THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14..10..2019
Orders Pronounced on : 02..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.43153 of 2016
&
W.M.P.Nos.36980 of 36981 of 2016
and
Writ Petition No.41422 of 2016
&
W.M.P.Nos.35393 of 35394 of 2016

W.P.No.43153 of 2016

V.Muruganandam
... Petitioner

-Versus-

1.The Commissioner,
Hindu Religious and Charitable Endowments (Administration) Department,
Nungambakkam,
Chennai 600034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Thanjavur.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments (Administration) Department,
Nagapattinam.

4.Selvaganapathy

5.V.Senthilnathan

6.V.Swaminathan

7.V.Sivanathan .. Respondents

Prayer in W.P.No.43153 of 2016:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order to the order dated 30.09.2016 passed in

RP.NO3/2016 D2 by the 2nd respondent - Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Nungambakkam, Chennai 600034 and to quash the same and consequently, direct the 2nd respondent to appoint the petitioner as a hereditary trustee in Sri Rajathagiriswaraswamy Temple, Keezhvelur Taluk, Velankanni, Nagapattinam District or any other qualified branch members of the family.

W.P.No.41422 of 2016:-

1.V.Senthilnathan
2.V.Swaminathan
3.V.Sivanathan

... Petitioners

-Versus-

1.The Commissioner,
Hindu Religious and Charitable Endowments,
(Administration) Department,
Nungambakkam, Chennai 600034.
2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Thanjavur.

3.The Assistant Commissioner,
Hindu Religious & Charitable Endowment,
Nagapattinam.

4.Selvaganapathy

5.V.Muruganandam

... Respondents

Prayer in W.P.No.41422 of 2016:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 1st respondent - Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Nungambakkam, Chennai 600034, dated 30.09.2016 in R.P.No.3 of 2016 and to quash the same and consequently, direct the 2nd respondent to appoint the petitioners as a consequently direct the 2nd respondent to appoint the petitioners as a hereditary trustee in Sri Rajathagiriswaraswamy Temple, Keezhvelur Taluk, Velankanni, Nagapattinam District or any other qualified branch members of the family.

For Petitioner(s) : Mr.C.Manishankar, Senior Counsel for Mr.S.Sithirai Anandan for petitioner in W.P.No.43153 of 2016

Mr.T.P.Manoharan, Senior Counsel for Mr.K.P.Jotheeswaran for petitioners in W.P.No.41422 of 2016

For Respondent(s) : Mr.M.Maharaja, Spl. Government Pleader (HR & CE) for RR1 to 3 in both writ petitions

Mr.R.Saravana Kumar for R4 in both writ petitions

COMMON ORDER

Challenge in both these writ petition is to order passed by the 1st respondent dated 30.09.2016 in a revision petition in R.P.No.3 of 2016 dismissing the revision petition filed the petitioner in W.No.43153 of 2016 as against the order of the 4th respondent appointing Selvaganapathy as hereditary trustee of one Sri Rajathagiriswaraswamy Temple, Keezhvelur Taluk, Velankanni, Nagapattinam District.

2. Mr.V.Muruganandam is the petitioner in W.P.No.43153 of 2016 and 5th respondent in W.P.No.41422 of 2016. The petitioners in W.P.No.41422 of 2016 viz., (1) V.Senthilnathan, (2) V.Swaminathan and (3) V.Sivanathan, are respondents 5 to 7 in W.P.No.43153 of 2016. For the sake of convenience, Mr.Muruganandam, who is the petitioner in W.P.No.43153 of 2016 will hereinafter be referred to commonly as the petitioner, while the Mr.V.Selvaganapathy, the 4th respondent in both the writ petitions will hereinafter be commonly referred to as the 4th respondent and the petitioners in W.P.No.41422 of 2016 viz., (1) V.Senthilnathan, (2) V.Swaminathan and (3) V.Sivanathan, who have been arrayed as as the respondents 5, 6 and 7 respectively will hereinafter be commonly referred to as the respondents 5 , 6 and 7 respectively in this order.

3. The facts leading to the filing of both these writ petitions, in brief, are as follows:- Sri Rajathagiriswaraswamy

Temple at Keezhvelur in Nagapattinam District, was originally belonged to one Kailasa Devar, the great grand father of the petitioner. He had two sons viz., Dakshinamoorthy Devar and Veerappa Devar. After the demise of Kailasa Devar, his sons Dakshinamoorthy Devar and Veerappa Devar had been maintaining the said temple till 1922. Thereafter, his grand son one Veerappa Devar had been maintaining the temple as the hereditary trustee from 1922 to 1931.

4. Between 1937 and 1947, some other persons belonging to their family had been managing the temple. Finally, one Dakshinamoorthi Devar Son of Vairappa Devar was managing the temple as the Hereditary trustee. The said Dakshinamoorthi Devar filed a petition under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act [hereinafter referred to as "the Act'] seeking to declare him as Hereditary Trustee of the temple. The above said application was allowed by the Deputy Commissioner, HR & CE Department, Thanjavur, by order dated 26.06.1973, thereby appointing Dakshinamoorthi Devar as Hereditary Trustee.

5. After the death of Dakshinamoorthi Devar, his son one Vairamuthu Devar, the father of the 4th respondent had filed an application under Section 54(1) of the Act to appoint him as Hereditary Trustee in the place of his deceased father - Vairamuthu Devar. That application was allowed by the Deputy Commisisoner, HR & CE Department, by order dated 18.10.1995. Accordingly, Vairamuthu Devar was recorded as Hereditary Trustee. Subsequently, due to his old age and aged related ailments, the said Vairamuthu Devar had to resign from the post of Hereditary Trustee and therefore, the 4th respondent being the son of Vairamuthu Devar filed a petition under Section 54(1) of the Act seeking to appoint him as the Hereditary Trustee in the place of his father. That application was allowed by the Deputy Commissioner, HR & CE, Thanjvaur, by order dated 01.07.2003 thereby appointing the 4th respondent as the Hereditary Trustee of the temple. Challenging the above said order, the petitioner claiming to be the grand son of Kailasadevar who is the brother of Dakshinamoorthi Devar filed a revision before the 1st respondent in the year 20015 which was numbered as R.P.No.03 of 2016. Pending revision, the respondents 5 to 7, who are sons of Veerasinga Devar, the brother of Vairamuthu Devar, impleaded themselves as party respondents in the revision.

6. According to the petitioner, the Hereditary Trusteeship belongs to the family of one Vairappa Devar; the said Vairappa Devar had two sons by name Kailasa Devar and Dakshinamoorthi Devar; and the petitioner is the grand son of Kailasa Devar. Further according to the petitioner, Kailasa Devar had been

functioning as Hereditary Trustee till 1985 and due to his aged related ailments, he had resigned from trusteeship and requested his brother - Dakshinamoorthi Devar to function as Hereditary Trustee. The grievance of the petitioner is that the said Dakshinamoorthi without the knowledge of the petitioner's family filed an application seeking to declare him as hereditary trustee as if he was the only legal heir. Thereafter, the son of Dakshinamoorthi Devar by name Vairamuthu Devar, who is the father of the 4th respondent obtained an order behind the back of the petitioner, without any notice to the other interested parties. According to the petitioner, being one of the members of Vairappa Devar family, he is also entitled to be appointed as Hereditary Trustee.

7. So far as the respondents 5 to 7 are concerned, they are grand sons of Dakshinamoorthi Devar and son of Veerasinga Devar. According to them, Vairamuthu Devar and Veerasinga Devar were brothers and Vairamuthu Devar without the knowledge of Veerasinga Devar had obtained an order declaring him as the hereditary trustee thereafter, the 4th respondent colluding with Vairamuthu Devar got appointed himself as the hereditary trustee, without any notice or knowledge of the petitioner. Thus, the order appointing the 4th respondent as the Hereditary Trustee is illegal and the respondents 5 to 7 being the legal heirs of Dakshinamoorthi Devar are also entitled to be appointed as the Hereditary Trustees.

8. The 1st respondent after considering the rival submissions dismissed the revision holding that Dakshinamoorthi Devar was declared as the Hereditary Trustee in the year 1973. That was not challenged by the parties and it had attained finality. Thereafter, Vairamuthu Devar Son of Dakshinamoorthi Devar was recorded as Hereditary Trustee in the year 1995 with the consent of the other legal heirs. Thereafter, the 4th respondent who is the son of Vairamuthu Devar has appointed as the Hereditary Trustee in the year 2003 and the members of the 4th respondent family alone have been managing the temple continuously for over 42 years. Hence, the 1st respondent held that claim of the petitioner was barred by limitation. The 1st respondent has also held that the father of the respondents 5 to 7 had given no objection for recording his brother Vairamuthu Devar as hereditary trustee and their family alone had been maintaining the temple for more than 20 years. Under Article 107 of The Limitation Act, the claim of the petitioner was barred by limitation and thus, the 1st respondent has rejected their contention. It is this order which is now under challenge in these writ petitions.

9. The 4th respondent filed counter affidavit stating that his grand father Dakshinamoorthi Devar had been in possession

and management of the Temple from the year 1947 to 1984. Thereafter, in the year 2003, the petitioner's father was in the management of the temple from 1984 to 2003 and from 2003 to till date the 4th respondent has been managing the temple. The 4th respondent's family have alone been managing the temple for more than 7 decades. In the year 1973, when Dakshinamoorthi Devar, the grand father of the 4th respondent filed an application under Section 63(b) of the Act declared him as the Hereditary Trustee, his brother Kailasa Devar did not choose to object the same. After Dakshinamoorthi Devar was declared as the Hereditary Trustee, he had been in the management of the temple as Hereditary Trustee and thereafter, the 4th respondent's father - Vairamuthu was recorded as hereditary trustee under Section 54 (1) of the Act and he had been in the management of the temple as hereditary trustee till 2003. After his resignation, his son - Selvaganapathy, the 4th respondent has been recorded as the Hereditary Trustee in the year 2003 and he has been in the management of the temple.

10. Earlier, the respondents 5 to 7 filed an application under Section 63(b) of the Act to declare them as the hereditary trustees. That application was dismissed on the ground that already the 4th respondent's grand father has been declared as hereditary trustee. When the petitioner had encroached some of the temple properties, the 2nd respondent conducted an inquiry against him and only thereafter, the petitioner filed a petition challenging the order of the 4th respondent as Hereditary Trustee under Section 63(b) of the Act.

11. In such circumstances, subsequent vacancy, if any, should be filed up only from the next line of succession of the previous trustee. The petitioner, who is not in the line of succession, is not entitled to be appointed as the hereditary trustee under Section 54(1) of the Act and therefore, he cannot challenge the order of appoint of 4th respondent as the hereditary trustee.

12. The 1st respondent filed counter affidavit in W.P.No.43153 of 2016 inter alia stating that on the application filed by one Dakshinamoorthi Devar, the grand father of the 4th respondent to declare the office of the Trusteeship as Hereditary before the Deputy Commissioner, HR & CE, Thanjavur, he was declared as hereditary trustee by order dated 26.05.1973. The said order was not challenged and the same had become final. After the demise of Dakshinamoorthi Devar, his son - Vairamuthu Devar, the father of the 4th respondent, was recorded as his successor to the hereditary trusteeship in the permanent vacancy by the Deputy Commissioner, HR & CE, Thanjavur, by order dated 18.10.1995 with consent of the others. After the demise of Vairamuthu Devar, his son, the 4th respondent has been recorded

as the hereditary trustee in the year 2003, ever since, he has been in the management of the temple. The management of the temple has been thus with the family of the 4th respondent for more than 42 years against the family of the petitioner, therefore, as per Article 107 of The Limitation Act, 1963, the petitioner cannot claim for possession of the hereditary office. The petitioner did not raise any protest against the exclusive management of the 4th respondent's family for more than 12 years and therefore, the claim of the petitioner is barred by limitation under Article 107 of The Limitation Act.

13. The 4th respondent filed a separate counter affidavit in W.P.No.41422 of 2016 wherein he inter alia contended that after the demise of Dakshinamoorthi Devar, the father of the 4th respondent by name Vairamuthu, who was in the next line of succession and being the eldest son, had been appointed as the hereditary trustee on succession. The other legal heirs of Dakshinamoorthi Devar including the father of the petitioner had no objection in favour of Vairamuthu Devar. The daughter Dakshinamoorthi Devar also had no objection for the father of the 4th respondent being appointed as the hereditary trustee. Thereafter, the father of the 4th respondent was appointed as the hereditary trustee in the year 1995. Consequent upon the vacancy arising out of the resignation of the Vairamuthu Devar, in the permanent vacancy, the 4th respondent was appointed as the hereditary trustee. Right from the date of appointment to till date, the 4th respondent alone administering and managing the affair of the temple as hereditary trustee and conducting festivals periodically. Even though the petitioner and the respondents 5 to 7 are living in the same village, they never raised any protest against the exclusive management of the 4th respondent. After the lapse of 13 years, the respondents 5 to 7 had filed a petition to implead themselves in the revision filed by the petitioner with a mala fide intention and ill motive. That apart, the claim of the petitioner is barred by limitation under Article 107 of the Limitation Act.

14. Earlier, a learned single Judge of this court by a common order dated 18.12.2017 set aside the order passed by the 1st respondent and remanded the matter back to the 1st respondent for fresh disposal on the ground that the 1st respondent had rejected the revision filed filed by the petitioner herein on the question of limitation without considering the merits of the case, therefore, the learned Judge had directed the 1st respondent to consider the matter afresh on merits and in accordance with law. When that order was challenged in appeal in W.A.Nos.184, 185 and 186 of 2018, a Division Bench of this court by a common judgement dated 09.04.2018, allowed the writ appeals and set aside the order of the learned single Judge and remanded the matter back to the

learned single Judge for hearing the writ petitions on merits and in accordance with law. The relevant portion of the judgement of the Division Bench of this Court reads as follows:-

> "17. In view of the above conclusion, these Writ Appeals are allowed, the common order dated 18.12.2017 made in W.P.No.43153, 43154 and 41422 of 2016 is set aside the and the writ petitions are remitted to the learned single Judge to be heard on merits and in accordance with law. It will be open to the appellant to raise the question of maintainability of the writ petition in W.P.No.43154 of 2016, where the order of the Commissioner passed in A.P.No.28 of 2016 was put in issue."

15. On remand, when the Writ Petition Nos.43153, 43154 and 41422 of 2016 were taken up for hearing on 14.10.2019, the learned counsel for the petitioner in W.P.No.43154 of 2016, on instructions, submitted that the petitioner did not press the writ petition. He had also made an endorsement to that effect. Accordingly, W.P.No.43154 of 2016 was dismissed as not pressed on 14.10.2019 and the other writ petitions in W.P.No.43153 and 41422 of 2016 were heard together afresh and are being disposed of by this common order.

16. I have heard the learned senior counsel appearing for the petitioner; the learned senior counsel appearing for the respondents 5 to 7; the learned Special Government Pleader appearing for the respondents 1 to 3 and the learned counsel appearing for the 4th respondent and also perused the records carefully.

17. Mr.Mani Shankar, the learned senior counsel appearing for the petitioner would submit that in the year 1984, Vairamuthu Devar was appointed as the hereditary trustee with the consent of the members of the other branch. Thereafter, both Vairamuthu and his son, th 4th respondent had colluded with each other and without any notice whatsoever to the others eligible members, the 4th respondent got recorded himself to be the hereditary trustee of the temple behind the back of the petitioner and the order of appointment was also not made known to the petitioner. The order by which the 4th respondent was appointed as the hereditary trustee was also not served on the petitioner. Pursuant to the directions issued in an earlier writ petition, a copy of the order of the Deputy Commissioner, HR & CE appointing the 4th respondent as the hereditary trustee was served, only thereafter, the petitioner had filed the revision petition.

18. Further, according to the learned senior counsel

appearing for the petitioner, being a member of Vairappa Devar family, the petitioner is also entitled to be appointed as the hereditary trustee. The earlier appointment of the grand father of the petitioner was based on a consent given by the other family members. Merely because the temple are being managed by the family of the 4th respondent, the same would not create any absolute right on them. When all the family members of the original hereditary trustee are entitled to be appointed to the office of the hereditary trustee, without notice to the other legal heirs and without the knowledge of the petitioner and the others, the 4th respondent has been appointed as the hereditary trustee. Thus the order is tainted with mala fide and the same is liable to be set aside. The learned senior counsel in support of his contentions relied on various judgements of the Hon'ble Supreme Court as well as this court about which we would make reference at appropriate stages of this order.

19. Mr.T.P.Manoharan, the learned senior counsel appearing for the respondents 5 to 7 would contend that originally, the petitioner's grand father - Dakshinamoorthi Devar was appointed as the hereditary trustee. After his demise, based on the no objection expressed by the father of the respondent 5 to7 - Veerasinga Devar, Vairamuthu Devar was appointed as hereditary trustee. But, the above said Vairamuthu Devar suppressing the real facts, clandestinely resigned from the post and recommended his son, the 4th respondent to be appointed as the hereditary trustee without any notice to the respondents 5 to 7. Since the order has been passed with any notice to the petitioner and contrary to law the same is nullity and void.

20. The learned senior counsel would further contend that hereditary trusteeship not necessarily devolves upon from father to son, especially, when the trusteeship remain with a particular family, it is only for the family to decide who should be appointed as hereditary trustee. Earlier, when the 4th respondent's father was appointed as hereditary trustee, the father of the respondents 5 to 7 had given no objection and that would not give any absolute right to the 4th respondent to get himself to be appointed as hereditary trustee in the vacancy caused on account of the resignation of his father Vairamuthu Devar and it is for the family to decide that who should be appointed as hereditary trustee of the temple. But, without knowledge to the respondents 5 to 7, the 4th respondent has been appointed as the hereditary trustee of the temple. Therefore, the order appointing the 4th respondent as the hereditary trustee was was not in accordance with law and the same is liable to be set aside.
The learned senior counsel in support of his contentions relied on various judgements of the Hon'ble Supreme Court as well as this court about which we would make reference at

appropriate stages of this order.

21. The admitted facts in the writ petitions are as follows:-

> (i) Sri Rajathagiriswaraswamy Temple was originally constructed by one Kailasa Devar. He had two sons viz., (i) Dakshinimoorthy Devar and (ii) Veerappa Devar.
>
> (ii) Thereafter, one Vairappa Devar rebuilt the temple as a modern temple.
>
> (iii) Vairappa Devar had two sons viz., (i) Kailasa Devar and (ii) Dakshinamoorthi Devar.
>
> (iv) On an application filed by Dakshinamoorthi Devar, office of the temple was declared as hereditary one and he was appointed as the hereditary trustee on 26.05.1973. Thereafter, when permanent vacancy caused due to the death of Dakshinamoorthi Devar, his son Vairamuthu Devar was appointed as the hereditary trustee on 18.10.1995 under Section 54(1) of the Act.
>
> (v) When he resigned the post of the hereditary trustee, his son the 4th respondent has been recorded as the hereditary trustee on 01.07.2003.
>
> (vi) The petitioner is the grand son of Kailasa Devar born through his son Vairappa Devar.
>
> (vii) The respondents 5 to 7 are sons of one Veerasinga Devar, who is the brother of Vairappa Devar.
>
> (viii) It is also not in dispute that right from the year 1973, the family of the 4th respondent alone managing the temple.

22. For better appreciation of the relationship of the parties, it would be appropriate to reproduce the genealogy tree of the parties:-

Vairappa Devar

Kailasa Devar — Dakshinamoorthi Devar

Kailasa Devar: Vairappa Devar, Nataraja Devar

Dakshinamoorthi Devar: Vairamuthu Devar, Veerasinga Devar

Vairappa Devar: K.V.Muruganandam

Nataraja Devar: (1) Aathmanathan (2) Subbaiyan (3) Gopikannan (4) Dhakshinamurthy (5) Selvaganapathy

Vairamuthu Devar: (1) Malathi (2) Geetha (3) Usha Rani

Veerasinga Devar: (1) Swaminathan (2) Senthilnathan (3) Sivanathan

23. As already stated above, though the temple in question had been in the management of Vairappa Devar (great grand father of the petitioner), only on the application filed by Dakshinamoorthi Devar under Section 63(b) of the Act, the office of the temple was declared as hereditary and Dakshinamoorthi Devar was appointed as the hereditary trustee in the year 1973, for which there had been no objection from the other legal heris of Vairappa Devar. Since, 1973, Dakshinamoorthi Devar had been managing the affairs of the office hereditary trustee and after his death, his elder son - Vairamuthu Devar had recorded himself as hereditary trustee in the permanent vacancy caused on account of the death of his father - Dakshinamoorthi Devar. At that time, the other legal heir of Dakshinamoorthi Devar, namely, Veerasinga Devar, who is the father of the respondents 5 to 7 and the daughter of Dakshinamoorthi Devar by name Angamuthu had given release deed in favour of Vairamuthu Devar. Based on that, Vairamuthu Devar recorded himself as the hereditary trustee in the year 1985. Thereafter, in the year 2003, Vairamuthu Devar had resigned the post of hereditary trusteeship and in that vacancy, the 4th respondent has been appointed as hereditary trustee. Thereafter, only in the year 2016, a revision petition came to be filed by the petitioner before the 1st respondent challenging the order of the 2nd respondent dated 01.07.2003 appointing the 4th respondent as hereditary trustee under Section 54(1) of the Act. Without challenging the order of the 2nd respondent, the respondents 5 to 7 filed a petition seeking to implead themselves as party respondents in the

revision filed by the petitioner. The order passed under Section 54(1) of the Act is appealable under Section 54(4) of the Act and the appeal should have filed within a period of one month from the date of receipt of a copy of the order. In the instant case, no appeal had been filed within the time, but only a revision was filed under Section 21 of the Act, 13 years after the order of the 2nd respondent. But, it is contended by the petitioner and the respondents 5 to 7 that they were not aware of the order, only pursuant to the order passed by this court on 28.10.2015 in W.P.No.34366 and 34367 of 2015, a copy of the order dated 01.07.2003 was handed over to the petitioner. Thereafter, the revision petition has been filed.

24. Be that as it may, now, it is the admitted case that right from 26.05.1973, the members of the 4th respondent family alone have been performing the duties of the hereditary trustee successively to the exclusion and adverse to the interest of the other branch. It is also pertinent to note here that while Dakshinamoorthi Devar was appointed as hereditary trustee for the first time in the year 1973, there had been no objection from the other branches and Dakshinamoorthi Devar continued to perform the functions of the hereditary trustee for over 22 years and after his demise, his son - Vairamuthu Devar, the father of the 4th respondent was recorded as hereditary trustee under Section 54(1) of the Act on 18.10.1985. When Vairamuthu Devar was appointed as the hereditary trustee, his brother - Veerasinga Devar, the father of the respondents 5 to 7 had given no objection relinquishing his right to be appointed as hereditary trustee. Vairamuthu Devar had been in the management of the temple as hereditary trustee till 2003. Thereafter, the 4th respondent was recorded as the hereditary trustee. Since 2003, the 4th respondent has been performing the duties of the hereditary trustee till date.

25. Article 107 of the Limitation Act, prescribes a limitation of 12 years for claiming possession of hereditary office which reads as follows:

PART IX - SUITS RELATING TO MISCELLANEOUS MATTERS

Description of suit	Period of Limitation	Time from which period begins to run
107. For possession of a hereditary office. Explanation.- A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.	Twelve years	When the defendant takes possession of the office adversely to the plaintiff

26. As already stated above, the 4th respondent has clearly established that right from the year 1973, his family alone have been performing the duties of the hereditary trustee adverse and to the exclusion of the interest of the other branches. Hence, the petitioner and the respondents 5 to 7 are barred from claiming right to the hereditary office. In an identical circumstance, in Ramanathan Chetti v. Murugappa Chetti, [1903 (13) MLJ 341], a Division Bench of this court has held as follows:-

> "7. On the question of limitation, we are clearly of opinion that the right of the members of the junior branch, as co-trustees, has been extinguished, whether the appropriate article applicable to the case be Article 127 or 142 or, as contended by the appellant's pleader Article 124. The evidence establishes beyond all doubt that the members of the junior branch had since May 1882, discontinued possession of the immoveable properties belonging to the temple, as also performance of the duties usually appertaining to the office of trustee (of the temple) and that the members of the senior branch have been in turns successively in possession of the properties of the temple and preformed the duties of the office of trustees to the exclusion of and adversely to the members of the junior branch. Two of the members of the junior branch-- who as witnesses now support the appellant admit

that an abortive attempt was made 'about 8 years ago' (about 1892) to regain possession of the office, and in fact falsely depose that they did regain possession for a short period of 3 months. Bearing in mind that the discontinuance of possession on the part of the members of the junior branch was in consequence of their having relinquished their rights in favour of the respondent (as is now clearly admitted by one of the members of the junior branch as the plaintiff's 1st witness, and by the appellant himself in two former depositions of his, Exhibits QQ and RR), it is clear beyond all doubt that there has been an ouster of the members of the junior branch for about 19 years prior to the suit. "

27. So far as the respondents 5 to 7 are concerned, the 4th respondent's father Vairamuthu Devar was appointed as hereditary trustee in the year 1985 and at that time, the father of the petitioner had given no objection and relinquished his right. Thereafter, the 4th respondent's family of the 4th respondent alone has been holding the hereditary office for more than 12 years. Therefore, now, it is not open to the respondents to claim any right on the hereditary trusteeship. That apart, they had not even chosen to challenge the order passed by the Joint Commissioner appointing the 4th respondent as hereditary trustee, instead, they had only filed an application seeking to implead themselves as party respondents in the revision filed by the petitioner. Therefore, now, the respondents cannot maintain the writ petition.

28. Right from the date of appointment of Dakshinamoorthi Devar as hereditary trustee, none of the other branches objected to his appointment or interfered with his exclusive management of the temple and performance of the functions of the hereditary office by the 4th respondent's branch adverse to the interests of the other branches. The respondents 5 to 7 also have not challenged the exclusive management of the 4th respondent's family for more than 20 years. Therefore, the petitioner and respondents 5 to 7 are estopped from claiming the right to hold the office of the hereditary trustee.

29. So far as the judgement relied on by the learned counsel for the petitioner in Sambudamurthi Mudaliar v. State of Madras, 1971 AIR (SC) 2363, wherein the issue involved as whether the office of the temple was hereditary or not. In Ranganatha Pillai v. The Commissioner for Hindu Religious and Charitable Endowments, 1979 (2) MLJ 23 case also, the issue related to declaration of the appellants therein as hereditary trustees of the temple under Section 63 of the Act.

30. In V.R.Santhanam Iyer v. V.S.Sundarathammal, 1981 (2) MLJ 8, the issue was as to whether the trusteeship was a property or not. While answering the issue, the Hon'ble Supreme Court has held that in the absence of any mode as devolution of trusteeship prescribed by the founder, succession to the last holder of the office. Therefore, the above judgements relied on by the learned counsel for the petitioner are not applicable to the facts of the instant case.

31. In Munuswami Chetty (Died) and others v. Commissioner, HR & CE Department, 1993 (10 MLJ 183, this court has held that it is not necessary that trusteeship should be devolved from father to son and so on. It would be open to the family to decide the matter as and when the question arise. But, in the instant case, as already stated supra, the petitioner's branch had relinquished their right and therefore, now, the petitioner cannot claim any right over the hereditary office.

32. So far as the judgement relied on by the learned counsel for the respondents 5 to 7 in R.Sulochana dev v. D.M.Sujatha, (2004 (5) CTC 108, is concerned, the Hon'ble Supreme Court in that case has held that any order passed in violation of the principles of natural justice is not an order passed in accordance with law and the same is void. But, in the instant case, as already stated above, when the 4th respondent's father was appointed as hereditary trustee, the father of the respondents 5 to 7 had given no objection and relinquished his right to the trusteeship of the temple, therefore, they are estopped from claiming right. When the father of the respondents 5 to 7 had already acceded for appointment of the hereditary trustee from the family of the 4th respondent, there was no occasion for giving notice to the branch of the respondents 5 to 7.

33. In another judgement relied on by the learned counsel for the respondents 5 to 7 in S.Subramania Pillai v. Trustees, Temple Group, 1981 (II) MLJ 77, when the appointment of the trustees made by the area committee was put under challenge, a Division Bench of this court has held that when the members of a particular family were exercising the right of trusteeship, the same would fall under the category of hereditary trusteeship. It was further held by this court that once the trusteeship has been characterized as hereditary, it is not necessary that trusteeship should devolve from father to son and so on and it is for the family to decide the matter as and when question arises. The relevant portion of the judgement reads as follows:-

> "20. We have now to find out as to what is meant by hereditary trusteeship. The terms 'hereditary trustee' is defined in section 6 (11) as meaning:

"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."

In Babu,Gurukkal v. Commissioner for Hindu Religious and Charitable Endowments Board, (1964) 1 MLJ 384, Assistant Commissioner, Hindu Religious and Charitable Endowments Department v. D.Rajagopalan, (1971) 84 LW 764 and Venkataraman v. L.A.Thangappa, (1972) 1 MLJ 325, it has been laid down that when members of a particular family alone were exercising rights of trusteeship, it would fall under the category of hereditary trustee. This principle has also been applied in O.S.A. No.79 of 1951, by a Division Bench of this Court, the case being reported only in short-notes in 1951 M.W.N. (S.N.) page 9. All these judgements have been followed by Mohan,J., in Ranganatha Pillai v. Commissioner for Hindu Religious and Charitable Endowments. "It is .... unnecessary to consider the mater any further, as the matter is already concluded by decisions of this court, taking a consistent view that for the trusteeship to be characterized as a hereditary trusteeship, it is not necessary that the trusteeship should devolve from father to son and so on. It is enough if by long usage the trusteeship remained with a family. As regard the person to act as trustee at any particular point of time, it would be open to the family to decide the matter as and when the question arises." Therefore, the mere fact that Subramania Pillai's uncle acted as a trustee even before this father's elder brother, does not in any manner affect the hereditary principle governing the trusteeship with reference to the trust under consideration . Having regard to the long usage from 1911, it is manifest that this family has been managing the affairs of the trustee."

34. But, in the case on hand, it is admitted that originally one Dakshinamoorthi Devar was appointed as hereditary trustee of the temple and the other branch had no objection for appointment of the hereditary trustee. Even at the time when Vairamuthu Devar was recorded as hereditary trustee in the year 1985, there was no objection from any branch. Thereafter, in

the year 2003, when the 4th respondent was appointed as hereditary trustee there was no objection from any other branches. Only in the year 2016, appointment of the 4th respondent came to be challenged by the petitioner. For more than 40 years, only the 4th respondent family has been managing the affairs of the hereditary office on succession. Admittedly, the 4th respondent family had totally excluded / discontinued families of the the other branch from the office of the hereditary, in fact, the families of the petitioner and the respondents 5 to 7 had relinquished their rights to the hereditary office in favour of the grand father of the 4th respondent. Having relinquished their right to the hereditary office, now, it is not open to the petitioner as well as the respondents 5 to 7 to claim that it is for their family to decide the issue. Hence, the judgements relied on by the respective senior counsel for petitioner and the respondents 5 to 7 are not applicable to the facts of the instant case.

35. For the foregoing reasons, this court is of the considered view that the order passed by the 1st respondent is sustainable both in law and on facts and this court do not find any illegality or irregularity in the same. Thus, the writ petitions fail and the same deserve only to be dismissed.

In the result, both the writ petitions are dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmk
To

1.The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Nungambakkam, Chennai 600034.

2.The Joint Commissioner, Hindu Religious & Charitable Endowment, Thanjavur.

3.The Assistant Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Nagapattinam.

+2ccs to M/s.S.Sithirai , Advocate SR.No. 100330,100329
+2ccs to Mr.E.Veda Bagath , Advocate SR.No. 100261

Writ Petition
Nos.43153 and 41422 of 2016

A.SK(24/01/2020)