

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2018

DELIVERED ON : 10.01.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) NO.979 OF 2006

&

MP.NO.1 OF 2006

1. Natesan
2. Jambulingam
3. Arumugha Pandaram
4. Arthanari Pandaram
5. Muniappan
6. Sekar
7. Vadivel

...Petitioners

Versus

1. M.A.Palanisamy
2. K.Velappa Gounder (died)
3. P.Vella Gounder (died)
4. A.Palanisamy
5. P.Ramasamy
6. K.P.Seerangan (died)
7. P.Seeranga Gounder
8. P.N.Muthusamy
9. Nallasamy Gounder (died)
10. Palaniammal
11. Poongodi

12.Sivakumar

... R10 to R12 brought on record
as LRS of the deceased R2 viz.,
K.VELAPPA Gounder vide Court Order
dated 8.12.2017 made in MPs 1 to
3/2015 in CRP.PD.979/2006

**13.Nallammal

14.Nallayan

... R13 & R14 brought on record
as LRS of the deceased R3
Viz. P. VELLA Gounder vide
court order dated 08.12.2017
made in MPs 4 to 6/2015 in
CRP PD979/2006

***15.Veerammal (died)
16.Saraswathy
17.Venkatachalam

...R15 to R17 brought on record as
LRS of the deceased R9 viz.,
NALLASAMY Gounder vide court
order dated 08.12.2017 made in
MPs7to 9/2015 in CRP PD
979/2006

... R15 -died. R16 & R17
LRS of the deceased R15 memo
dt.26.09.2018 vide Court Order
dt.26.09.2018 made in
CRP. (PD).979/2006.

****18. Perumayee
19.Malleeswari
20.Manimegalai
21.Sridhar

... R18 to R21 brought on record
as LRS of the deceased R6
viz. K.P. SEERANGAN vide
court order dated 08.12.2017
made in CMPs19557 to
19559/2017 in CRP PD
979/2006

Prayer :

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 16.09.2005 made in C.M.A.No.5 of 2004 on the file of the Sub Court, Namakkal reversing the Fair and Decreeetal order dated 03.02.2004 made in Unnumbered O.S.No.---of 2004 on the file of the District Munsif Court, Tiruchengode.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.T.Sezhian for RR1,4,7 & 8.
RR2,3,6,9 &15-Died
Not ready in notice for RR5,
10 to 14, 16 to 21

O R D E R

The above Civil Revision Petition is filed challenging the Judgment passed by the learned Sub-Judge, Namakkal in C.M.A.No.5/2004, in and by which, the learned Sub-Judge has set aside the Judgment and Decree of the learned District Munsif, Tiruchengode in an unnumbered suit ---of 2004.

2. The defendants in the said suit are the revision petitioners before this Court and the respondents are the plaintiffs. The parties are referred to in the same litigative status in which they have been referred to in the suit.

3. The brief facts preceeding the filing of the suit would be necessary in order to appreciate the dispute involved in the above Civil Revision Petition. The dispute between the parties is with reference to the Management and Administration of the following Temples:

- (a) Arulmigu Sengamma Muniappan Temple,
Pallakkapalayam village,
- (b) Arulmigu Mariamman Temple,
Malappalayam, Pduru Village,
- (c) Arulmigu Kariakalaiamman @
Badrakaliamman Temple,
Pallakkapalayam Village and
- (d) Arulmighu Mariamman Temple,
Goudampalayam Village, Trichengode
Taluk, Namakkal."

4. From a perusal of the records, it is seen that on 09.10.1981 the Deputy Commissioner(Judicial) HR & CE Dept., had passed an order on an application filed under Section 63(b) of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act') declaring the management of the Arulmigu Sengamma Muniappan Temple, Pallakkapalayam village, Tiruchengode Taluk, Salem District to be hereditary.

- The applicants in the said application are one Kava Pandaram, Kandhasamy, Kava Pandaram, Kandhasamy, Subramaniya Pandaram and Arumugam.
- It is further seen that this order was challenged before the Dy. Commissioner, HR&CE Administrative Dept, by Mr. Nachimuthu, K. Velappa Gounder (the 2nd plaintiff in the impugned suit) Muthu Gounder and Nalla Sivam and by an order dated 24.07.1990, the said application was dismissed as belated.
- The Commissioner, HR&CE Dept., had observed that the application was filed for condoning the delay of 374 days in filing the appeal and despite notice to the learned counsel for the appellants to appear before the court on 25.04.1988, there was no appearance and thereafter the

matter has been adjourned on several dates, on which dates also there was no appearance both by the learned counsel as well as by the appellants themselves.

- The Commissioner also observed that the reasons which has been given for condoning the delay were not convincing.
- It is seen that by an order dated 31.12.1990, the Deputy Commissioner HR&CE Department, Salem, has recognized the sons of Subramaniya Pandaram namely S. Nadesan and S.Jambulingam to also be the Hereditary Trustees of the suit temples.
- 14 years after the passing of the order by the Deputy Commissioner recognizing the sons of Subramaniya Pandaram to be the Hereditary Trustees along with the others, the plaintiffs had filed the unnumbered suit against the sons of Subramaniya Pandaram and 5 others for a declaration that they are the only Hereditary Trustees to the temple and to restrain the defendants from preventing the plaintiffs from managing the affairs of the suit temple, by granting permanent injunction.
- The plaintiffs would contend that the temples were being managed from time immemorial by the Oorgounders. The temples are very small village temples and the Oorgounders of Malappalyam Pudur, Kinathupalayam, Osuvakattuvalavu Malayadipalayam, Ayigoundampalayam, Kothinanur, Manjipalayam, Paraiyur and Poolappalayam Village all hamlets of Pallakkapalayam have been in management and administration of the said temple.
- Each of the plaintiff would trace their right to one of their ancestors, who were originally Oorgounders and by reason of being their descendants, they would submit that they are the present Oorgounders.
- It is their case that they have been managing the affairs of the suit temple as per rites and customs and the festivals connected to these temples have been conducted by the plaintiffs. That apart the repair/renovation of the these temples are undertaken by the plaintiffs and the respective Oorgounders. Therefore, according to the plaintiffs, they have been managing the affairs of the suit temple over three generations. Therefore, they would contend that they are the Hereditary Trustees of the suit temple.
- It is the case of the plaintiffs that the defendants who are merely Poojaris of the suit temples have no right in

the management of the temples. Off late they been acting in an arbitrary manner claiming exclusive rights to the temples and openly proclaiming that they would not permit the plaintiffs to manage the affairs of the temples.

- On 17.01.2004 the defendants had prevented the plaintiffs from entering into suit temple and when it was questioned they had informed the plaintiffs that their father had been proclaimed as the Hereditary Trustee of the suit temple by the HR&CE Department.
- It is only thereafter that the plaintiffs had come to know about the order passed in O.A. No.109/1978 on the file of the learned Deputy Commissioner, HR&CE Department, Coimbatore. The plaintiffs would submit that the defendants have never been managing of the suit temple and the order has been obtained behind their back and the same would not bind the plaintiffs.
- They would contend that the learned Deputy Commissioner only has the right to decide whether the office of trusteeship was Hereditary or not but he cannot consider rival claims and declare the hereditary right which is exclusively within the domain of the civil court. Therefore, the plaintiffs have been constrained to file above suit.

5. The District Munsif, Tiruchengode without taking the suit on file, had proceeded to dismiss the said suit on the ground of jurisdiction. The learned Judge had observed that under Section 6 (7) of the Act, Court would refer to the Sub-Court having jurisdiction over the area in which the math or temple is situate and therefore, the filing of the suit before the learned District Munsif was without jurisdiction.

6. The said order was taken upon on appeal by the respondents herein in C.M.A.No.5/2004. The learned Sub-Judge, by judgment and decree dated 16.09.2005, was pleased to allow the appeal and directed the learned District Munsif to take the suit on its file if it is otherwise in order. The Appellate Court had relied upon Section 63(b) of the Act to come to the conclusion that the Deputy Commissioner had power only to decide, whether the office of Trusteeship in the temple is Hereditary or not in all other respects jurisdiction vests only with the Civil Court. The learned Judge has relied upon the Judgment of this Court report in 1981 MLJ page No.392 [Aviyur Mariamman Temple by Hereditary Trustee Parasuraman Vs. T.N.Sundaramurthi Pillai and Another]. Challenging the said judgment and decree, the defendants in the suit are before this Court.

7. Mr. N. Manokaran, learned counsel for the revision petitioners would contend that the suit is filed for seeking the relief of a declaration to declare the plaintiffs as the Hereditary Trustees of the suit temple and this issue has already been settled. He would further argue that the order passed by the Deputy Commissioner had been challenged before the Commissioner, HR&CE Department under Section 69(1) of the Act and the same was also dismissed and the remedy available to the plaintiffs is only to file a suit under Section 70 of the Act. He would further contend that the learned Sub-Judge, has not considered the fact that the plaintiffs have neither filed a suit under Section 70 of the Act nor filed any writ petition against the order dated 24.07.1990. The jurisdiction of the Civil Court has been barred by the provisions of Section 108 of the Act which provides that no suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter provided under the Act shall be moved in a Civil Court except to the extent provided under the Act. He would further contend that the learned Sub-Judge has overlooked the fact that the original order was passed under Section 63(1) and the appeal thereon, was considered under the provisions of Section 69 of the Act. He would further contend that the order of the learned Sub-Judge suffers from an infirmity. The learned counsel had relied upon the following Judgments in support of his contentions:-

- (1994) 1 Supreme Court Cases 1[S.P.Chengalvaraya Naidu (Dead) by LRS....Vs. Jagannath (Dead) By LRs. and Others]
- (1977) 4 Supreme Court Cases 467 [T.Arivandandam..Vs. T.V.Satyapal and another]
- MANU/TN/0415/1980 [Aviyur Mariamman Temple Vs. T.N.Sundaramoorthi Pillai and Ors.]
- (1981) 1MLJ page 392 [Aviyur Mariamman Temple by Hereditary Trustee Parasuraman...Vs. T.N.sundaramoorthi Pillai and another]
- 2012(2) CTC 531 [Ammanpalayam Sree Mariamman Devasthanam Trust, rep. by its President, A.E.Shanmugam...Vs. Arulmigu Sree Mariamman Thirukoil, Ammanpalayam, Paruvachi, rep. by its Hereditary Trustees 1.Sitha Gounder 2. Ayyannan 3. Palanisamy 4. Ananda Gounder]

8. Per contra, Mr.T.Sezhian, learned counsel appearing on behalf of the plaintiffs would contend that under Section 63 of the Act, the Deputy Commissioner is vested only with the right to enquiry as to whether a trustee holds office as a Hereditary Trustee or otherwise. The rival claims cannot be adjudicated by

the Deputy Commissioner and the jurisdiction is exclusively vested with the Civil Court. The learned Counsel would rely upon the Judgments of this Court reported in 1981 (1) MLJ page 392 [cited supra] and in 2012 (2) CTC page 531 [cited supra].

9. This Court heard the submissions of the respective learned counsels and perused the records.

10. It is not in dispute that under Section 9 of the Civil Procedure Code, the Civil Court has jurisdiction to try suits of all natures except those that are specifically barred by the various enactments. Before dealing with the issue on hand, it is necessary to extract the following provisions of the HR&CE Act:-

"63. ¹[Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters.____ Subject to the rights of suit or appeal hereinafter provided, ² [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall have power to inquire into and decide the following disputes and matters.____

(a) Whether an institution is a religious institution;

(b) Whether a trustee holds or held office as a hereditary trustee;

(c) Whether any property or money is a religious endowment;

(d) Whether any property or money is a specific endowment;

(e) Whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution is in regard to any other matter;

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

(g) Where any property or money has been given for the support of an institution which is partly of a religious and partly of a 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 uses, as to what portion of such property or money shall be

allocated to religious uses.

70. Suits and appeals. _____ (1) Any Party aggrieved by an order passed by the Commissioner_____

(i) under sub-section (1) or sub-section (2) of Section 69 and relating to any of the matters specified in Section 63, Section 64 or Section 67; or

(ii) under Section 63, Section 64 or Section 67 read with sub-section (1)(a), 2 or (4) (a) of Section 22 or under Section 5 may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order, but it shall have no power to stay the order of the Commissioner pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1), may, within ninety days from the date of the decree, appeal to the High Court."

11. On perusing the records in the instant case, it is seen that the Deputy Commissioner had, on an application by 6 persons to decide as to whether they can hold the office as Hereditary Trustees, declared that the Trusteeship was Hereditary.

12. Challenging this order, the 2nd plaintiff and others had filed an appeal under Section 69 (1) of the Act. It is also to be noted that the 2nd appellant in the proceedings before the Commissioner, HR&CE Department, is the 2nd plaintiff in the suit in question. The said appeal was dismissed on the ground that the appeal had been filed with delay of 374 days and under the Provisions of Section 69(1) the appeal has to be preferred to the Commissioner within the period of 60 days from the date of publication of the order or the receipt of the appeal to the Commissioner. Against the order under Section 69(1) a suit before the Court within the period of 90 days from the date of receipt of the said order is contemplated under Section 70 of the Act. Sub Section 7 of Section 6 of the Act has defined the Court as follows:-

"6. Definitions.____ In this Act, unless the context otherwise requires,____

(7) "Court" means____

(i) In relation to a math or temple situated in the Presidency town, the 3[Chennai] City Civil Court;

(ii) in relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction;

(iii) in relation to a specific endowment attached to a math or temple, the Court which could have jurisdiction as aforesaid in relation to the math or temple;

(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples; "

13. The instant suit which is the subject matter of revision has been filed seeking a declaration with reference to the Trusteeship of the suit temple which squarely comes under the provisions of Section 63 of the Act and which has already been filed and orders passed as early as in the year 1981.

14. The suit has been filed on the file of the learned District Munsif, Thiruchedur. It is also seen that as the sequel to the order dated 09.10.1981 on the death of one of the Hereditary Trustee, the legal heirs had moved the Deputy Commissioner to recognise them as the Hereditary Trustees in the place of the deceased Trustee and this application was allowed by an order dated 31.12.1990 vide the proceedings of the Assistant Commissioner, HR&CE Department. The instant suit has been filed 14 years thereafter and the 2nd plaintiff who has been a party to the earlier proceedings has feigned ignorance and suppressed the earlier proceedings. The learned Subordinate Judge, relying on the Judgment reported in 1981 (1) MLJ page 392 which has been cited by the learned counsel for the plaintiffs/respondents herein, has held that the jurisdiction of the Deputy Commissioner was to enquire and decide as to "whether the Trustee holds or held office as the Hereditary Trustee". The learned Subordinate Judge has overlooked the fact that it is this exercise that has been done by the Deputy Commissioner (Judicial) of the HR&CE Department vide his order in O.A.No.109/1978, the applicants therein who are the predecessors in interest of the defendants had moved an application for declaring that they held the office of Trustee as Hereditary and it was this right that had been declared. Therefore, the contention of the respondents/plaintiffs that the Deputy

Commissioner has exceeded his jurisdiction is without basis. Further, even the order dated 31.12.1990 is only a follow-up of the earlier order dated 09.10.1981 inasmuch as the Commissioner only recognised 2 sons of deceased Hereditary Trustee as Hereditary Trustees along with others. One of the plaintiffs in the instant suit was a party to the above order and he has remained silent for over 14 years and at this juncture, they cannot be allowed to question the jurisdiction of the Deputy Commissioner in passing the order under Section 63 (b) of the Act.

15. It is no doubt true that the jurisdiction of the Civil Court is curtailed only when there is an express bar. However in the instant case, if the plaintiffs were aggrieved by the order of the Commissioner, the remedy was to file a suit under Section 70 of the Act. The learned District Munsif has dismissed the suit only on the ground of jurisdiction by holding thta it is the Sub-court, which is vested with the jurisdiction to take up the suit. The rejection of the suit on this ground is erroneous as the learned Judge, if he was of the opinion that the District Munsif Court lacked jurisdiction to try the suit then he must have returned the plaint for presentation before the proper Court. This exercise has not been done by the learned Judge and the Appellate Court has not addressed this issue but has proceeded to hold that the Trial Court had erroneously relied upon in Section 6(7) HR&CE Act. Such a finding is erroneous as the Court as defined under the Act is only the Sub-Court and not the District Munsif Court. When the Act prescribes that a suit should be moved before a particular Court, then it is only that court which will be vested with the power and no other court can try the suit. The order of the Appellate Court is therefore modified to the extent that the suit shall be remitted back to the Learned Subordinate Judge, Tiruchengode, to be taken on file and Numbered.

16. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jrs

To

1. The Sub Court,
Namakkal
2. The District Munsif,
Tiruchengode
3. Sub Court, Tiruchengode

+1cc to Mr.N.Manokaran, Advocate, S.R.No.3164

+1cc to Ms.R.Meenal, Advocate, S.R.No.3128

CRP.(PD).No.979 of 2006

VSNII(CO)
CS/19/02/2019