

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Thursday, the Fourth day of January Two Thousand Eighteen

PRESENT

THE HON`BLE MR.JUSTICE A. SELVAM

and

THE HON`BLE MR.JUSTICE P. KALAIYARASAN

CMP No.19436 of 2017

IN WA.936/2014

K.P. RAMAN (DECEASED-4th Respondent)

K.R.SWAMYNATHAN

[PETITIONER]

Vs

1 M.RADHAKRISHNAN

[RESPONDENTS]

2 THE COMMISSIONER

HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS

(A) DEPARTMENT, CHENNAI 34

3 THE JOINT COMMISSIONER

HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS

(A) DEPARTMENT, CHENNAI 34

4 THE EXECUTIVE OFFICER

ARULMIGU GOPALAKRISHNASWAMY AND ALLIED

TEMPLES, KRISHNAPURAM

5 R.SUBRAMANIAN

6 K.G.SANKARASUBRAMANIAM

7 E.SIVAKUMAR

8 D.MEENA D. BHATTACHARYA

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to bring on record K.R. Swamynathan the petitioner herein as the

legal representatives of the deceased 4th Respondent viz., Mr.K.P. Raman in the above W.A. No. 936 of 2014.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S. K.V. SUBRMANIAN ASSOCIATEZ, Advocate for the petitioner, the court made the following order:-

(Order of the Court was made by **P.KALAIYARASAN, J**)

This petition has been filed under Order 22 Rule 4 of CPC, seeking to implead the petitioner as the legal representative of the deceased fourth respondent, viz., Mr.K.P.Raman in the Writ Appeal.

2. The back drop of the case is that on the petition filed by one Radhakrishnan under Section 54 (1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (herein after referred to as "HR & CE Act"), the Joint-Commissioner on 16.05.2012 passed an order deciding M.Radhakrishnan and four others as the next hereditary trustees of the Temple consisting of Arulmigu Gopala Krishnaswamy Temple, Arulmigu Viswanathaswamy Temple and Arulmigu Anjaneyaswamy Temple, Krishnapuram, Tenkasi Taluk, Tirunelveli.

3. K.P.Raman, the fourth respondent in the present writ appeal filed appeal petition under Section 54(4) of the HR & CE Act before the Commissioner against the above said order, dated 16.05.2012 passed by the Joint-Commissioner. The Commissioner passed the order in the above appeal petition on 16.04.2013, remitting back the matter to the Joint-Commissioner for fresh consideration by setting aside his order. M.Radhakrishnan filed the writ petition in W.P.No.18874 of 2013 against the said order passed by the Commissioner, HR & CE. In this writ petition, K.P.Raman is arrayed as fourth respondent.

4. The learned single Judge of this Court in his order, dated 16.06.2014, setting aside the order of the Commissioner, HR & CE, remanded back to the Commissioner, HR & CE for disposal after hearing all the parties. Aggrieved by the said order, the writ petitioner M.Radhakrishnan has preferred the writ appeal.

5. The fourth respondent passed away during the pendency of the writ appeal. The petitioner being son of the fourth respondent, worshiper and devotee of the subject temples, seeks to bring him on record as legal representative of the deceased fourth respondent, viz., Mr.K.P.Raman in the writ appeal.

6. The respondent / appellant in his counter contends that the fourth respondent has preferred the appeal only as a "personal action" and the appeal is abated against the fourth respondent as there is no heritable right that survives on the legal heirs. It is further contended that a worshiper can never interfere in the process

of recording succession.

7. The issue involves in this lis is about the filling up of vacancies in the offices of the hereditary trustee of the Krishnapuram Arulmigu Gupalakrishnaswamy and allied temples. As per Section 54 of the HR & CE Act, any person aggrieved by an order of the Joint-Commissioner may appeal against the order to the Commissioner. Though K.P.Raman was not a party before the Joint-Commissioner, he filed the appeal petition under Section 54 before the Commissioner, HR & CE. Against the order of the Commissioner, M.Radhakrishnan filed the writ petition and then writ appeal.

8. As per Order 22 rule (1) CPC, the death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

9. Here in this case, the petitioner as a worshiper and devotee wants to contest the writ appeal as a legal representative in the place of his father. It is also seen from the records that the case of the fourth respondent in the writ appeal is that the appellant and others who have now been recorded as hereditary trustees by the Joint-Commissioner have abandoned their right for about 30 years and the temple was maintained by doing renovation work and managed by the public. Therefore, it cannot be said that K.P.Raman filed appeal petition claiming his personal right and the right to sue survives. Thus the petitioner not only being legal representative of K.P.Raman but also as a worshiper and devotee of the temple is entitled to be impleaded in the writ appeal.

In the result, this petition is allowed. The Registry is directed to carryout the amendment. No cost.

-sd/-
04/01/2018

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE COMMISSIONER
HINDU RELIGIOUS & CHARITABLE ENDOWMENTS (A)
DEPARTMENT, CHENNAI-34

2 THE JOINT COMMISSIONER
HINDU RELIGIOUS & CHARITABLE ENDOWMENTS (A)
DEPARTMENT, CHENNAI-34

3 THE EXECUTIVE OFFICER,
ARULMIGHU GOPALAKRISHNASWAMY & ALLIED
TEMPLES, KRISHNAPURAM, KADAYANALLUR
MUNICIPALITY, TENKASI TALUK, TIRUNELVELI
DISTRICT

C.C. to M/S. K.V. SUBRMANIAN ASSOCIATE Advocate on payment of
necessary charges

Order

in
CMP.19436/2017

in
WA.936/2014

Date :04/01/2018

From 26.2.2001 the Registry is issuing certified
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JK 18/01/18