

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.03.2017

PRONOUNCED ON : 26.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.1763 of 1999

Ammalu Ammal Kattalai
Nagapattinam
rep.by its hereditary Trustee
R.S.GovindanAppellant/Appellant/Plaintiff

..Vs..

1.Sakthivel
2.SwaminathanRespondents/Respondents 1 & 3/
Defendants 1 & 3

PRAYER: Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree in A.S.No.291 of 1995 dated 23.07.1996 on the file of Principal District Court, Nagapattinam, confirming the judgment and decree in O.S.No.64 of 1988 dated 17.06.1995 on the file of Sub Court, Nagapattinam.

For Appellant : Mr.R.Siddharath
for Mr.T.R.Rajaraman
For R1 : Mrs.P.Srividhya
for Mr.A.Muthukumar
For R2 : Mrs.H.Betsy Tabitha
for Mr.T.K.Seshadri

J U D G M E N T

The unsuccessful plaintiff is the appellant herein.

2. For the sake of convenience, the parties are referred to as per the ranking before the Trial Court.

3. Challenging the correctness of the order dated 23.07.1996 made in A.S.No.291 of 1995, on the file the Principal District Judge, Nagapattinam and confirming the judgment and decree made in O.S.No.64 of 1988, Sub-Court, Nagapattinam, the plaintiff has preferred this appeal.

4. The plaintiff has filed the suit for declaration of title, declaring that is the hereditary Trustee of the plaintiff-charity, the Ammalu Ammal Kattalai, Nagapattinam and for recovery of possession of the schedule 1 and 2 of the

property from the second defendant and for Permanent Injunction against the first defendant from interfering with the collection of rent and for accounts in respect of the rent collected by the first defendant from the second defendant who is a tenant in the Item No.II of the suit property.

5. The plaint proceeds on the basis that one R.S.Govindan who has claimed that he is hereditary Dharmakartha of the Ammalu Ammal Kattalai in Nagapattinam which owns the Item No.I&II of the suit property. The plaint proceeds on the basis that Item No.I&II of the suit property belonged to the plaintiff's charity and he is adopted son of P.S.Ramasamy Chettiyar, who is the hereditary Dharmakartha of the above said charity and further, alleged that the trusteeship to the above said charity 'Ammalu Ammal Arakattalai' (herein in charity) is by hereditary-ship.

6. The first defendant Sakthivel has filed written statement contending that the said P.S.Ramasamy Chettiyar has adopted the plaintiff as his adopted son. Subsequently, as he is not conducted himself properly under Ex.B4. The adoption deed has been cancelled and as against the said cancellation a suit in O.S.No.28 of 1973 has been filed and the same is decreed and confirmed by the High Court and hence, he is the adopted son of the said P.S.Ramasamy Chettiyar. However, under Exhibit B5, the said P.S.Ramasamy Chettiyar has executed a will in respect of the properties of the charity, the suit property whereby the trusteeship was given to the first defendant and the same has been upheld before the Court of law in a earlier Rent Control proceedings and hence, the suit is not maintainable and prayed for dismissal.

7. Before the trial Court to prove the pleadings, the plaintiff examined himself as P.W.1 and plaintiffs are marked Ex.A1 to A8 and defendant examined himself as D.W.1 and scribe of the Ex.B5, will was examined as D.W.2 and second defendant-the tenant of the suit property is examined as D.W.2 and defendants have marked Ex.B1 to B28.

8. On consideration of the both oral and documentary evidence, the trial Court has come to a categorical conclusion that the plaintiff is the adopted son of the said P.S.Ramasamy Chettiyar and though the above said adoption was cancelled under Ex.B4, the same has been set aside in the civil proceedings in O.S.No.28 of 1973 and confirmed by the High Court and further held that relying upon Exs.A2,B2,B13,B14 and evidence of the D.W.2, the trial Court has held that trusteeship in respect of the plaintiff's charity is by nomination only and not by hereditary-ship as claimed by the plaintiff and further held that the Ex.B5, will is proved in the manner known to law, thereby the first defendant herein is nominated as a trustee of the plaintiff's charity who is looking after the suit property and carrying out the objectives mentioned by the charity and accordingly, rejected

the relief of declaration of title to hereditary-ship to the plaintiff's charity in favour of the plaintiff herein and also rejected the relief of recovery of possession of the suit property and permanent injunction against the first defendant.

9. Aggrieved against the judgment and decree, the plaintiff has preferred the appeal suit before the Principal District Judge, Nagapattinam in A.S.No.291 of 1995 wherein on re-appreciation of entire evidence and also following the decisions of the Hon'ble Supreme Court, the lower Appellate Court has concurred with the findings rendered by the trial Court and dismissed the appeal and hence, the Second Appeal.

10. On the above Second Appeal has been admitted on the following substantial question of law:-

i) Whether the interpretation of the learned Principal District Judge with regard to the term " hereditary trustee" as defined under Sec.6(11) of the Tamil Nadu Hindu Religious Charitable Endowment Act is right?

ii) Whether the learned Principal District Judge is right in holding that the office of trusteeship of Ammal Kattalai is not hereditary ignoring the material documents and clinching evidence?

iii) When the will under Ex.B5 is not proved in accordance with Sec.68 of the Evidence Act and Sec.63 of the Indian Succession Act, is not the lower appellate Court wrong in accepting the first defendant's claim on the basis of will? And

iv) Whether the father of plaintiff, late Sri Ramasamy Chettiar had any vested right to create a new line of succession to the office of trusteeship by way of a will?

11. As all the substantial questions of law are inter-related and inter-connected, they are dealt in common.

12. As stated supra, the appellant/plaintiff has come forward with specific case is that the 'Ammalu Ammal charity' is maintained and administered by the hereditary Dharmakartha as a charity was originally administered by Soundararajan and after death, his son P.S.Ramasamy Chettiar and since he had no issues, he had adopted the plaintiff viz., R.S.Govindan and subsequently, it appears that by a deed of cancellation, he had cancelled the adoption who is marked is Ex.B4 by the defendant. As against the cancellation of the adoption, the plaintiff herein filed in O.S.No.28 of 1973 which was dismissed by the trial Court. However, on appeal, the High Court had held that the cancellation of the adoption is not valid in law and adoption cannot be cancelled and held that R.S.Govindan is the adopted son of P.S.Ramasamy chettiar.

13. Now, based upon the said adoption deed and confirmation of the said factum of adoption by the High Court in the civil proceedings, the plaintiff further build up his case and stated that the charity is administered by a hereditary trusteeship which was vehemently disputed by the first defendant. The first defendant both in his written

statement as well as in his evidence as D.W.1 could deposed that under Ex.B1, in a civil proceedings in O.S.No.309/37, in respect of a civil dispute relating to the suit property on the 'Ammalu Ammal charity', the then trustee Kothandarama chettiar has gave a statement and the evidence given in the said Original Suit has been marked initially with objection and the trial Court has held that in view of the provisions of Section 82 of the Indian Evidence Act, the same is held to be admissible in evidence and this Court is of the considered view that such a finding by the trial Court as well as the lower Appellate Court cannot be interfered with. Further, on a perusal of Ex.B1, it is a crystal clear that the trusteeship is by nomination only and not by hereditary-ship as claimed by the plaintiff. In this regard, it is pertinent to note that under Ex.B27, a Miscellaneous Petition has been filed in M.P.No.1163 of 19 wherein Subramaniam, s/o. Sadasiva Chettiar has collected the rent and not the plaintiff. On perusal of Ex.A7, which is a certified copy of the Ex.B5, WILL executed in favour of the first defendant by the adopted father of the plaintiff P.S.Ramasamy chettiar whereby, the said P.S.Ramasamy Chettiar has nominated the first defendant as a Dharmakartha to look after the charity.

14. Both the Courts below have concurrently held that Ex.B5, WILL has been duly proved in the manner known to law and the said finding is under challenge by the appellant herein. The D.W.2 is the scribe of the Ex.B5, will, executed by P.S.Ramasamy Chettiar whereby, the respondent herein is appointed as the trustee of the charity in a Rent Control proceedings initiated by the P.S.Ramasamy Chettiar during his lifetime, the present plaintiff has filed Interlocutory Application No.65 of 1983 to implead himself as hereditary trustee of the charity wherein attestor of the WILL have been duly examined and after going to the genuineness of the WILL in the Rent Control proceedings, the Rent Controller appears to have given a finding that it has been proved in the manner known to law (whereby the first defendant herein is appointed as trustee of the charity) as against the said finding R.C.A.No.9 of 1985 has been filed which is also appears to be allowed and as against which, the first defendant has preferred C.R.P 976 of 1988, wherein the genuineness of the will has been upheld and further held that the first defendant Sakthivel is entitled to collect the rent in respect of the suit property and accordingly relying upon the decision of the C.R.P No.976 of 1988 between the very same party, both the Courts below have concluded that since in an earlier proceedings between the same party Ex.B5, will has been proved in the manner known to law. Besides in the present suit, the scribe is examined as D.W.2 who also support of the case of the execution of Ex.B5 has held that the Ex.B5 is proved in the manner known to law. Having satisfied the ingredients of the Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act, it remains to be stated that in the decision reported in 1983 T.N.L.N.J. Page 203 P.S.Ratna Bai

Vs.D.V.Ramanan Vs.D.Venkataraman Bhatt, it has been held that "once a decision has been rendered in respect of a document between the same parties, a same could not be proved again and again in the subsequent proceedings".

15. Taking into consideration of the order passed by the High Court in CRP.No.976 of 1988 between the same parties in respect of very same property coupled with the oral evidence of the D.W.2 and the decision of the Supreme Court 1996 MLJ 45 stated supra, this Court has no hesitation in coming to the conclusion that the finding rendered by the Courts below regarding the execution and the genuineness of the Ex.B5 WILL in favour of the first defendant is well considered and well merited, does not warrant any interference by this Court and accordingly, the said finding is hereby confirmed and since Ex.B5, WILL has been proved in accordance with Section 68 of the Indian Evidence Act and 63 of the Indian Succession Act, the third substantial question of law is held against the plaintiff.

16. The learned counsel for the appellant contended that the claim of the appellant/plaintiff that is hereditary trustee of the charity has not been duly considered by the Courts below and this Court has given its anxious consideration for the said contention of the appellant counsel, it remains to be stated that under sub clause (2) Section 6 of the Tamil Nadu Hindu Religious and Charitable Endowments Act is defined:-

The trusteeship is hereditary if

- i.The office devolves by hereditary right.
- ii.The hereditary devolution is regulated by usage
- iii.The hereditary devolution is specifically provided for by the founder

It has been held that the devolution of trusteeship in a family for three generations extending for a period of 100 years will indicate that the trusteeship is hereditary".

17. Based upon the earlier legal proceedings wherein different persons have been nominated by the successive trustees and taking note of the above provisions in the Tamil Nadu HR&CE Act, both the Courts below have concurrently held that the trusteeship to the 'Ammalu Ammal charity' has not by hereditary-ship and only by nomination is perfectly valid in the absence of any legally acceptable evidence being adduced by the plaintiff to substantiate his plea. Further, it is for the plaintiff not only to plead the said plea, but it is the burden upon him to prove the said plea. Both the Courts below has concurrently held that the plaintiff has miserably failed to prove his pleading regarding the hereditary trusteeship. Accordingly, this Court finds that the said finding by the both Courts below that the 'Ammalu Ammal charity' been administered and maintained by the trustee by nomination only and not by hereditary-ship and under Ex.B5, P.S.Ramasamy

Chettiar has nominated the first defendant as the trustee and said document has also been upheld by the High Court in the above said CRP.No.976 of 1988 and hence, this Court is of the considered view that the office of trusteeship to the 'Ammalu Ammal charity' is only by nomination and not hereditary trusteeship and said finding is in accordance with law and based upon the evidence adduced before the Court and the plaintiff having failed to let in any evidence to substantiate his plea both the Courts below have rightly and concurrently held so is hereby confirmed and accordingly, the substantial question of law No.IV is also held against the appellant herein.

18. In fine, both the Courts below have concurrently held that the office of trusteeship of 'Ammalu Ammal Kattalai' is not hereditary but only by nomination and under Ex.B5 P.S.Ramasamy Chettiar has nominated to the first defendant as the trustee for the charity and the said Ex.B5 has been proved in the manner known to law the Courts below have concurrently and rightly come to the conclusion that the office of the trusteeship of the 'Ammalu Ammal Kattalai' is only by nomination and 1st defendant is trustee is well founded and well merited cannot be interfered and accordingly, all the substantial questions of law are held the appellant herein.

19. In the result,

i) this Second Appeal is dismissed without costs.

ii) Judgment and Decree in A.S.No.291 of 1995 dated 23.07.1996 on the file of Principal District Court, Nagapattinam in confirming the judgment and decree in O.S.No.64 of 1998 dated 17.06.1995 on the file of Sub-Court, Nagapattinam is hereby confirmed.

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Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Principal District Court, Nagapattinam
- 2.The District Sub-Court, Nagapattinam

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+lcc to Mr.A.Muthukumar, Advocate SR.No.75506
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sm:18.12.2017

JUDGMENT IN
S.A.No.1763 of 1999