

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-06-2017

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

A.S Nos.958 of 2010

and

M.P.No.1 of 2010

V.K.BalaramaNaicker

... Appellant/Plaintiff

Vs

The Commissioner,
Hindu Religious and Charitable Endowments,
Administration Department,
Chennai - 600 034.

... RESPONDENT/Defendant

The appeal is filed under section 70 of Tamil Nadu Hindu Religious and Charitable Endowment Act 22 of 1959 and Amendment Act 28 of 2003 R/W Order XVI Rule 1 C.P.C., to set aside the judgment and decree dated 16.10.2010 passed in O.S.No.198 of 2002 on the file of Learned Additional District Judge, Fast Track Court No.3, Thiruvallur.

For Appellant : Mr.J.R.K.Bhavanantham

For Respondent : Mr.R.P.Pratap Singh,
Government Advocate.

O R D E R

The appeal suit has been preferred by the unsuccessful appellant before the authorities as well as before the Civil Court in getting a declaration that he is the hereditary trustee of the temple dedicated to Sri Om Sakthi Ganesan located in Ganesapuram, Manavala Nagar near Thiruvallur Railway Station.

2. According to the appellant, the temple was established in a land measuring 0.01 cent and comprised in survey No. 338-A/3, Ganesapuram. The said land is said to be a poromboke land and the temple has got no property of its own. The temple was established on 02.09.1962. Out of the own funds of the appellant, he had installed Ganesa idol for worship. Subsequently, on 31.08.1992, the appellant performed kumbabishekam using his own funds. A hundial has been installed in the temple and it is getting a monthly income of Rs.500/- to

Rs.700/-, which is not sufficient for doing pooja and upkeep of the temple.

3. When the respondent officials started to interfere with the affairs of the institution, the plaintiff moved the Joint Commissioner, HR&CE in OA.No.22/1994 seeking a declaration that the appellant is holding the office as hereditary trustee under Section 63(b) of Tamil Nadu Hindu Religious and Charitable Endowments Act. The said application was dismissed on 05.03.1997 and an appeal in AP.No.10/1997 before the Commissioner was also dismissed on 06.03.2002.

4. In view of the exhaustion of the statutory remedies, the appellant moved the Civil Court under Section 70 of the Act, by filing the statutory suit in O.S.No.198/2002 before Sub Court, Thiruvallur. The said suit was dismissed after a full fledged trial on 16.07.2010. Against the said dismissal order only, the present appeal has been filed.

5. Heard Mr.J.R.K.Bhavanantham, learned counsel appearing for the appellant and Mr.R.P.Prathap Singh, learned Government Advocate, H.R & C.E.

6. Before the Civil Court, two issues were raised and the first issue is namely, "1.Whether the plaintiff holds the office as Hereditary trustee of Sri Om Sakthi Ganesan Temple?".

7. The only contention raised by the appellant is that he is a hereditary trustee under Section 63(b) of the aforesaid Act. In order to substantiate this contention, the appellant adduced oral evidence namely PW2 and PW3, apart from marking Exs.A1 to A3 and A7, Kist receipts. Section 6(11) of the Tamil Nadu Hindu Religious and Endowments Act defines "Hereditary Trustee" as "the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force" Since, the appellant himself is said to have constructed the temple, the question of succession in favour of the same person is not possible, the Civil Court observed. Further, the appellant did not produce evidence to show that the temple was constructed out of his own funds. Moreover, the temple is situated in a poromboke land and the appellant has not shown any deed or grant in his favour to show that he is in occupation of the property. Further, the witnesses, PW2 and PW3, whom the appellant examined in support of his case, stated that they did

not know whether the appellant constructed the temple with his own funds. In the absence of any evidence to show that he had only constructed the temple and he would fit into the definition of hereditary trustee, the authorities as well as the Civil Court were justified in dismissing the claim of the petitioner. Therefore, the appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

sai/kak

To

1.The Learned Additional District Judge,
Fast Track Court No.3,
Thiruvallur.

2. The Section officer
VR Section
High Court, Madras.

+1 Cc to Govt. Advocate sr 43345.

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CNR(CO)
sp(05/09/2017)

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