

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

**CRP.Nos.3202 and 3204 of 2018 &
CMP.Nos.18303 and 18305 of 2018**

1. R. Muthusamy
2. P.M. Palanisamy
3. L.D.Balasubramaniam .. Petitioners

Vs

P. Maruthachalam .. Respondent

Prayer in CRP.No.3202 of 2018: Civil Revision petition filed under Article 227 of Constitution of India against the order of the learned Joint Commissioner, HR & CE Department, Coimbatore, dated 6.8.2018 made in unnumbered I.A.No..... of 2018 in M.P.No.15 of 2017 in O.A.No.13 of 2017.

Prayer in CRP.No.3204 of 2018: Civil Revision petition filed under Article 227 of Constitution of India against the order of the learned Joint Commissioner, HR & CE Department, Coimbatore, dated 6.8.2018 made in unnumbered I.A.No..... of 2018 in M.P.No.16 of 2017.

For Petitioner
in both CRPs : Mr.S.Sithirai Anandam

For respondent : Mr. V. Srikanth

ORDER

These Civil Revision Petitions are directed against the rejection of unnumbered petitions, filed by the petitioners herein under section 54(1) of Tamilnadu HR&CE Act 39 of 1996 seeking to implead themselves as third parties by the respondent, the Joint Commissioner of HR&CE Department, Coimbatore, on 6.8.2018 holding that the third party has no locus standi to interfere with the appointment of Hereditary Trustee.

2. The learned counsel for the petitioners would contend that one of the Hereditary Trustees of A/m. Mariamman and Karupparaya Temples, Linganoor Village viz., Nanjappa Gounder died in the year 1985. If the Hereditary Trustee dies, the person who is claiming hereditary issue should file an application within a period of one year as per Article 107 of Limitation Act. Since the application is filed only in the year 2017, it is hit by limitation and that the third party's rights accrues and therefore the petitioners herein should be impleaded as parties.

3. He would rely on the judgment of the Division Bench of this

Court in W.A.No.251 of 2012, dated 5.7.2012, wherein, it is held as follows;

'13. It is also pertinent to point out here that the appellant did not choose to file any appeal as against the order passed in W.P.(M.D) No.4364 of 2000 and allowed it to become final. In respect of common order, the appellant has chosen to challenge only one portion of the order. Therefore also, the writ appeal at this stage is not correct. In this connection, the learned counsel appearing for the appellant would rely upon a judgment reported in 1955 Supreme Court Report, 186, Raj kali Kuer v. Ram Rattan pandey, for the proposition that hereditary office of the poojari and panda even a female would be allowed to be succeed. That is not disputed much. But the fact remains that though there is a custom in their family she has not chosen to challenge the order appointing the writ petitioner as hereditary trustee in the year 1983. He would also rely upon a judgement reported in 1990 1 LW 144, Prem Anand v. The Commissioner, H.R.& .E., etc. for the proposition that Section 54 will apply when permanent vacancy occurs automatically the next in line of succession has to succeed. There is no doubt about this proposition. But, unfortunately, the right of succession had granted in the year

1983 when the appellant did not raise any objection or claim any right thereof.

14. The learned counsel appearing for the first respondent also would rely upon a judgment in 2007(2) TLNJ 649 (Civil), Smt. Ass Kaur (Deceased by L.Rs. v. Kartar Singh)(dead) by L.Rs. And others, for the proposition that "custom is one of the three sources of Hindu Law an custom may override a statue subject, of course, to a clear proof of usage. This he would mainly rely upon the decision that the women folk never allowed to hae hereditary trusteeship and it is the custom in their family and therefore once custom is proved then it has to be accepted. But, unfortunately, that is not the case here nor there is any independent evidence proving the custom. But sitting under Article 226 of the Constitution of India, we cannot decide on the custom without evidence. The fact remains is that the appellant ha snot questioned the authority of the writ petitioner/the first respondent herein to continue to hold the office of hereditary trustee. That right itself is enough in this particular case. Therefore, we do not find any reason to interfere with the order under challenge.

In the result, the Writ Appeal is dismissed. The appellant is estopped from questioning the appointment as it is barred by limitation and as it

is not the permanent vacancy under section 54(1) of the Act.'

4. Per contra, the learned counsel appearing for the respondent would contend that section 54 of the above said Act is for filling of the permanent vacancy in the place of hereditary trustee of religious institution, which, as per sub-clause 1 of the Act, the next line of succession shall be entitled to succeed to the office, therefore, it is not open to the third parties to claim the possession therein. It is only for the legal heirs of the deceased hereditary trustee to claim that office. If there is any dispute between the legal heirs, then they have to file a petition under Section 54(1) of the Act within a period of 12 years.

5. On the other hand, it is for recording the trusteeship, when there is no rival claim, it does not require any application under section 54 of the Act. Moreover, he would also submit that the petitioners have approached the Court without exhausting the appellate remedy and therefore, the Civil Revision Petition is liable to be dismissed.

6. Heard the submissions made on either side.

7. Admittedly, the said Nanjappa Gounder was appointed as a permanent hereditary trustee of the Temples by the order of the Deputy Commissioner, HR & CE Department in O.A.No.58 of 1979, dated 7.1.1980. His legal heir by name L.N.Ganesan has applied for appointing him as hereditary trustee on the basis of succession.

8. Insofar as the judgment of the Honourable Division Bench dated 5.7.2012, there is a rival claim between the legal heirs of the hereditary trustee deceased. In that case, a female legal heir claim trusteeship, but the condition is to appoint only male heirs. When the rival claim was raised, this Court has found that Article 107 of the Limitation Act will apply, but in the instant case, there is no rival claim.

9. Admittedly, the petitioner is a legal heir of the deceased hereditary trustee. All that requires to record is that he is entitled to succeed the office by operation of section 54(1) of the Act.

10. This Honourable court, while dealing with the similar situation in the case of ***Prem Anand Vs. The Commissioner, Hindu Religious and Charitable Endowments, Madras and another reported in 1990-1-LW 144***, has categorically held at paragraph 2

as under;

' 2. Under S.54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to mak an application for being appointed under the Act. In this case, the petitioner had to approach the first respondent, because a fit person, was already in charge of the administration of the temple. As the first respondent had appointed the fit person, the petitioner sought a direction the fit person from the first respondent to hand over charge to the petitioner as he has become the hereditary trustee. The first respondent ought to have issued such a direction . On the other hand, the first respondent directed the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of the Act.'

Therefore the petitioner has no locus to claim the office to get impleaded and to oppose the claim of the legal heir of the hereditary trustee.

11. Furthermore, if an order is passed under sub clause 4 of Section 54 of TN HR&CE Act, it is always open for the petitioner to prefer an appeal to the Commissioner within a period of one month from the date of receipt of that order and there is an effective remedy of appeal available.

12. Be that as it may. On merits in view of the judgment of this Honourable Court, in Prem Anand's case, this Court is of the considered opinion that the petitioner has no locus standi to object the claim of the legal heir of the hereditary trustee. He shall be entitled to the office as per the line of succession.

13. Consequent upon the finding that the petitioners have no locus standi to question the appointment of hereditary trustee, the Civil Revision Petitions filed against the rejection of impleading petition stand rejected. Further request to appoint the petitioner as hereditary trustee considering the age and capacity of the parties cannot also be entertained.

14. In view of the above discussions made, these Civil Revision Petitions are not maintainable and accordingly they are dismissed. No costs. Consequently, connected CMP.Nos.18303 and 18305 of 2018 are closed.

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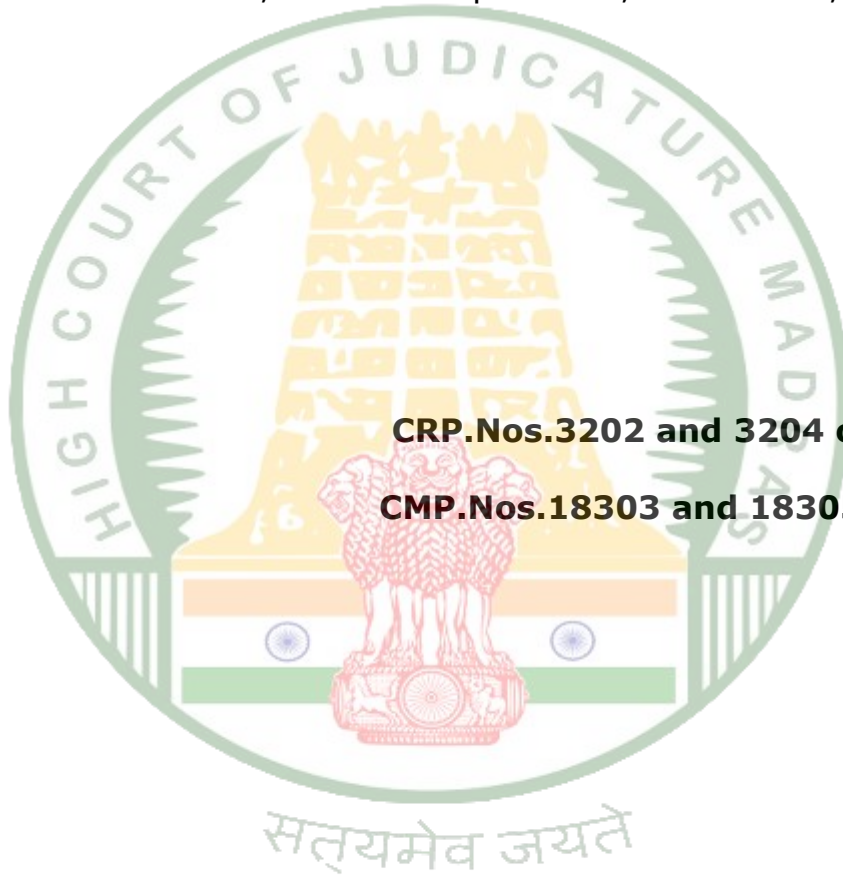
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M.GOVINDARAJ, J.

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To

The Joint Commissioner, HR & CE Department, Coimbatore,



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CMP.Nos.18303 and 18305 of 2018**

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