 : ILR (1899) 22 Mad 383 (PC) : 3 Cal WN 415 : 1 Bom LR 277] ; and so also the third, as held in the Second Pittapur case [Raja Ram Rao v. Raja of Pittapur, (1918) 45 IA 148 : AIR 1918 PC 81 : 47 IC 354] . To this extent the general law of the Mitakshara has been superseded by custom, and the impartible estate, though ancestral, is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility. This right, therefore, still remains, and this is what was held in Baijnath case [AIR 1921 PC 62 : 60 IC 537 : Baijnath Prashad Singh v. Tej Bali Singh, (1921) 48 IA 195 :] . To this extent the estate still retains its character of joint family property, and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birthright of the senior member to take by survivorship still remains. Nor is this right a mere spes successionis similar to that of a reversioner succeeding on the death of a Hindu widow to her husband's estate. It is a right which

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*is capable of being renounced and surrendered. **Such being Their Lordships' view, it follows that in order to establish that a family governed by the Mitakshara in which there is an ancestral impartible estate has ceased to be joint, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to renounce their right of succession to the estate. . . .***

Since the decision of the Privy Council in Shiba Prasad Singh case [AIR 1932 PC 216 : (1932) 59 IA 331 : 138 IC 861] , it is well settled that an estate is impartible does not make it the separate and exclusive property of the holder: where the property is ancestral and the holder has succeeded to it, it will be part of the joint estate of the undivided family.

22. In Chinnathayi case [1951 SCC 1159 : AIR 1952 SC 29 : 1952 SCR 241 : 1952 SCJ 1] it was observed that the dictum of the Privy Council in Shiba Prasad Singh case [AIR 1932 PC 216 : (1932) 59 IA 331 : 138 IC 861] that to establish that an impartible estate has ceased to be joint family property for purposes of succession, it is necessary to prove an intention, express or implied, on the part of the junior members of the family to give up their chance of succeeding to the estate. **The test to be applied is whether the facts show a clear intention to renounce or surrender any interest in the impartible estate or a relinquishment of the right of succession and an intention to impress upon the zamindari the character of separate property.** In Mirza Raja Gajapathi case [1951 SCC 1159 : (1964) 2 SCR 403 : AIR 1964 SC 118] , it was observed that an ancestral impartible estate to which the holder has succeeded by the custom of primogeniture is part of the joint estate of the undivided Hindu family. Though the other rights enjoyed by the members of a joint Hindu family are inconsistent in the case of an impartible estate, the right of survivorship still remains. In Rajah Velugoti Kumara Krishna case

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[(1969) 3 SCC 281 : AIR 1970 SC 1795 : (1970) 3 SCR 88] , it was observed that the only vestige of the incidents of joint family property, which still attaches to the joint family property is the right of survivorship which, of course, is not inconsistent with the custom of impartibility. In Bhaiya Ramanuj Pratap Deo case [(1981) 4 SCC 613 : (1982) 1 SCR 417] the principles laid down by the Privy Council in Shiba Prasad Singh case [AIR 1932 PC 216 : (1932) 59 IA 331 : 138 IC 861] were reiterated.

23.26. By relying on **Nagesh Bisto Desai**, his submission is that the principles noticed therein recognise that, where a right continues to retain the character of a joint family right, exclusivity in favour of one member cannot be presumed merely from the fact that such member has been recognised as the person holding or representing the right. For such a right to cease to enure to the benefit of the other members, there must be a clear intention, express or implied, to relinquish or surrender their respective rights.

23.27. By relying upon **Nagesh Bisto Desai**, learned Senior Counsel submits that the order dated 11.09.2001, even if passed on the basis of the representation made by respondent No. 5, has to be understood in the context in which respondent No. 5 was prosecuting the

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proceedings on behalf of the family of late Havale Gowda. The mere fact that respondent No. 5 was the person who represented the family or was permitted to perform the duties of an Archak cannot, by itself, result in the hereditary right of the other members of the family being extinguished.

23.28. He submits that there is no material demonstrating any unequivocal intention on the part of the petitioners to relinquish or surrender their hereditary right of Archakship in favour of respondent No. 5. On the contrary, the petitioners have consistently asserted their entitlement to the hereditary office and have questioned the claim of respondent No. 5 to exclusive archakship.

23.29. Accordingly, learned Senior Counsel submits that any recognition of the right of the Havale Gowda family to perform Archakship pursuant to the earlier proceedings would enure to the benefit of the members of that family entitled thereto and could not, in the absence of a clear and legally sustainable relinquishment, be

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treated as having vested exclusively in respondent No. 5.

23.30. He submits that the Deputy Commissioner would exercise powers only in terms of Section 25B of The Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 [for short 'the Act'] which is reproduced hereunder for easy reference:

25B. Power of the Deputy Commissioner to settle scheme for the administration of Charitable endowments and to decide certain other disputes.-

(1) When the Deputy Commissioner has reason to believe that in the interest of the proper administration of Charitable endowments or a endowment attached to any notified institution or declared institution, a scheme shall be settled for such endowment or when not less than five persons having interest make an application in writing stating that in the interest of the proper administration of the endowment, a scheme shall be settled for it, the Deputy Commissioner shall on consultation with the Trustee or the Committee of Management or the persons having interest and if, after such consultation he is satisfied that it is necessary or desirable to do so, he shall by order, settle a scheme of administration of such Charitable endowment or endowment.

(2) The scheme settled under this section for the administration of Charitable endowments may include certain provision for,-

(i) constitution of a body for the purpose of assisting in the administration of such Charitable endowments;

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(ii) the method of selection of members for such committee from the persons having interest in such endowments;

(iii) defining the powers and duties of the committee;

(3) The Deputy Commissioner may determine the properties of the endowment and the list of such properties shall be appended to the scheme as a schedule.

(4) The Deputy Commissioner may at anytime after consulting trustees or committee by order modify or cancel any scheme in respect of an endowment which is in force and settled under sub-section (1) or any scheme in force settled or modified by any courts or any earlier enactments:

Provided that such cancellation or modification of a scheme in force settled or modified earlier shall be made only subject to such conditions and restrictions as may be imposed by the Deputy Commissioner.

(5) If the Deputy Commissioner is satisfied that any such scheme referred to in sub-section (1) is inconsistent with the provisions of this Act and rules made thereunder he may, at anytime modify it in such a manner as may be necessary to bring it into conformity with the provisions of this Act and rules made there under.

(6) Whenever any question arises as to,-

(i) whether a particular property is the property of a notified institutions or declared institution under the Act; or

(ii) whether any property or money is either a religious endowment or specific endowment; or

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(iii) whether any Archak or temple servant holds or held an office in any notified institution or declared institution on the basis of a hereditary right; or

(iv) whether any person is entitled by custom or otherwise to any honour, emolument or perquisite in any religious institution; and what is the existing usage of a notified or declared institution; or

(v) whether any institution or endowment is wholly or partly of a religious or of secular character and whether any property or money has been given wholly or partly for religious or secular purpose; or

(vi) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular purposes, as to what portion of such property or money shall be allocated to religious purpose; or

(vii) to accord sanction of dittam and seva list in respect of notified institutions having gross annual income of rupees one lakh and above but below Rupees ten lakhs; or

(viii) any dispute between the servant of a notified institution and the committee of management. - the Deputy Commissioner after hearing the parties concerned shall by order decide it.

(7) Any person aggrieved by any order passed by the Deputy Commissioner under any of the foregoing provisions, shall appeal within one month of the date of receipt of the order to the Commissioner.

(8) The Commissioner may after hearing the aggrieved person and other contending parties, pass appropriate order in accordance with law.

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23.31. Learned Senior Counsel submits that the jurisdiction of the Deputy Commissioner in matters relating to hereditary Archakship is traceable to Section 25B of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997 (for short, 'the Act'). In particular, Section 25B(6)(iii) empowers the Deputy Commissioner, after hearing the parties concerned, to decide whether any Archak or temple servant holds or held an office in any notified or declared institution on the basis of a hereditary right.

23.32. He submits that the statutory scheme therefore requires the Deputy Commissioner, when such a dispute is raised, to examine the material placed by the rival claimants and determine whether the person claiming the office holds or held the same by virtue of a hereditary right. Such determination necessarily requires consideration of the relevant documents, the orders passed in the earlier proceedings, the genealogy of the concerned family and the nature of the right claimed by the respective parties.

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23.33. According to learned Senior Counsel, the Deputy Commissioner, while exercising jurisdiction under Section 25B(6)(iii) of the Act, had considered the material placed before him, including the earlier order dated 11.09.2001, the document dated 18.11.1999 and the respective claims of the petitioners and respondent No. 5. Upon such consideration, the Deputy Commissioner passed the order dated 05.09.2023 recognising the hereditary right of the members of the branch of late Havale Gowda to perform Archakship in their respective turn.

23.34. Learned Senior Counsel submits that the order dated 05.09.2023 ought not to be understood as creating or conferring a new right in favour of respondent No. 5. The jurisdiction exercised by the Deputy Commissioner under Section 25B(6)(iii) of the Act is to adjudicate whether the office is held or was held on the basis of hereditary right. The order, therefore, recognises and determines the existing hereditary entitlement rather than creating such entitlement for the first time.

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23.35. It is further submitted that, even assuming respondent No. 5-Kari Gowda was found entitled to perform Archakship as a member of the branch of late Havale Gowda, such recognition cannot automatically be construed as conferring an exclusive and personal right upon him. If the hereditary right forms part of the rights devolving upon the branch or family under the applicable law of succession, the benefit of such recognition would enure to all members of the family who are otherwise entitled to succeed to the hereditary office.

23.36. Learned Senior Counsel therefore submits that the Deputy Commissioner, having exercised the jurisdiction specifically vested in him under Section 25B(6)(iii) of the Act and having considered the relevant material, was competent to determine the hereditary entitlement.

23.37. The Commissioner, while exercising appellate jurisdiction under Sections 25B(7) and (8), ought consequently to have examined the correctness of that determination on the material already available rather than

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remanding the matter for a fresh consideration without identifying any specific aspect which had remained unexamined.

23.38. He submits that this Court in W.P. No.26618/2014 vide order dated 23.10.2020 has held as under:

"Deputy Commissioner are hereby directed to examine whether the Commissioner or Deputy Commissioner can decide the disputed issue among the petitioners and contesting respondent to perform pooja in the aforesaid temple or not. Contesting respondents are permitted to place their say in the matter before the Commissioner/Deputy Commissioner. In this regard, a speaking order shall be passed within a period of three months from the date of receipt of this order."

23.39. By relying on the direction issued by this Court, he submits that the Deputy Commissioner was directed to examine whether the Commissioner or Deputy Commissioner can decide the disputed issue amongst the petitioners and, after hearing the parties, pass necessary order, and it is in pursuance of that, the Deputy Commissioner has passed the order on 05.09.2023 extending the hereditary

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Archakship to the petitioners and respondent No.5. Thus, this order is required to be given due effect.

23.40. The Commissioner having earlier confirmed the order of the Deputy Commissioner dated 11.09.2001 vide order dated 15.10.2011, the said order having attained finality, the question of respondent No.5 filing an appeal insofar as the order of Deputy Commissioner dated 05.09.2023 would not arise, the entire family is entitled to hereditary Archakship is his submission. On that basis he submits that the reliefs sought for are required to be granted.

24. Sri.Harish Chandra Movvar, learned counsel for respondent, would submit that:

24.1. The Deputy Commissioner under Section 25B of the Act can only adjudicate as to whether there was hereditary right of Archakship and not the *inter se* rights between the persons claiming hereditary Archakship. The Deputy Commissioner has gone beyond the purview of the said provision by deciding the rights of each of the family members and it is for this reason

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that the Commissioner has remanded the matter to the Deputy Commissioner for fresh consideration.

24.2. In this regard he relies on the decision of the Division Bench of this Court in ***Sri. C.L. Parashivamurthy vs. The State of Karnataka***, [WA 1687/2024 DD 03.03.2026], more particularly paragraph 11, which is reproduced hereunder for easy reference:

11. Section 25B of the Act stipulates the power of the Deputy Commissioner to settle the scheme for administration of charitable endowments and to decide certain other disputes. Sub-section (6) of Section 25B of the Act enumerates the questions that the Deputy Commissioner, after hearing the parties, shall decide. Section 25B(6)(iii) of the Act specifies that the dispute as to whether any Archak or Temple Servant holds or held an office in any notified institution or declared institution on the basis of a hereditary right" is also to be decided by the Deputy Commissioner. Hence, it is clear that by virtue of Section 25B(6)(iii) of the Act, in the event of a dispute regarding appointment of Archak on the basis of a hereditary right claimed, the same is to be decided by the Deputy Commissioner, after hearing the parties.

24.3. By relying on ***Parashivamurthy*** learned counsel submits that the jurisdiction of the Deputy Commissioner under Section 25B(6)(iii)

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of the Act is confined to the statutory question as to whether the office of Archak is held or was held on the basis of a hereditary right. The provision does not confer jurisdiction upon the Deputy Commissioner to adjudicate the inter se civil rights of competing members of a family claiming succession to such hereditary office.

24.4. He submits that, in the present case, the existence of the hereditary office itself is not the real dispute. The dispute is as to the respective individual rights of the petitioners and respondent No. 5 to succeed to and perform the office of Archakship. The determination of such rights necessarily requires adjudication of questions relating to succession, relinquishment, the effect and validity of the affidavit dated 18.11.1999, the scope and effect of the order dated 11.09.2001 and whether respondent No. 5 acquired any exclusive right to the office.

24.5. According to learned counsel, these are matters which travel beyond the limited jurisdiction conferred upon the Deputy Commissioner under Section 25B(6)(iii) of the Act. The Deputy

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Commissioner could determine whether the office was hereditary; he could not, in exercise of that provision, finally determine which individual amongst the members of the family had succeeded to the hereditary office or whether one member had acquired an exclusive right thereto.

24.6. He submits that the Deputy Commissioner, while passing the order dated 05.09.2023, proceeded to adjudicate precisely such *inter se* claims. By recognising hereditary Archakship in favour of the petitioners and respondent No. 5 and determining their respective entitlement, the Deputy Commissioner travelled beyond the jurisdiction vested in him under Section 25B(6)(iii) of the Act.

24.7. Learned counsel submits that the Commissioner, in exercise of the appellate jurisdiction under Sections 25B(7) and (8) of the Act, was therefore justified in interfering with the order dated 05.09.2023, but however, ought not to have remanded the matter to the Deputy Commissioner.

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24.8. It is submitted that such individual and *inter se* rights cannot be conclusively determined by the Deputy Commissioner in proceedings under Section 25B of the Act. Questions as to the validity and binding nature of the alleged consent affidavit dated 18.11.1999, the effect of the order dated 11.09.2001, the alleged relinquishment of hereditary rights and the respective rights of succession of the parties are matters which require adjudication by a competent Civil Court.

24.9. Learned counsel therefore submits that the Commissioner was justified in interfering with the order of the Deputy Commissioner. However, the matter ought not to have been remanded to the Deputy Commissioner for the purpose of adjudicating the individual rights of the parties afresh. Once it was found that the dispute involved questions beyond the jurisdiction conferred under Section 25B(6)(iii) of the Act, the parties ought to have been relegated to the competent Civil Court for adjudication of their respective rights.

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24.10. Accordingly, learned counsel submits that the order dated 05.06.2025 is liable to be sustained insofar as in setting aside the order of the Deputy Commissioner, the Commissioner ought to have held that the Deputy Commissioner could not adjudicate the *inter se* civil rights of the parties. The parties, if so advised, would have to approach the competent Civil Court for determination of their respective rights to the hereditary office of Archakship. The statutory proceedings under Section 25B of the Act cannot be converted into proceedings for adjudication of title, succession or other individual civil rights which fall within the jurisdiction of the Civil Court.

24.11. He also relies on Section 9 of the Act, which is reproduced hereunder for easy reference:

9. Appointment of Archakas.

(1)The committee of management of a notified institution may with the approval of the Commissioner appoint one or more archakas to each temple belonging to the institution.

[Provided that in case of hereditary post, if there is no dispute among the members of the family, the next in line of succession shall be appointed; with the prior approval of the Commissioner;

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Provided further that in case where no legal heir of the hereditary post are available the Committee of Management may appoint any person as provided under sub-section (1)]

(2)Where more than one Archaka is appointed the senior among them shall perform as the Pradhana Archaka. The Pradhana Archaka wherever appointed, and the archakas, shall perform such duties as the Committee of Management may specify.

(3)Without prejudice to the power of the State Government to prescribe a common pattern for each category of temples, the number of archakas appointed to the temple shall be in keeping with the practice obtaining in the temple immediately before the commencement of this Act.

24.12. Learned counsel submits that Section 9(1) of the Act itself draws a distinction between the existence of a hereditary post and the question as to who, amongst the members of the family, is entitled to succeed to and hold that post. The first proviso to Section 9(1) contemplates appointment of the next person in the line of succession where there is no dispute amongst the members of the family. Thus, where a dispute arises amongst the members of the family as to their respective rights of succession to the hereditary post, such dispute cannot be conclusively adjudicated by the Deputy Commissioner under Section 25B(6)(iii) of the Act.

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24.13. He submits that Section 25B(6)(iii) confers a limited statutory jurisdiction upon the Deputy Commissioner to decide whether an Archak or temple servant holds or held an office in a notified or declared institution on the basis of a hereditary right. The provision does not confer jurisdiction upon the Deputy Commissioner to adjudicate the individual or *inter se* civil rights of rival members of a family claiming succession to such hereditary office.

24.14. According to learned counsel, the distinction is material in the present case. The question whether the office of Archakship is hereditary may fall within the scope of Section 25B(6)(iii) of the Act. However, the further question as to whether respondent No. 5 has an exclusive right thereto, whether the petitioners have inherited or retained a corresponding right, whether the alleged consent affidavit dated 18.11.1999 is genuine and binding, whether any right was relinquished by the petitioners, and what is the precise order of succession amongst the descendants of late Havale Gowda are questions concerning the *inter se* civil rights of the parties.

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24.15. He submits that such questions necessarily involve adjudication of disputed questions of fact and law relating to succession, relinquishment, validity and binding nature of documents and the respective civil rights of the parties. The Deputy Commissioner, exercising the limited jurisdiction under Section 25B(6)(iii) of the Act, could not have assumed jurisdiction to conclusively determine those questions.

24.16. Learned counsel therefore submits that the Deputy Commissioner exceeded the jurisdiction vested in him when, by order dated 05.09.2023, he proceeded to recognise and determine the respective hereditary entitlement of the petitioners and respondent No. 5. The Deputy Commissioner could at best have determined the existence of the hereditary character of the office; he could not have adjudicated which individual member of the family was entitled to succeed to or exclusively hold that office.

24.17. It is in this context that the Commissioner, by order dated 05.06.2025, was justified in interfering with the order of the Deputy

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Commissioner. The Commissioner correctly noticed that the dispute raised before the authorities was not merely as to the existence of a hereditary office, but concerned the *inter se* rights of the members of the family. Such a dispute, according to learned counsel, falls outside the adjudicatory jurisdiction of the Deputy Commissioner under Section 25B(6)(iii) of the Act and ought to be agitated before the competent Civil Court.

24.18. Learned counsel accordingly submits that the Commissioner was justified in not allowing the order of the Deputy Commissioner to stand, he however submits that the Commissioner ought not to have remanded the matter back to the Deputy Commissioner, but ought to have relegated the parties to the competent Civil Court for adjudication of their *inter se* rights, including the effect of the alleged consent affidavit dated 18.11.1999, the order dated 11.09.2001 and the respective claims of the petitioners and respondent No. 5 to the hereditary office of Archakship.

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24.19. His submission is that even as per the petitioners, a hereditary right of Archakship is a property right and a claim has been made that it would enure to the benefit of the entire family, the Deputy Commissioner not being empowered to decide civil rights between the parties and their respective rights as regard to hereditary Archakship, it was required for the Deputy Commissioner to have only recognised hereditary right and called upon the parties to approach the appropriate Civil Court having jurisdiction to decide the *inter se* issues between the parties. His submission is that even this Court while deciding WP No. 26618 of 2014 was aware of this fact and it is for that reason had directed the Deputy Commissioner to consider whether the Commissioner or Deputy Commissioner can decide the disputed issue among the petitioners and contesting respondents to perform the pooja in the aforesaid temple or not. Thus, essentially the Deputy Commissioner ought to have decided whether he had the power to decide this issue and only if he had come to a conclusion that he had such power could the impugned order have

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been passed. Without adverting to this aspect, the Deputy Commissioner could not have decided the *inter se* dispute between the petitioners and respondent No.5 is his submission. On that ground he submits that the Commissioner was right in remanding the matter back to the Deputy Commissioner for fresh consideration.

25. Heard Sri.V.Lakshminarayana, learned Senior counsel for Smt.Shilpa Rani, learned counsel for the petitioner and Smt.Saritha Kulkarni, learned AGA for respondents in W.P. No.3388 of 2024 and Sri.V.Lakshminarayana, learned Senior counsel for Smt. Anusha.L, learned counsel for the petitioners, Smt.Saritha Kulkarni, learned AGA for respondent Nos.1 to 4, Sri.Harish Chandra Movvar, learned counsel for respondent No.5 and Sri.Likith.R.P., learned counsel for respondent No.6(A) to (F) in W.P. No.24820 of 2025. Perused papers.

26. The points that would arise for determination are:

(i) Whether the Deputy Commissioner had jurisdiction under Section 25B(6)(iii) of the Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997, to

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adjudicate the inter se rights of the petitioners and respondent No.5 to the hereditary office of Archakship of Sri Deviramma Temple, including their respective claims of succession and entitlement to perform pooja?

- (ii) Whether the order dated 05.09.2023 passed by the Deputy Commissioner is sustainable in law, having regard to the earlier proceedings culminating in the order dated 11.09.2001, the affidavit dated 18.11.1999 and the rival claims of the parties?
- (iii) Whether the Commissioner, in exercise of appellate jurisdiction under Sections 25B(7) and 25B(8) of the Act, was justified in interfering with the order dated 05.09.2023 and remanding the matter to the Deputy Commissioner by order dated 05.06.2025, or whether the parties ought to have been relegated to the competent Civil Court for adjudication of their inter se civil rights?
- (iv) Consequently, whether the order dated 05.06.2025 passed by the Commissioner calls for interference by this Court?
- (v) What Order?

- 27. This Court answers the above points as follows:
- 28. **Answer to Point No. (i):** Whether the Deputy Commissioner had jurisdiction under Section 25B(6)(iii) of the Karnataka Hindu Religious

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Institutions and Charitable Endowments Act, 1997, to adjudicate the inter se rights of the petitioners and respondent No.5 to the hereditary office of Archakship of Sri Deviramma Temple, including their respective claims of succession and entitlement to perform pooja?

- 28.1. Sri V. Lakshminarayana, learned Senior Counsel appearing for the petitioners, submits that the power of the Deputy Commissioner in relation to hereditary Archakship flows from Section 25B(6)(iii) of the Act. The said provision empowers the Deputy Commissioner, after hearing the parties, to decide whether an Archak or temple servant holds or held office in a notified institution or declared institution on the basis of a hereditary right.
- 28.2. Learned Senior Counsel submits that when such a dispute is raised, the Deputy Commissioner is required to examine the material placed by the rival claimants, including the earlier orders, documents, family tree and the nature of the hereditary right claimed.
- 28.3. It is submitted that the Deputy Commissioner has done so in the present case. The order

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dated 05.09.2023 considers the order dated 11.09.2001, the document dated 18.11.1999 and the respective claims of the petitioners and respondent No.5. On such consideration, the Deputy Commissioner recognised the hereditary right of the members of the branch of late Havale Gowda to perform Archakship by turns.

28.4. Learned Senior Counsel submits that the order dated 05.09.2023 does not create a new right. It only recognises an existing hereditary right and provides for its exercise by the persons entitled thereto.

28.5. It is further submitted that even if respondent No.5 is held to have a hereditary right as a member of the branch of late Havale Gowda, the same cannot be treated as an exclusive personal right. If the hereditary right devolves upon the branch or family in accordance with the law of succession, the other members entitled to succeed cannot be excluded merely because respondent No.5 had earlier represented the family.

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28.6. Learned Senior Counsel places reliance upon the order dated 23.10.2020 passed by this Court in W.P. No.26618/2014. By the said order, this Court had directed the Deputy Commissioner to examine whether it was the Commissioner or the Deputy Commissioner who could decide the dispute between the petitioners and the contesting respondent regarding performance of pooja in the temple. The order dated 05.09.2023 was thereafter passed by the Deputy Commissioner pursuant to the said direction.

28.7. Learned Senior Counsel further submits that hereditary Archakship is a right in the nature of property. In support of the said submission, he relies upon **Ramachandra v. Shivaram**, [ILR 2008 Karnataka 4878], particularly paragraphs 68, 69, 70 and 71, **Ram Rattan v. Bajrang Lal**, [(1978) 3 SCC 236], particularly paragraphs 8 to 13, and **Narayanam Seshacharyulu v. Narayanam Venkatacharyulu**, [AIR 1957 AP 876], particularly paragraphs 2, 13 and 15.

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28.8. Relying upon the aforesaid decisions, learned Senior Counsel submits that the hereditary office of an Archak, where emoluments are attached to the office, is heritable and partible and is treated as a species of property. Therefore, the hereditary right does not become the exclusive right of one member of the family merely because such member happens to be the person who earlier represented the family.

28.9. Sri Harish Chandra Movvar, learned counsel appearing for respondent No.5, submits that the power of the Deputy Commissioner under Section 25B(6)(iii) of the Act is limited. The Deputy Commissioner can decide whether an Archak or temple servant holds or held office on the basis of a hereditary right. However, he cannot decide the individual rights of the members of the family *inter se*.

28.10. Learned counsel relies upon the decision of the Hon'ble Division Bench of this Court in ***Sri C.L. Parashivamurthy v. The State of Karnataka***, [WA No.1687/2024, decided on 03.03.2026], particularly paragraph 11. His

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submission is that Section 25B(6)(iii) enables the Deputy Commissioner to decide the question of hereditary Archakship, but does not confer jurisdiction to finally decide the civil rights of competing members of the family.

28.11. Learned counsel submits that, in the present case, the existence of a hereditary office is not the real dispute. The dispute is as to which members of the family are entitled to succeed to the office and perform Archakship. According to him, such a determination would require consideration of the effect of the affidavit dated 18.11.1999, the order dated 11.09.2001, the alleged relinquishment of rights and the claim of respondent No.5 to exclusive Archakship.

28.12. It is therefore submitted that the Deputy Commissioner could recognise the existence of the hereditary office, but could not finally determine the individual rights of the petitioners and respondent No.5. Such questions, according to learned counsel, are questions of civil rights and would have to be decided by a competent Civil Court.

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28.13. Learned counsel also relies upon Section 9 of the Act. He submits that the first proviso to Section 9(1) contemplates appointment of the next person in the line of succession where there is no dispute among the members of the family. Where there is a dispute among the family members, the provision does not confer power upon the Deputy Commissioner to determine their individual succession rights.

28.14. Learned counsel submits that the questions as to whether respondent No.5 has an exclusive right, whether the petitioners have inherited a right, whether the document dated 18.11.1999 is genuine and binding, whether any right was relinquished and what would be the order of succession among the descendants of late Havale Gowda are all questions concerning civil rights between the parties.

28.15. According to learned counsel, the Deputy Commissioner therefore ought to have confined the enquiry to the question whether the office of Archak was hereditary. He could not have proceeded to determine which particular

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members of the family were entitled to exercise that right.

28.16. Learned counsel submits that the Commissioner, in exercise of the appellate power under Sections 25B(7) and (8) of the Act, was therefore justified in interfering with the order dated 05.09.2023 but was not justified in remanding the matter by order dated 05.06.2025 for fresh consideration, he ought to have directed the concerned to approach the Civil Court is his submission.

28.17. It is further submitted that the order dated 23.10.2020 in W.P. No.26618/2014 itself required the competent authority to examine whether the dispute could be decided by the Deputy Commissioner or the Commissioner. According to learned counsel, the Deputy Commissioner was required to first determine the scope of his jurisdiction. Instead, he proceeded to determine the rival rights of the parties.

28.18. Learned counsel therefore submits that the Commissioner was justified in remanding the matter. According to him, the question as to the

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individual entitlement of the parties to hereditary Archakship is required to be left open for adjudication before the competent Civil Court, and the order dated 05.06.2025 does not call for interference.

28.19. This Point concerns the jurisdiction of the Deputy Commissioner under Section 25B of the Act. Both sides proceed on the basis that Section 25B governs the dispute. The question is whether Section 25B(6)(iii) empowers the Deputy Commissioner to decide the *inter se* rights of the members of a family to a hereditary Archakship, or whether his jurisdiction is confined to deciding whether the office is held on the basis of a hereditary right.

28.20. Section 25B(6) of the Act begins with the words, "*Whenever any question arises as to,-*" and thereafter sets out the questions which the Deputy Commissioner is required to decide. Clause (iii) of Sub-Section (6) of Section 25B relates to the question "*whether any Archak or temple servant holds or held an office in any notified institution or declared institution on the basis of a hereditary right*". The provision

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thereafter requires the Deputy Commissioner, after hearing the parties concerned, to decide the question.

28.21. The language of Clause (iii) is therefore clear. The question to be decided is whether the Archak or temple servant holds or held the office on the basis of a hereditary right. The provision does not expressly deal with succession between members of the family, division of the office into turns, relinquishment of a hereditary right or the validity and effect of an arrangement between family members.

28.22. The other Clauses in Section 25B(6) also indicate the manner in which the Legislature has specified the disputes which fall for determination by the Deputy Commissioner. Clause (iv), for instance, deals with whether a person is entitled by custom or otherwise to any honour, emolument or perquisite in a religious institution and with the existing usage of the institution. Clause (viii) expressly provides for deciding a dispute between a servant of a notified institution and the committee of management.

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28.23. Section 25B(6)(iii) of the Act contains no provision empowering the Deputy Commissioner to decide a dispute between members of the family as to who is entitled to succeed to the hereditary office. If the Legislature intended to confer such a power, it could have said so in express terms.

28.24. Section 9 of the Act also requires consideration. Section 9(1) provides for appointment of Archakas by the committee of management with the approval of the Commissioner. The first proviso states that, in the case of a hereditary post, where there is no dispute among the members of the family, the next in line of succession shall be appointed with the prior approval of the Commissioner. Section 9(2) provides that where more than one Archaka is appointed, the senior among them shall perform as the Pradhana Archaka.

28.25. The first proviso to Section 9(1) of the Act therefore operates only where there is no dispute among the members of the family. In the present case, there is a dispute between the petitioners and respondent No.5. The

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proviso consequently does not provide a mechanism for deciding their competing claims. At the same time, it does not confer such jurisdiction upon the Deputy Commissioner under Section 25B(6)(iii) of the Act. Section 9 deals with appointment, whereas Section 25B(6) identifies the questions which the Deputy Commissioner is competent to decide.

28.26. The decision of the Division Bench of this Court in ***Sri C.L. Parashivamurthy v. The State of Karnataka***, [WA No.1687/2024, decided on 03.03.2026], is relied upon by respondent No.5. In paragraph 11, the Division Bench considered Section 25B(6)(iii) and held that, where there is a dispute regarding appointment of an Archak on the basis of a hereditary right claimed, the same is to be decided by the Deputy Commissioner after hearing the parties.

28.27. The said decision makes it clear that a claim of hereditary Archakship falls within the jurisdiction of the Deputy Commissioner. However, the question before this Court is different. The existence of the hereditary office is not the dispute in the present case. The

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dispute is as to the entitlement of the petitioners and respondent No.5 *inter se* to succeed to and exercise that hereditary office. **Parashivamurthy** in paragraph 11 does not confer upon the Deputy Commissioner the power to decide such *inter se* civil rights.

28.28. The decisions relied upon by learned Senior Counsel for the petitioners establish the nature of the right, but do not enlarge the jurisdiction of the Deputy Commissioner under Section 25B(6)(iii) of the Act.

28.29. In **Ramachandra v. Shivaram**, [ILR 2008 Karnataka 4878], this Court, after considering the decision of the Hon'ble Supreme Court in **Ram Rattan v. Bajrang Lal** [(1978) 3 SCC 236] and the decision of the Hon'ble Andhra Pradesh High Court in **Narayanam Seshacharyulu v. Narayanam Venkatacharyulu**, [AIR 1957 AP 876], held in paragraph 71 that the right to the hereditary Archak's office is a right to property where emoluments are attached to the office and that such an Archak can be removed only by a civil suit.

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28.30. In ***Ram Rattan v. Bajrang Lal***, [(1978) 3 SCC 236], the Hon'ble Supreme Court considered the nature of the hereditary office of Shebait. In paragraph 8, the Hon'ble Supreme Court recognised that hereditary Shebaitship is heritable and partible and may be enjoyed by heirs of equal degree by turn. In paragraphs 10 and 11, the Hon'ble Supreme Court considered the earlier decisions treating hereditary office as immovable property. In paragraph 13, the Hon'ble Supreme Court concluded that the hereditary office of Shebait, when enjoyed by a person by turn, is immovable property.

28.31. The decision in ***Ram Rattan*** concerns the office of Shebait and, as noticed in paragraph 9, a Shebait is not merely a Pujari but also has the responsibility of administering the property attached to the temple. Therefore, the decision cannot by itself be treated as a decision on the jurisdiction of the Deputy Commissioner in relation to hereditary Archakship. However, ***Ramachandra***, in paragraph 71, has applied the principle to hereditary Archakship.

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28.32. In **Narayanam Seshacharyulu v. Narayanam Venkatacharyulu**, [AIR 1957 AP 876], the Hon'ble Andhra Pradesh High Court held in paragraph 2 that hereditary Archakship is a species of property which devolves according to the ordinary law of inheritance. In paragraph 13, it was held that the office of Archak with its emoluments is heritable and partible. Paragraph 15 also recognises, in the circumstances stated therein, transfers by Archakas of their right to the office and emoluments.

28.33. These decisions therefore establish the nature of hereditary Archakship as a heritable and partible right. They do not, however, hold that the Deputy Commissioner has jurisdiction under Section 25B(6)(iii) of the Act to adjudicate the individual succession rights of competing family members. In fact, **Ramachandra**, in paragraph 71, refers to adjudication by a civil suit.

28.34. The dispute in the present case has to be considered in that background. The parties do not seriously dispute that the office of Archak of

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Sri Deviramma Temple is hereditary. The dispute is as to the persons entitled to succeed to and exercise that office.

28.35. Respondent No.5 claims exclusive Archakship on the basis of the earlier proceedings, including the affidavit dated 18.11.1999 and the order dated 11.09.2001. The petitioners dispute the same. They contend that respondent No.5 was representing the branch of late Havale Gowda and that there was no consent by them to confer exclusive hereditary Archakship upon respondent No.5. They also dispute the genuineness and effect of the document dated 18.11.1999.

28.36. Determination of these questions would require consideration of the succession to the hereditary office, the effect of the affidavit dated 18.11.1999, the order dated 11.09.2001, the alleged relinquishment of rights, the genealogy of the family and the respective entitlement of the petitioners and respondent No.5. These are questions concerning the civil rights of the parties.

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28.37. The order dated 05.09.2023 passed by the Deputy Commissioner does not merely recognise the existence of hereditary Archakship. It proceeds to recognise hereditary Archakship in favour of the petitioners and respondent No.5 and provides for its exercise by turns. In doing so, the Deputy Commissioner has determined the competing claims of the parties.

28.38. The submission of learned Senior Counsel that the order dated 05.09.2023 merely recognises an existing right therefore cannot be accepted. Recognition of the existence of a hereditary office is one matter. Determining which members of the family are entitled to exercise that office, and in what manner, is another. The latter involves adjudication of the civil rights of the rival claimants.

28.39. The order dated 23.10.2020 passed by this Court in W.P. No.26618/2014 does not alter the position. This Court had directed the Deputy Commissioner to examine whether the Commissioner or the Deputy Commissioner could decide the disputed issue between the

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petitioners and the contesting respondent regarding performance of pooja in the temple and to pass a speaking order. The said direction required the authority to examine its jurisdiction. It did not enlarge the jurisdiction conferred by the Act.

28.40. The Deputy Commissioner, therefore, was required to first consider whether Section 25B(6)(iii) of the Act empowered him to decide the *inter se* rights of the parties. The order dated 05.09.2023 does not disclose such consideration. The fact that the Deputy Commissioner considered the documents placed before him cannot, by itself, confer jurisdiction which the statute does not provide.

28.41. The dispute regarding the document dated 18.11.1999 further demonstrates the nature of the controversy. The petitioners allege that the document is fabricated and does not bear their signatures. Whether the document is genuine, whether it was executed by the concerned persons, and what legal effect it has are matters which may require evidence. This Court, in exercise of writ jurisdiction, would not

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undertake such an enquiry. Equally, the Deputy Commissioner cannot undertake such an enquiry for the purpose of determining the *inter se* civil rights of the parties when such jurisdiction is not conferred by Section 25B(6)(iii) of the Act.

28.42. The position that emerges is that the Deputy Commissioner has jurisdiction under Section 25B(6)(iii) of the Act to decide whether the office of Archak is held or was held on the basis of a hereditary right. The provision does not confer jurisdiction to decide the succession to that office between rival members of the family, the respective shares or turns of such members, or the validity and effect of an alleged relinquishment or family arrangement.

28.43. In the present case, therefore, the Deputy Commissioner travelled beyond the scope of Section 25B(6)(iii) of the Act in determining the *inter se* rights of the petitioners and respondent No.5. Such rights are required to be adjudicated by the competent Civil Court.

28.44. This Court therefore answers Point No. (i) by holding that the Deputy Commissioner had no

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jurisdiction under Section 25B(6)(iii) of the Act to determine the *inter se* rights of the petitioners and respondent No.5 to the hereditary office of Archak of Sri Deviramma Temple, including their respective claims of succession and entitlement to perform pooja. His jurisdiction under the said provision is confined to deciding whether the office is held or was held on the basis of a hereditary right.

29. **Answer to Point No. (ii): Whether the order dated 05.09.2023 passed by the Deputy Commissioner is sustainable in law, having regard to the earlier proceedings culminating in the order dated 11.09.2001, the affidavit dated 18.11.1999 and the rival claims of the parties?**

29.1. Sri V. Lakshminarayana, learned Senior Counsel for the petitioners, submitted that the Deputy Commissioner had considered all the relevant material placed by the petitioners and respondent No.5, including the document dated 18.11.1999 and the order dated 11.09.2001. The submission regarding the scope of Section 25B and the effect of the order in W.P. No.26618/2014 has already been considered under Point (i) and is not repeated.

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- 29.2. The petitioners never consented to respondent No.5 having exclusive hereditary Archakship of Sri Deviramma Temple. According to the petitioners, the document dated 18.11.1999 does not record any such consent. They deny having signed the document and contend that it has been fabricated to support respondent No.5's claim of exclusive Archakship.
- 29.3. It is submitted that the order dated 11.09.2001 also does not confer any exclusive right upon respondent No.5. Respondent No.5, being the eldest son of late Havale Gowda, was prosecuting the proceedings on behalf of the family and not in his individual capacity. Therefore, recognition of the right of the family cannot be treated as recognition of an exclusive right in favour of respondent No.5.
- 29.4. Learned Senior Counsel submits that hereditary Archakship is a property right. Relying on ***Ramachandra v. Shivaram*** [ILR 2008, Karnataka 4878] (Paragraphs 68 to 71), he submits that hereditary office and the right to worship by turn are treated as immovable

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property and that the right is heritable and partible.

29.5. He also relies on ***Ram Rattan v. Bajrang Lal*** [(1978) 3 SCC 236] (Paragraphs 8 to 13), where the Hon'ble Supreme Court held that the hereditary office of Shebait, including the right enjoyed by turn, is immovable property and that transfer of such a right must be by a registered instrument.

29.6. Reliance is also placed on ***Narayanam Seshacharyulu v. Narayanam Venkatacharyulu*** [AIR 1957 AP 876] (Paragraphs 2, 13 and 15), where the hereditary office of an Archaka, together with its emoluments, was held to be heritable and partible property. It is submitted that these decisions show that the right cannot be treated as a mere personal privilege which could be permanently given up by an informal family arrangement.

29.7. On that basis, it is submitted that the document dated 18.11.1999, being unregistered and, in any event, disputed by the petitioners, could not have brought about a transfer or

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relinquishment of their hereditary rights. Even assuming the document to be genuine, it is contended that it records, at the highest, an arrangement permitting respondent No.5 to perform the duties of an Archak for three years and does not amount to a permanent relinquishment of the rights of the other members of the family.

29.8. Learned Senior Counsel further submits that respondent No.5 and the petitioners belong to the branch of late Havale Gowda. Therefore, if respondent No.5 has a hereditary right to the office, the same cannot, in the absence of a valid relinquishment by the other members, be treated as an exclusive personal right in his favour.

29.9. In support of the submission that exclusivity cannot be presumed, reliance is placed on **Nagesh Bisto Desai v. Khando Tirmal Desai** [(1982) 2 SCC 79] (Paragraphs 19 and 22). It is submitted that where a right retains the character of a joint family right, the other members can be taken to have given up that

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right only where there is a clear intention, express or implied, to renounce or surrender it.

29.10. According to learned Senior Counsel, there is no such clear relinquishment in the present case. The petitioners have consistently asserted their right to hereditary Archakship and have challenged respondent No.5's claim of exclusivity. The order dated 11.09.2001 therefore cannot be read as conferring an exclusive hereditary right upon respondent No.5.

29.11. Sri Harish Chandra Movvar, learned counsel for respondent No.5, submitted that the dispute concerns the individual rights of the petitioners and respondent No.5 to succeed to and perform the hereditary office of Archak. His submissions regarding Sections 25B and 9 of the Act, reliance placed on **C.L. Parashivamurthy v. The State of Karnataka** [WA No.1687/2024, DD 03.03.2026] (Paragraph 11), and the order in W.P. No.26618/2014 have already been considered under Point (i) and are not repeated.

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29.12. Learned counsel submits that the questions raised by the petitioners concern succession, relinquishment, the effect and validity of the document dated 18.11.1999, the scope of the order dated 11.09.2001 and the alleged exclusive right of respondent No.5. These are questions relating to the civil rights of the parties *inter se*.

29.13. It is therefore submitted that the Deputy Commissioner could not have finally determined whether the petitioners had succeeded to the office, whether they had relinquished their rights, whether the document dated 18.11.1999 was genuine and binding, or whether respondent No.5 had acquired an exclusive right. These questions, according to learned counsel, require adjudication by a competent Civil Court.

29.14. Learned counsel submits that the Commissioner was justified in interfering with the order dated 05.09.2023 of the Deputy Commissioner, insofar as the Deputy Commissioner had proceeded to recognise the hereditary Archakship of the petitioners and respondent

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No.5 and to regulate their respective entitlement to perform pooja. However, the Commissioner, according to the learned counsel, was not justified in remanding the matter to the Deputy Commissioner for fresh consideration of those *inter se* disputes.

29.15. It is submitted that, once the Commissioner found that the dispute concerned the civil rights of the parties *inter se*, the parties ought to have been relegated to the competent Civil Court. Any remand, if at all warranted, could only have been for the limited purpose of examining whether the Deputy Commissioner had jurisdiction under Section 25B to decide such questions. The remand could not have authorised the Deputy Commissioner to again adjudicate upon succession, relinquishment, the validity or effect of the document dated 18.11.1999, or the rival claims to the hereditary office.

29.16. Learned counsel has not sought to establish, in these proceedings, that the document dated 18.11.1999 is genuine, that it amounts to a valid transfer or relinquishment despite being

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unregistered, or that the order dated 11.09.2001 in fact conferred an exclusive hereditary right upon respondent No.5. His submission is that these questions themselves cannot be conclusively decided in proceedings under Section 25B of the Act and must be left to the competent Civil Court.

29.17. This Point concerns the validity of the order dated 05.09.2023 passed by the Deputy Commissioner, in the light of the earlier proceedings, the document dated 18.11.1999, the order dated 11.09.2001 and the rival claims of the petitioners and respondent No.5. The question as to the power of the Deputy Commissioner has already been considered under Point (i) by holding that the Deputy Commissioner had no power under Section 25B(6)(iii) of the Act to decide the rights of the petitioners and respondent No.5 *inter se*. The order dated 05.09.2023, insofar as it decides those rights, therefore cannot be sustained.

29.18. As noticed above this Court had by order dated 23.10.2020 passed in W.P. No.26618/2014 directed the Deputy Commissioner to examine

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whether the Commissioner or the Deputy Commissioner had the power to decide the disputed issue between the petitioners and the contesting respondent regarding performance of pooja in the temple. The order dated 05.09.2023 does not disclose any finding on this threshold question. The Deputy Commissioner proceeded to decide the rival claims without first deciding whether he had jurisdiction to do so. This is an additional reason why the order cannot be sustained.

29.19. The next question is the effect of the order dated 11.09.2001. The proceedings leading to that order were initiated by late Havale Gowda. After his death, respondent No.5, being his eldest son, continued the proceedings. The petitioners themselves contend that respondent No.5 was prosecuting the proceedings on behalf of the family. There is nothing placed before this Court to show that the present petitioners were separately heard in those proceedings or that their individual rights were adjudicated.

29.20. On the material available before this Court, the order dated 11.09.2001 cannot be read as

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conferring an exclusive hereditary right upon respondent No.5. At the highest, it recognises respondent No.5 as representing the branch of late Havale Gowda for the purpose of the proceedings then pending. It does not contain a finding that respondent No.5 alone had an exclusive hereditary right to the office. The order dated 11.09.2001 has not been challenged in these proceedings and is therefore left undisturbed.

29.21. The order dated 15.10.2011 has also been referred to. The parties describe the effect of this order differently. The factual narration refers to a direction to the Assistant Commissioner and the Tahsildar to examine the complaints and the entitlement of respondent No.5, whereas learned Senior Counsel for the petitioners refers to the order as confirming the earlier order dated 11.09.2001. It is unnecessary for this Court to decide between these two descriptions. On either reading, the order dated 15.10.2011 does not decide whether the petitioners have a share or turn in the hereditary Archakship or whether respondent No.5 alone is entitled to the office.

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29.22. The reliance placed on ***Nagesh Bisto Desai v. Khando Tirmal Desai*** [(1982) 2 SCC 79] also requires consideration. In Paragraph 19, the Hon'ble Supreme Court reproduced ***Shiba Prasad Singh v. Rani Prayag Kumari Debi*** [AIR 1932 PC 216] wherein the Privy Council held that, where a family right is claimed to have been given up, there must be an intention, express or implied, to renounce the right of succession. In Paragraph 22, the Hon'ble Supreme Court again referred to the requirement of a clear intention to renounce or surrender the interest or the right of succession.

29.23. The principle relied upon by the petitioners cannot, however, by itself decide the present dispute. ***Nagesh Bisto Desai*** concerned an impartible estate and the rights of members of a joint Hindu family in such estate. The present dispute concerns hereditary Archakship and the right to perform pooja by turn. The decision therefore cannot be applied as if it directly determines the rights of the parties in the present case.

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29.24. What the decision does show is that relinquishment of a pre-existing right cannot ordinarily be presumed merely from the fact that one member of a family was recognised or permitted to act on behalf of the family. Whether there was, in the present case, any relinquishment by the petitioners is a separate question. That question depends upon the evidence concerning the document dated 18.11.1999 and the surrounding circumstances.

29.25. This brings the Court to the document dated 18.11.1999. Respondent No.5 relies upon the document. The petitioners dispute it and contend that they did not sign it and that it is a fabricated document. Whether the document is genuine, who executed it, in what circumstances it was executed and what was intended by it are all disputed questions of fact.

29.26. These questions cannot be decided in the present writ proceedings. This Court cannot conduct a trial as to the genuineness of the document. Equally, the Deputy Commissioner could not have used that disputed document as the basis for finally determining the civil rights

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of the parties inter se. This Court therefore records no finding as to the genuineness of the document dated 18.11.1999 or the consent said to be contained in it.

29.27. The petitioners have relied upon ***Ramachandra v. Shivaram*** [ILR 2008, Karnataka 4878] (Paragraphs 68 to 71) and ***Ram Rattan v. Bajrang Lal*** [(1978) 3 SCC 236] (Paragraphs 8 to 13) to contend that hereditary Archakship is a property right and that transfer of such a right requires a registered instrument.

29.28. In ***Ramachandra***, this Court, while referring to ***Ram Rattan***, noted in Paragraph 68 that the hereditary office of Shebait and the right to worship by turn had been treated as immovable property. In Paragraph 71, this Court held that the right to hereditary Archakship is a right to property where emoluments are attached to the office of the hereditary poojary.

29.29. In ***Ram Rattan***, the Hon'ble Supreme Court, in Paragraph 13, held that the hereditary office of Shebait which is enjoyed by turn is immovable property and that a gift of such property must

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be by a registered instrument. The decision also refers to the treatment of hereditary allowances as immovable property.

29.30. These decisions establish the nature of the right relied upon by the petitioners. They do not, however, answer the question whether the document dated 18.11.1999 amounts to a transfer, relinquishment, consent or family arrangement, nor do they decide the effect of that document on the rights of the parties. Those questions depend upon the nature and contents of the document and the circumstances in which it came into existence.

29.31. The contention regarding registration is therefore left open. If the petitioners contend before the competent Civil Court that the document amounts to a transfer or relinquishment of a property right and is ineffective for want of registration, they are free to raise that contention. This Court need not decide it in the present proceedings.

29.32. Reliance was also placed on **Narayanam Seshacharyulu v. Narayanam Venkatacharyulu** [AIR 1957 AP 876]

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(Paragraphs 2, 13 and 15). In Paragraph 2, the Hon'ble Andhra Pradesh High Court held that a hereditary Archaka office is a species of property which devolves according to the ordinary law of inheritance. In Paragraph 13, it was held to be heritable and partible. Paragraph 15 also considers the circumstances in which a transfer by an Archaka of his right to other Archakas or persons standing in the line of succession may be recognised.

29.33. The decision therefore supports the proposition that hereditary Archakship may have the character of a heritable and partible property right. It does not, however, determine whether the petitioners in the present case relinquished their rights or whether respondent No.5 acquired an exclusive right. Those questions have to be established on the facts of this case.

29.34. The petitioners contend that even if the document dated 18.11.1999 is genuine, it merely permitted respondent No.5 to perform the duties of an Archak for three years and did not amount to a permanent relinquishment of their rights. Whether that is the correct

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interpretation of the document cannot be decided without first determining its genuineness and then considering the circumstances in which it was executed. That exercise is not required for deciding the present writ petition.

29.35. The petitioners further contend that respondent No.5 and the petitioners belong to the same branch of late Havale Gowda and that, therefore, any hereditary right recognised in favour of respondent No.5 would enure to the benefit of the other members of the branch. That again is a question concerning succession and the extent of the rights of the individual members of the family. It is not a question which the Deputy Commissioner could finally determine under Section 25B(6)(iii) of the Act.

29.36. The submission that the Deputy Commissioner had considered all the relevant material does not alter the position. The question is not whether the Deputy Commissioner had looked at the documents. The question is whether he had the statutory power to determine the rights

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arising from those documents. As held under Point (i), he did not have such power.

29.37. The order dated 05.09.2023 proceeded beyond determining whether the office of an Archak was hereditary. It recognised the hereditary Archakship of the petitioners and respondent No.5 and proceeded to regulate their entitlement to perform pooja. In doing so, the Deputy Commissioner necessarily determined the rival claims of the parties to the office.

29.38. Such determination required consideration of the effect of the order dated 11.09.2001, the genuineness and effect of the document dated 18.11.1999, the alleged relinquishment, the succession to the rights of late Havale Gowda and the respective entitlement of the petitioners and respondent No.5. These are civil rights which cannot be finally adjudicated by the Deputy Commissioner under Section 25B(6)(iii) of the Act.

29.39. Learned counsel for respondent No.5 is therefore right to the extent that the *inter se* rights of the parties require adjudication before the competent Civil Court. At the same time,

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this Court is not deciding those rights. It is only holding that the Deputy Commissioner could not have decided them in the proceedings under Section 25B of the Act.

29.40. It is also necessary to clarify the scope of the present finding. This Court has not decided:

29.40.1. whether the document dated 18.11.1999 is genuine;

29.40.2. whether the petitioners consented to respondent No.5 performing the duties of an Archak.

29.40.3. whether the document amounts to a relinquishment of the petitioners' hereditary rights;

29.40.4. whether the document is required to be registered or is otherwise legally effective;

29.40.5. whether the petitioners are entitled to a share or turn in the hereditary Archakship;

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29.40.6. whether respondent No.5 has an exclusive hereditary right; or

29.40.7. what the precise rights of the members of the branch of late Havale Gowda are.

29.41. All these questions are left open. The parties are at liberty to place the relevant material before the competent Civil Court and seek appropriate relief in accordance with law.

29.42. There is, however, one aspect which can be concluded. The order dated 11.09.2001 does not, on the material placed before this Court, confer an exclusive hereditary right upon respondent No.5. Equally, that order does not adjudicate the present petitioners' individual rights. Nothing stated in this judgment shall be understood as determining those rights.

29.43. The result follows from the finding under Point (i). The Deputy Commissioner had no jurisdiction under Section 25B(6)(iii) of the Act to decide the *inter se* rights of the petitioners and respondent No.5. Further, despite the order dated 23.10.2020 in W.P. No.26618/2014 requiring consideration of the question whether

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the Deputy Commissioner or the Commissioner had the power to decide the dispute, the Deputy Commissioner did not record a finding on that threshold issue.

29.44. The order dated 05.09.2023 therefore cannot be sustained. The Commissioner was justified in interfering with the order to the extent that it proceeded to determine the *inter se* civil rights of the parties. However, once the Commissioner came to the conclusion that the dispute involved civil rights which could not be adjudicated under Section 25B of the Act, the matter could not be remanded to the Deputy Commissioner for deciding those very rights afresh.

29.45. At the highest, a remand could have been made for the limited purpose of determining a question falling within the statutory jurisdiction of the Deputy Commissioner. It could not have resulted in the Deputy Commissioner again examining succession, relinquishment, the validity or effect of the document dated 18.11.1999 or the rival entitlement of the parties to the hereditary office.

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29.46. The parties, if so advised, have to work out their respective civil rights before the competent Civil Court. The finding in this judgment is confined to the jurisdiction of the Deputy Commissioner under Section 25B(6)(iii) of the Act and does not decide the merits of those civil rights.

29.47. This Court answers Point No. (ii) by holding that the order dated 05.09.2023 passed by the Deputy Commissioner cannot be sustained insofar as it determines the *inter se* rights of the petitioners and respondent No.5 to the hereditary office of Archakship and their respective entitlement to perform pooja. The Deputy Commissioner had no jurisdiction under Section 25B(6)(iii) of the Act to decide those civil rights. The genuineness and legal effect of the document dated 18.11.1999, the question of relinquishment, succession and the alleged exclusive right of respondent No.5 are left open for adjudication by the competent Civil Court.

29.48. The order dated 11.09.2001 does not, on the material before this Court, confer an exclusive hereditary right upon respondent No.5.

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However, it is not for this Court in the present proceedings to determine the individual rights of the parties arising from that order. The Commissioner was therefore justified in interfering with the Deputy Commissioner's order, but the *inter se* civil dispute could not have been remanded to the Deputy Commissioner for fresh adjudication.

30. **Answer to Point No. (iii):** Whether the Commissioner, in exercise of appellate jurisdiction under Sections 25B(7) and 25B(8) of the Act, was justified in interfering with the order dated 05.09.2023 and remanding the matter to the Deputy Commissioner by order dated 05.06.2025, or whether the parties ought to have been relegated to the competent Civil Court for adjudication of their *inter se* civil rights?

And

Answer to Point No. (iv): Consequently, whether the order dated 05.06.2025 passed by the Commissioner calls for interference by this Court?

- 30.1. Sri V. Lakshminarayana, learned Senior Counsel for the petitioners, submitted that the Commissioner was not justified in interfering

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with the order dated 05.09.2023 passed by the Deputy Commissioner or in remanding the matter for fresh consideration. His submissions regarding the jurisdiction of the Deputy Commissioner under Section 25B of the Act, the effect of the order dated 23.10.2020 in W.P. No.26618/2014, and the material considered by the Deputy Commissioner have already been dealt with under Points (i) and (ii) and are not repeated.

30.2. Learned Senior Counsel submits that the Deputy Commissioner had already considered the material placed by the parties and had passed the order dated 05.09.2023 after examining the earlier order dated 11.09.2001, the document dated 18.11.1999 and the rival claims of the petitioners and respondent No.5. There was, therefore, no basis for the Commissioner to remand the matter for fresh consideration.

30.3. He submits that while exercising appellate jurisdiction under Sections 25B(7) and 25B(8) of the Act, the Commissioner was required to examine the correctness of the order dated

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05.09.2023 on the material available before him. According to learned Senior Counsel, the Commissioner could not have ordered a remand without identifying any specific issue which had remained undecided by the Deputy Commissioner.

30.4. Learned Senior Counsel further submits that the Commissioner ought to have considered the legal effect of the decisions relied upon by the petitioners, particularly **Ram Rattan v. Bajrang Lal** [(1978) 3 SCC 236] (Paragraphs 8 to 13). According to him, the hereditary Archakship is a property right and an alleged consent or relinquishment of such right cannot be accepted merely on the basis of an unregistered document. The Commissioner, according to learned Senior Counsel, did not properly consider this aspect before directing a remand.

30.5. He further submits that the order dated 11.09.2001 had already been considered and confirmed by the Commissioner by order dated 15.10.2011. According to learned Senior Counsel, the said order had attained finality

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and respondent No.5 could not thereafter contend that the order dated 11.09.2001 conferred an exclusive hereditary right upon him.

30.6. Learned Senior Counsel submits that the order dated 11.09.2001, properly understood, recognised the hereditary right of the family and did not confer an exclusive right upon respondent No.5. Therefore, the Commissioner ought not to have reopened the matter by directing a fresh consideration of the rights of the family members.

30.7. It is further submitted that the order dated 05.09.2023 had recognised the hereditary Archakship of the petitioners and respondent No.5 and the subsequent orders had given effect to the rotational arrangement. The petitioners had accordingly sought interference with the order dated 05.06.2025 and restoration of the position flowing from the order dated 05.09.2023.

30.8. In W.P. No.24820 of 2025, the petitioners seek a writ of certiorari quashing the order dated 05.06.2025 passed by the Commissioner at

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Annexure-D. They also seek a writ of mandamus directing the respondents to continue the rotational Archakship between the petitioners and respondent No.5 in terms of the Tahsildar's order dated 11.09.2023 at Annexure-E and the charge orders dated 04.12.2023 and 16.01.2024 at Annexures-F and G, respectively, apart from such other reliefs as this Court may deem fit.

30.9. Learned Senior Counsel therefore submits that the Commissioner ought not to have remanded the matter to the Deputy Commissioner.

30.10. Sri Harish Chandra Movvar, learned counsel for respondent No.5, submitted that the Commissioner was justified in interfering with the order dated 05.09.2023 passed by the Deputy Commissioner, but the matter ought not to have been remanded to the Deputy Commissioner. His submissions regarding the scope of Section 25B(6)(iii) of the Act and the direction in W.P. No.26618/2014 have already been considered under Point (i) and are not repeated.

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30.11. Learned counsel submits that, while exercising appellate jurisdiction under Sections 25B(7) and 25B(8) of the Act, the Commissioner was justified in setting aside the order dated 05.09.2023. The Deputy Commissioner had gone beyond the scope of Section 25B(6)(iii) of the Act and had proceeded to decide the rights of the petitioners and respondent No.5 as between themselves.

30.12. According to learned counsel, the dispute was not merely about whether the office of an Archak was hereditary. The real dispute concerned the individual rights of the family members to succeed to and perform the hereditary office. The Deputy Commissioner had therefore entered into questions of succession, relinquishment and entitlement which fell outside the jurisdiction conferred by Section 25B(6)(iii) of the Act.

30.13. Learned counsel submits that the Commissioner was, therefore, right in interfering with the order of the Deputy Commissioner. However, once the Commissioner found that the Deputy Commissioner had no jurisdiction to decide the

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inter se rights of the parties, there was no justification for remanding the matter to the same authority.

30.14. The questions concerning the effect of the document dated 18.11.1999, the scope of the order dated 11.09.2001, the alleged relinquishment of hereditary rights and the respective rights of the petitioners and respondent No.5 to succeed to the hereditary office are civil questions. They involve disputed questions of fact and law and have to be decided by a competent Civil Court.

30.15. Learned counsel therefore submits that the order dated 05.06.2025 ought to be sustained only to the extent that it set aside the order dated 05.09.2023. The parties ought to have been left to work out their rights before the competent Civil Court, instead of directing the Deputy Commissioner to reconsider the matter.

30.16. He further submits that, even on the case put forward by the petitioners, hereditary Archakship is a property right which devolves upon the members of the family according to law. If that is so, the question as to which

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member or branch is entitled to succeed to the office is a question of civil right and cannot be finally determined in proceedings under Section 25B of the Act.

30.17. Learned counsel submits, in the alternative, that the Commissioner was also justified in directing reconsideration because the Deputy Commissioner had not first examined whether he had the jurisdiction to decide the dispute between the family members. However, the proper course, according to learned counsel, would have been to confine the reconsideration to the question of jurisdiction and, upon finding that the dispute concerned *inter se* civil rights, to leave the parties to approach the competent Civil Court.

30.18. The two Points arise from the same order dated 05.06.2025 and can therefore be considered together. The questions are whether the Commissioner was justified in interfering with the order dated 05.09.2023 passed by the Deputy Commissioner, whether the Commissioner could have remanded the matter to the Deputy Commissioner, and,

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consequently, whether the order dated 05.06.2025 requires interference by this Court.

30.19. Section 25B(7) of the Act provides that any person aggrieved by an order passed by the Deputy Commissioner under the preceding provisions may appeal to the Commissioner. Section 25B(8) of the Act provides that the Commissioner, after hearing the aggrieved person and the other contending parties, may pass an appropriate order in accordance with law. The appellate power is therefore wide enough to examine whether the order of the Deputy Commissioner could have been made under the Act. The Commissioner, however, can pass only such order as the Act permits.

30.20. In the present case, the order dated 05.09.2023 could not have been sustained. This Court has already held that the Deputy Commissioner had no power under Section 25B(6)(iii) of the Act to decide the *inter se* rights of the petitioners and respondent No.5. The Deputy Commissioner was competent to decide whether the office of Archakship was held or had been held on the basis of a

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hereditary right. He was not competent to decide the rival claims of the members of the family as to succession, entitlement to perform the office, relinquishment of rights or the alleged exclusive right of respondent No.5.

30.21. The order dated 05.09.2023, however, went beyond that limited question. It recognised hereditary Archakship in favour of the petitioners and respondent No.5 and proceeded to regulate their respective entitlement to perform pooja. In doing so, the Deputy Commissioner determined the rights of the parties *inter se*. Such an order cannot be sustained.

30.22. The contention of the petitioners that the Commissioner ought to have examined the material already considered by the Deputy Commissioner does not alter this conclusion. The issue was not merely whether the material had been properly appreciated. The first question was whether the Deputy Commissioner had jurisdiction to decide the dispute at all. Once it was found that he had no

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such jurisdiction, an examination of the merits of his decision would serve no useful purpose.

30.23. The same applies to the submission based on ***Ram Rattan v. Bajrang Lal*** [(1978) 3 SCC 236] (Paragraphs 8 to 13). As noticed earlier, the decision explains the nature of a hereditary office and the requirement of a registered instrument in the case of a gift of such property. It does not confer upon the Deputy Commissioner jurisdiction to decide whether the document dated 18.11.1999 amounted to a transfer, gift or relinquishment of the hereditary right. That question remains open for adjudication before the competent Civil Court.

30.24. The decisions in ***Narayanam Seshacharyulu v. Narayanam Venkatacharyulu*** [AIR 1957 AP 876] and ***Nagesh Bisto Desai v. Khando Tirmal Desai*** [(1982) 2 SCC 79] also do not assist the petitioners on the question of appellate jurisdiction. Neither decision confers upon the Deputy Commissioner the power to determine the civil rights of rival members of a family.

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30.25. The petitioners further submit that the order dated 15.10.2011 had confirmed the order dated 11.09.2001 and that the said order had attained finality. It is therefore contended that respondent No.5 could not have challenged the order dated 05.09.2023. This submission cannot be accepted. Finality attaches to what an earlier order actually decided. The order dated 11.09.2001 did not decide whether the petitioners had a right to share the hereditary Archakship with respondent No.5 or whether respondent No.5 alone was entitled to perform the office.

30.26. The order dated 05.09.2023 dealt with a question which had not been decided earlier, namely the respective entitlement of the petitioners and respondent No.5 to perform the hereditary office. Respondent No.5 was therefore a person aggrieved by that order and was entitled to invoke the appellate jurisdiction under Section 25B(7) of the Act. The earlier proceedings did not prevent him from challenging a subsequent order which determined a different question.

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30.27. The Commissioner was, therefore, justified in interfering with the order dated 05.09.2023. In setting aside an order which the Deputy Commissioner had no jurisdiction to pass, the Commissioner acted within the scope of Sections 25B(7) and (8) of the Act.

30.28. The question, however, is whether the Commissioner was justified in remanding the matter to the Deputy Commissioner. The answer must be in the negative.

30.29. A remand can be made only to an authority which has jurisdiction to decide the matter remanded to it. The Deputy Commissioner has no jurisdiction under Section 25B(6)(iii) of the Act to determine the *inter se* rights of the petitioners and respondent No.5. A remand would therefore require the Deputy Commissioner to reconsider a dispute which he has no statutory power to decide.

30.30. The order dated 23.10.2020 in W.P. No.26618/2014 does not require a different conclusion. This Court had directed the Deputy Commissioner to examine whether the Commissioner or the Deputy Commissioner

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could decide the disputed issue between the parties and to pass a speaking order. The Deputy Commissioner did not record a finding on that threshold question. This Court has now answered the question. Since the Deputy Commissioner has no jurisdiction to decide the *inter se* civil rights of the parties, there is no purpose in remanding the matter to him.

30.31. The submission of Sri Harish Chandra Movvar, learned counsel for respondent No.5, that the parties ought to be left to approach the competent Civil Court therefore merits acceptance. The questions concerning succession, relinquishment, the genuineness and effect of the document dated 18.11.1999, the scope of the order dated 11.09.2001 and the alleged exclusive right of respondent No.5 are questions concerning the civil rights of the parties. Those questions cannot be finally determined by the Deputy Commissioner under Section 25B(6)(iii) of the Act.

30.32. In ***Ramachandra v. Shivaram*** [ILR 2008, Karnataka 4878] (Paragraph 71), it has been held that the right to a hereditary Archak's

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office is a right to property and observed that such an Archak can be removed only by a civil suit. The decision does not directly decide the jurisdictional question under Section 25B of the Act, but it supports the conclusion that disputes concerning the civil right to a hereditary Archak's office are matters for adjudication before the Civil Court.

30.33. In ***C.L. Parashivamurthy v. The State of Karnataka*** [WA No.1687/2024, DD 03.03.2026], (Paragraph 11). The decision recognises the power of the Deputy Commissioner under Section 25B(6)(iii) of the Act to decide whether an Archak or temple servant holds or held office on the basis of a hereditary right. It does not extend that power to deciding competing civil claims of members of the family who assert succession to that office.

30.34. There is one submission on behalf of respondent No.5 that requires brief consideration. Learned counsel submitted that the Commissioner was justified in remanding the matter because the Deputy Commissioner

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had not first decided whether he had jurisdiction. This submission cannot be accepted. The purpose of the remand would still be to enable the Deputy Commissioner to decide the dispute between the rival claimants. Since this Court has held that the Deputy Commissioner has no such power, the remand could serve no useful purpose.

30.35. The proper course, therefore, was for the Commissioner to set aside the order dated 05.09.2023 and leave the parties to approach the competent Civil Court. The Commissioner was correct in the first part of his order but erred in the consequential direction of remand.

30.36. It is necessary to make clear what this Court has not decided. This Court has not decided whether the document dated 18.11.1999 is genuine, whether it records any consent, whether it amounts to relinquishment, whether such relinquishment is legally valid, whether the petitioners are entitled to succeed to the hereditary office, or whether respondent No.5 has any exclusive right. All these questions are

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left open to be decided by the competent Civil Court on the evidence placed before it.

30.37. The same applies to the order dated 11.09.2001. The order does not confer an exclusive hereditary right upon respondent No.5. At the same time, this Court is not determining the precise rights of the petitioners under that order. The parties are free to place the order and all connected material before the competent Civil Court.

30.38. The consequence is that the order dated 05.06.2025 requires interference only to the limited extent of correcting the direction of remand. The portion of the order which sets aside the order dated 05.09.2023 is upheld. The direction remanding the matter to the Deputy Commissioner is modified by directing the parties to approach the competent Civil Court for adjudication of their respective civil rights.

30.39. The order dated 05.09.2023 cannot be restored. The Deputy Commissioner had no jurisdiction to decide the *inter se* rights of the parties necessarily excludes restoration of that

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order. The prayer for continuation of the rotational Archakship arrangement also cannot be granted on the basis of the order dated 05.09.2023. As noticed in the proceedings in W.P. No.3388 of 2024, the Tahsildar's memorandum dated 11.09.2023 was issued pursuant to the order dated 05.09.2023. Once that order is held unsustainable, the consequential arrangement cannot be directed to continue on that basis.

30.40. After the competent Civil Court adjudicates the rights of the parties and the decree attains finality, the parties will be at liberty to place the decree before the competent statutory authority. The Deputy Commissioner may thereafter exercise such powers as are available under Section 25B of the Act, consistent with the decree and in accordance with law. If the statutory requirements for settlement of a scheme under Section 25B(1) of the Act are satisfied, the Deputy Commissioner may consider that question at the appropriate stage. This Court does not direct the framing of any particular scheme or

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prescribe the manner in which the office is to be performed.

30.41. This Court answers Point No. (iii) by holding that the Commissioner was justified in interfering with and setting aside the order dated 05.09.2023, since the Deputy Commissioner had no jurisdiction under Section 25B(6)(iii) of the Act to decide the *inter se* rights of the petitioners and respondent No.5 to the hereditary office of Archakship.

30.42. However, the Commissioner was not justified in remanding the matter to the Deputy Commissioner. The parties ought to have been relegated to the competent Civil Court for adjudication of their respective civil rights.

30.43. This Court answers Point No. (iv) by holding that the order dated 05.06.2025 calls for interference only to a limited extent. The portion of the order setting aside the Deputy Commissioner's order dated 05.09.2023 is upheld. The direction remanding the matter to the Deputy Commissioner is set aside and is substituted by a direction that the petitioners and respondent No.5 are at liberty to approach

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the competent Civil Court for adjudication of their respective civil rights.

30.44. The prayer for restoration of the order dated 05.09.2023 and for continuation of the rotational Archakship arrangement is rejected. The rival claims concerning succession, relinquishment, the document dated 18.11.1999 and the effect of the order dated 11.09.2001 are left open for determination by the competent Civil Court.

31. **Answer to Point No. (v): What Order?**

31.1. In view of the answers to Points No. (i) to (iv), the consequences of the above findings needs to be stated clearly.

31.2. The order dated 05.09.2023 having been set aside, the rotational arrangement created pursuant to that order cannot continue on that basis. The rival claims of the petitioners and respondent No.5 have not been adjudicated in these proceedings and are left open for determination by the competent Civil Court.

31.3. At the same time, the setting aside of the order dated 05.09.2023 cannot result in the regular

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poojas and other customary religious services of the temple being left unattended. Such poojas are required to be performed in accordance with the established practice of the temple. Where other branches of the family have a hereditary right to perform the poojas and there is no dispute regarding their entitlement, the poojas may be performed by members of such undisputed branches in accordance with the existing practice, until the rights of the contesting parties are determined by the competent Civil Court.

31.4. The periods during which the petitioners and respondent No.5's branch would otherwise have performed the poojas shall, in the interregnum, be distributed rateably amongst the other undisputed branches of the family. The Deputy Commissioner shall accordingly redetermine the periods during which such branches may perform the poojas, having regard to the established practice of the temple. Such redetermination shall be confined to making arrangements for the uninterrupted performance of the poojas and shall not involve

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any adjudication of the *inter se* rights of the petitioners and respondent No.5.

31.5. This arrangement is only to ensure the performance of the regular poojas and other customary religious services of the temple. It shall not be understood as a declaration or recognition of the rights of any particular person or branch to the hereditary office. In particular, it shall not prejudice the claims of the petitioners or respondent No.5 before the competent Civil Court, nor shall it confer any additional right upon the branches performing the poojas under the interim arrangement.

31.6. It is reiterated that this Court has not decided the merits of the rival claims of the petitioners or respondent No.5. All contentions relating to their respective rights, including succession, relinquishment, the document dated 18.11.1999 and the effect of the order dated 11.09.2001, are left open for determination by the competent Civil Court. The observations made in this judgment are confined to the questions arising in these writ petitions and

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shall not be understood as a determination of the civil rights of either side.

31.7. In the event of a civil suit being instituted, the same shall be decided by the competent Civil Court independently, on the evidence and material placed before it, and without being influenced by any observation made in this judgment on the merits of the rival civil claims.

31.8. Upon the rights of the parties being determined by the competent Civil Court and the judgment attaining finality, the petitioners and respondent No.5 shall be at liberty to approach the jurisdictional authorities for giving effect to the rights so determined, in accordance with law.

31.9. It is further clarified that the rights of any person who is not a party to these proceedings have neither been considered nor affected by this judgment. The only exception is the interim arrangement contemplated above, under which the other undisputed branches may perform the poojas during the periods which would otherwise have fallen to the petitioners and respondent No.5's branch, rateably amongst themselves, for such periods as may be

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redetermined by the Deputy Commissioner. This arrangement shall remain subject to the final adjudication of the competent Civil Court and shall not prejudice the rights of any such person.

31.10. In the above circumstances this Court passes the following:

ORDER

- (i) W.P. No.3388 of 2024 is **dismissed**.
- (ii) W.P. No.24820 of 2025 is **allowed in part**, as follows.
 - a. To the extent that the order dated 05.06.2025 passed by the Commissioner, respondent No.1, interferes with the order dated 05.09.2023 passed by the Deputy Commissioner, it is upheld. The order dated 05.09.2023 is not restored.
 - b. The order dated 05.06.2025 is modified. In place of the direction remanding the matter to the Deputy Commissioner, the petitioners and respondent No.5 are

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directed to approach a Civil Court of competent jurisdiction for adjudication of their respective rights.

- c. Once those rights are determined and the decree has attained finality, and the same is brought to the notice of the Deputy Commissioner, it will be for the Deputy Commissioner to pass the orders needed under Section 25B of the Act so as to act in line with the decree. This may include, if he finds it fit, a scheme under which the family members of late Havale Gowda are designated, with specific periods, to perform their Archakship.
- d. Prayer (b) of that petition, for a direction to continue the rotational Archakship, is rejected.

(iii) Needless to say, until the rights of the petitioners and respondent No.5 are determined, neither the petitioners nor respondent No.5 has any right to perform pooja at Sri Deviramma Temple situated at Hagare Village, Madihalli Hobli, Belur Taluk.

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(iv) All contentions regarding the respective rights of the petitioners and respondent No.5 are left open to be decided by a Civil Court of competent jurisdiction. Nothing in this judgment is a finding on those rights, and the rights of any person who is not a party to these petitions are not adversely affected, except to the extent of the other branches performing the poojas during the time allotted to the petitioners and respondent No.5's family rateably amongst themselves, the period to be redetermined by the Deputy Commissioner accordingly.

This Court has been assisted by Mr. Sourav, Law Clerk, in the formulation of this Judgment.

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(SURAJ GOVINDARAJ)
JUDGE

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List No.: 3 Sl No.: 2