

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2020

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.11 of 1995

- 1.Palanisamy
- 2.M.V.Palanisamy Pandaram (Deceased)
- 3.Arumugam (Deceased)
- 4.P.Madheswaran (Deceased)
- 5.P.Kulandaivel
- 6.P.Subramaniam

- 7.Balammal
- 8.Sakthivel

(Appellant 7 and 8 brought on record as LRs of the deceased second appellant vide order of Court dated 16.10.2019 made in C.M.P.No.15817 of 2019 in A.S.No.11 of 1995)

- 9.Palaniammal
- 10.Balakrishnan
- 11.Suseela
- 12.Kalaivani
- 13.Sabari
- 14.Sivasankaran(Minor)

(Appellants 9 to 14 brought on record as Lrs of the deceased 3rd appellant vide order of Court dated 16.10.2019 made in C.M.P.No.15816 of 2019 in A.S.No.11 of 1995)

- 15.Saroja
- 16.M.Premavathy
- 17.M.Praveenkumar

(Appellants 15 to 17 brought on record as LRs of the deceased fourth appellant vide Court dated 16.10.2019 made in C.M.P.No.15868 of 2019 in A.S.No.11 of 1995)

.. Appellants/Plaintiffs

vs.

1.Rathinam (Deceased)

2.Commissioner,
Hindu Religious and Charitable Endowments
Department,
Nungambakkam High Road,
Madras-34.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sooramangalam Junction Main Road,
(Near Five Roads),
Salem-4.

4.The Executive Officer,
Arulmigu Someswarar and Other Temples,
Sankagiri and Taluk,
Salem District.

5.P.Raja Gounder (Deceased)

6.Mrs.Suseela

7.Mrs.Revathi

8.Mrs.Renuka

9.Sivakumar (Deceased)

10.Pavalai Ammal

11.Manonmani

12.K.R.Mohan

(Cause title amended vide order of Court
dated 29.10.2015 made in A.S.No.11/1995)

13.Rajeshwari

14.Minor Udhaya

15.Suriya

(RR-13 to 15 brought on record as
LRs of the deceased R-9 vide order
of Court dated 16.10.2019 made in
CMP No.14574 of 2019)

.. Respondents/Defendants

Appeal Suit is preferred under Section 17 (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 against the order and decree dated 07.11.1994 passed in O.S.No.204 of 1985 on the file of the learned Sub Judge, Sangagiri. (E.B.Amended vide order of Court dated 29.10.2015 made in A.S.No.11 of 1995)

For Appellants : Ms.G.Sumitra (Change of vakalat given, memo filed)

For Respondents-1,5&9 : Died, steps taken.

For Respondents-2&3 : Mr.E.Neelakandan,
Government Advocate (HR&CE)

For Respondent-4 : Mr.T.S.Vijaya Raghavan

For Respondents-6to8,
and 10 to 15 : Mr.A.V.Arun

J U D G M E N T

The appeal suit on hand is directed against the judgment and decree dated 07.11.1994 passed by the learned Sub Judge, Sangagiri in O.S.No.204 of 1985.

2. The appellants in the appeal suit are the plaintiffs in the suit and the respondents in the appeal suit are the defendants in the suit.

3. For the sake of convenience, the ranking of the parties in the appeal suit would be referred to as per their ranks before the Trial Court.

4. The suit was instituted by the plaintiffs to set aside the order of the second defendant/second respondent-Commissioner of Hindu Religious and Charitable Endowments Department, Chennai in A.P.No.31 of 1981 and declare that the plaintiffs are the Hereditary Trustees of the fourth defendant/fourth respondent-Temple.

5. The facts in brief, as stated by the plaintiffs in the plaint, are that Arulmigu Karia Kaliyamman Temple is situated in Natham poromboke in Padaveedu Village, Tiruchengode Taluk, Salem District. It is a small village Temple. It has got minor Inam Temples with meagre income. The plaintiffs and their ancestors are the Hereditary Poojaris-cum-Trustees of the

Temples.

6. Originally one Vaiyapuri Pandaram and his brother Palaniandi and one Palaniandi and his brother Chinnakuppandi and prior to them their ancestors were managing the affairs of the Temple and doing poojas and services to the Temple. After the said Vaiyapuri Pandaram, his son Kaliandi, after him, his two sons Vaiyapuri Pandaram and Ardhanari Pandaram and after the said Vaiyapuri Pandaram, his son, Palanisami, the first plaintiff herein, inherited the office. After the said Ardhanari Pandaram, his sons Chinnappan and Raju inherited the office.

7. It is stated that the plaintiffs are in the realm of affairs, and the other persons have given no objection sworn statements to the effect that declaration may be given in the name of the plaintiffs. After the said Palaniandi, his two sons Ardhanari Pandaram and Muniandi Pandaram and after the said Ardhanari Pandaram, his two sons and Vaiyapuri Pandaram and Muthandi and after the said Vaiyapuri Pandaram, his son Palanisamy Pandaram, the second plaintiff herein, inherited the office and is doing poojas and services and managing the affairs of the Temple. After the said Muthandi, his son Ardhanari and after the said Muniandi Pandaram, his son Ardhanari inherited the office. Since the plaintiffs are in the realm of affairs, the said persons have given no objection sworn statement to the office that declaration may be given in the names of the plaintiffs. After the said Palaniandi, his three sons, namely, Karuppandi, Ponnandi and Kolandaiandi and after the said Karuppandi, his two sons Sundara Pandaram and Vaiyapuri and after them, their sons Periapaiyan and Raju and after the said Ponnandi, his sons Kava Pandaram, Sengoda Pandaram, Rangasamy Pandaram, Kuppani and Ponnandi and after the said Kava Pandaram, his son Palani, after the said Sengoda Pandaram, his son Kanda Pandaram, after the said Rengasamy Pandaram, his son Thangavelu, after the said Kuppani, his son, Kolandai Pandaram and after the said Ponnandi, his son, Angamuthu inherited the office. Since the plaintiffs are in the realm of affairs, the said persons have given no objection sworn statement to the effect that declaration may be given in the names of the plaintiffs. After the said Kolandaiandi, his son, Palani Pandaram, the third plaintiff herein, inherited the office and is doing poojas and services and managing the affairs of the Temple. After the said Ardhanari Pandaram, his son, Shanmugam and after the said Arandi, his son Nachimuthu Pandaram and after the said Kuppani Pandaram inherited the office. Since the plaintiffs are in the realm of affairs, the said persons have given no objection sworn statement to the effect that declaration may be given in the names of the plaintiffs.

8. The plaintiffs are the Hereditary Trustees of the Temple. The names of the ancestors of the plaintiffs are found in I.F.R.Settlment proceedings and other records. The plaintiffs and their ancestors were and are in possession of the Temple and its lands and managing the affairs of the Temple. No Trustees were ever appointed for the Temple by the Department. No outsider of the family of the plaintiffs were ever having control over the Temple or regarding its management.

9. The plaintiffs apprehend that the Assistant Commissioner, Hindu Religious and Charitable Endowment, Salem may take steps to appoint Trustees at the instance of certain parties, who are inimically disposed of towards the plaintiffs and hence they filed O.A.No.97 of 1978 before the Deputy Commissioner, Hindu Religious and Charitable Endowment, Coimbatore, under Section 63(b) of the Act, to declare the plaintiffs as Hereditary Trustees and subsequently, the said proceedings were transferred to the Deputy Commissioner (Judicial) Madras. The Deputy Commissioner has dismissed the Original Application by means of an order, dated 03.11.1980. The plaintiffs filed an appeal before the second defendant-Commissioner in A.P.No.31 of 1981 and the second defendant without considering the evidence and the documents and without proper appreciation, dismissed the appeal by means of an order dated 27.01.1983 and challenging the said order, the suit was instituted.

10. The third defendant is the authority competent to appoint Trustees for the Temple. In view of the dismissal of the appeal, steps are taken to appoint the Trustees. The fourth defendant further issued a notice dated 05.07.1993 to the plaintiffs to hand over charge of the Temple and its properties, claiming that he appointed a fit person. Thus, the fourth defendant is also impleaded as a party to the suit. Setting out these facts, the suit was instituted to set aside the order of the second defendant in A.P.No.31 of 1981 and to declare that the plaintiffs are the Hereditary Trustees of the Temple.

11. The second defendant-Commissioner, Hindu Religious and Charitable Endowments Department, filed written statement, denying the allegations and has stated that Arulmigu Karia Kaliyamman Temple situates in Natham Poromboke in Padaveedu Village Tiruchengode Taluk is true. However, it is not admitted that the Temple is a small village Temple, getting a meagre income. Further, it is denied that the plaintiffs and their ancestors are the Hereditary Poojaris cum Trustees of the suit Temple.

12. It is not admitted that originally the Temple was managed by one Vaiyapuri Pandaram and his brother Palaniandi and another Palaniandi and his brother Chinna Kuppandi. It is equally not true to say that after Vaiyapuri Pandaram, his son Kaliandi and after him, his two sons Vaiyapuri Pandaram and Arthanari Pandaram and after Vaiyapuri Pandaram, his son Palaniandi, the first plaintiff herein inherited the office of the Trusteeship and Poojariship of the suit Temple. It is also not true that after Arthanari Pandaram, his sons Chinnappan and Raju inherited the office. It is not admitted that the plaintiffs have inherited the office of the Trusteeship-cum-Poojariship of the Temple and they are in management of the suit Temple as Hereditary Trustees. There is no authentication in the genealogical tree filed by the plaintiffs before the Deputy Commissioner. Even assuming that it is a genuine one, it does not show how they have managed the Temple hereditarily. The Inam Fair Register describes one Vaiyapuri, Palaniandi, another Palaniandi, and Chinna Kuppandi as Poojaris only. Therefore, it is futile to say that the plaintiffs are hereditary Poojaris-cum-Trustees of the suit Temple. As stated above, I.F.R. Describes Vaiyapuri, Palaniandi another Palaniandi and Chinna Kuppandi as Poojaris only. It is not true to say that except the plaintiffs, no other outside has got any control over the administration of the suit Temple. The plaintiffs have not proved their case by adducing sufficient and acceptable evidence to show that they have been administering the affairs of the Temple hereditary. No worthwhile documentary evidence was produced by them to substantiate their claim that the suit Temple is in their management for over three generations continuously. The documents filed by the plaintiffs in the proceedings in O.A.No.97 of 1978 before the Deputy Commissioner were of recent origin and hence, the same could not be relied on.

13. It is true that Palanisamy and three others filed an application under Section 63(b) of the Tamil Nadu Act 22 of 1959 in O.A.No.97 of 1978 before the Deputy Commissioner, HR&CE, Administration Department, Coimbatore. The said application was transferred to the file of the Deputy Commissioner (Judicial), HR&CE, Madras and the same was ultimately dismissed on 03.11.1980 after due enquiry. As against the said orders of the Deputy Commissioner, the plaintiffs preferred an appeal before the second defendant under Section 69(1) of the Act and the appeal in A.P.No.31 of 1981 after hearing was dismissed by the second defendant on 27.01.1983 as devoid of any merits. The Temple owns 8.51 acres of dry land in S.No.114/2. The plaintiffs have failed to furnish particulars about the land in the proceedings O.A.No.97 of 1978 before the Deputy Commissioner,

HR&CE (Judicial) Madras. The plaintiffs also failed to produce sufficient and satisfactory evidence in the application. Therefore, the application before the Deputy Commissioner and the appeal before the second defendant were rightly dismissed. There are no other reasons for any interference in the orders passed by the second defendant and the Deputy Commissioner. Since, the application filed under Section 63(b) and the appeal made thereon under Section 69(1) of the Act were dismissed, the third defendant is competent to appoint non-Hereditary Trustees to the suit Temple for proper administration of the Temple and its properties.

14. The fifth defendant also filed written statement contending that it is nothing but false to allege that the plaintiffs and their ancestors were Hereditary Poojaris cum Trustees of the temple in Padaveedu Village. It is false to say that the income of the Temple is very meagre. The plaintiffs are not the Trustees of the Temple, but they are only the Poojaris. Only the fifth defendant is managing the affairs of the Temple as a Trustee before him, his father and grandfather were managing the suit Temple. The fifth defendant is also celebrating the festival out of the collections made from 'Kooraikootam'. The fifth defendant is also paying the electric consumption charges for the Temple.

15. The persons mentioned in paragraph 4 of the plaint never acted as Trustees of the Temple and it is a false one. The plaintiffs and their ancestors were not managing the affairs of the Temple at any time. They are only Poojaris of the Temple. The plaintiffs cannot get any declaration in their favour and the persons said to have given no objection statement is of no use. The fifth defendant is not at all aware of the no objection statement said to have been given by the persons mentioned in the plaint to the plaintiffs. Even if there is no objection statement, it will not be useful and it will not give any right to the plaintiffs.

16. The allegations regarding that the plaintiffs are not the Hereditary Trustees of the Temple are not correct. It is also not correct to say that the names of the ancestors of the plaintiffs are found in I.F.R. Settlement proceedings and other records. The plaintiffs are not in possession of the Temple and managing the affairs of the Temple as Trustees. The plaintiffs community people never managed the affairs of the Temple. Only the fifth defendant and his forefathers are the Hereditary Trustees of the Temple. The plaintiffs petition was rightly dismissed by the Deputy Commissioner Judicial Madras on 03.11.1980. The appeal filed by the plaintiffs before the second

defendant was also rightly dismissed after considering the available evidence on 26.03.1983.

17. As regards the allegations stated in paragraphs 6 and 6-A of the plaint that the third defendant has got every right for appointing the Trustees of the Temple and the plaintiffs have no right to question the same are partly correct. The fourth defendant has rightly asked the plaintiffs to handover the properties of the Temple. The plaintiffs have no right in the suit Temple. The fifth defendant is the Hereditary Trustee and has got every right to be appointed as Hereditary Trustee by the Competent Authority and the suit is barred by limitation and is to be dismissed.

18. The Trial Court framed the following issues for consideration:-

"(1) Whether the order passed by the second defendant in A.P.No.31 of 1981 is liable to be set aside or not ?

(2) Whether the plaintiffs are entitled to get declaration that they are the Hereditary Trustees of the suit Temple or not ?

(3) Whether the suit is maintainable or not ?

(4) To what other reliefs, the plaintiffs are entitled ?"

The following additional issues were also framed by the Trial Court:-

"(1) Whether the fifth defendant was managing the affairs of the suit Temple or not ?

(2) Whether the third defendant is entitled to appoint Trustee in the suit Temple or not ?

(3) Whether the fourth defendant is empowered to claim the suit properties from the plaintiffs or not ?

(4) Whether the suit is barred by limitation or not ?

(5) Whether there is any basis for the suit ?"

19. On the side of the plaintiffs, PWs-1 to 7 were examined as witnesses and Exs.A-1 to A-53 were marked as documents. On the side of the defendants, DWs-1 to 4 were examined as witnesses and Exs.B-1 to B-73 were marked as documents.

20. On the side of the plaintiffs, the first plaintiff Palanisamy was examined as PW-1, the fourth plaintiff Arumugam was examined as PW-2, the second plaintiff Palanisamy Pandaram was examined as PW-3, the sixth plaintiff Kolandaivel was examined as PW-4, the seventh plaintiff Subramaniam was examined as PW-5, Nachimuthu was examined as PW-6 and Ponnusamy was examined as PW-7. On behalf of the defendants 2 and 3, the Inspector of HR&CE Department, Mr.Thangamuthu was examined as DW-1, the fifth defendant was examined as DW-2, Subramanian was examined as DW-3 and Marry was examined as DW-4.

21. With reference to the issue regarding limitation, the Trial Court considered the fact that the plaintiffs had received the order passed by the second defendant Ex.A-29, the signature of the Superintendent was found on 24.03.1983. The said order was received by the counsel for the plaintiffs on 26.03.1983 and the certified copy was received on 28.05.1983. Therefore, the suit was instituted within the period of limitation and accordingly, the suit is maintainable.

22. With reference to the second issue, whether the plaintiffs are entitled for declaration that they are the Hereditary Trustees of the suit Temple, the Trial Court has elaborately considered the documents and the evidences placed by the parties. The Trial Court found that Athanooramman Temple is not connected with the suit Temple Arulmigu Kariya Kaliyamman, which is the subject matter of the Temple and the property belongs to the Kariya Kaliyamman Temple is included in the suit.

23. The following findings of the Trial Court are relevant for the purpose of considering the present appeal suit with reference to the facts and circumstances of the case.

23.1. In paragraph-11 of the judgment, the Trial Court considered the deposition of PW-1, wherein PW-1 (first plaintiff) admits that accounts are there from time immemorial. He also admits that "Dharma Kartha" seal was not available. There are rubber stamps in Exs.A-19, 20, 21, 23, 24, 25 and 26. PW-1 was examined on 15.12.1993. Hence, this Court presume that they were affixed in 1983. However, Original Application was filed in 1978 and no documents were filed before the Joint Commissioner containing the Hereditary Trustee. Hence, this Court hold that Exs.A-19 to 26 were manufactured after the filing of the suit.

23.2. In paragraph-12 of the judgment, the Trial Court considered the deposition of PW-2 (fourth plaintiff), wherein PW-2 admits in his cross-examination that accounts were

available even before filing the Original Application, which was maintained by Kanda Pandaram. He further admits that Kanda Pandaram is alive and that they do not have a quarrel with him and that Kanda Pandaram has same rights. PW-3 (second plaintiff) also admits in cross-examination that accounts were maintained only after the suit was filed.

23.3. In paragraph-12 of the judgment, the Trial Court considered the deposition of PW-6, who supposed to be a Poojari employed by the plaintiffs, admits that a Committee for the Temple was formed 15 years before and that all the 70 members were referred to as Poojaris. But the said document was not produced and hence, an adverse inference is drawn.

23.4. In paragraph-13 of the judgment, the Trial Court considered the deposition of PW-7, wherein PW-7, aged 77, has stated that even from the days of his father and that for 40 years accounts have been filed in the suit. But nothing has been filed and marked. He has further admitted that there was no seal at any point of time. Thus, the seal affixed in Exs.A-19 to A-26 have been manufactured for the purpose of the case. Hence, an adverse inference has to be drawn for non-production of accounts.

23.5. In paragraph-14 of the judgment, the Trial Court considered the deposition of PW-1, wherein PW-1 admits that the lands are available and buildings have been constructed and given for rent. He also admits the availability of rental deeds. PW-2 also admits the same. PW-4 admits that the plaintiffs have been referred to as Poojaris and not as Trustees. PW-5 has admitted that he has been referred to as Poojari in his Sale Deed. Those documents have not been produced and hence, an adverse inference is drawn.

23.6. In paragraph-15 of the judgment, the Trial Court considered that Kanda Pandaram was not examined since the issue of non-production of accounts will surface and hence, an adverse inference is drawn.

23.7. Regarding the reference of some of the Poojaris as Trustees, in paragraph-16 of the judgment, the learned Trial Judge holds that the plaintiffs are attempting to pick up a case based on the loop holes of the defendants' case, which is not permitted.

23.8. In paragraph-16 of the judgment, the Trial Court observed that Ex.A-42 is a receipt issued by HR&CE Department. But how come the seal of Hereditary Trustees came to be affixed in it. Hence, it seems to be cooked up. All exhibits referred

only on behalf of the plaintiffs and not on Hereditary Trustees.

23.9. In paragraph-17 of the judgment, the Trial Court observed that the plaintiffs have not objected to their reference as Poojaris as they could have done it very much.

21.10. In paragraph-18 of the judgment, the Trial Court observed that the plaintiffs having been referred to as Poojaris alone in Exs.A-3 to A-6 and they have not objected to the same. Further, since they have not filed the accounts, an adverse inference is drawn against them.

21.11. In paragraph-19 of the judgment, the Trial Court observed that Ex.A-8 refers to the plaintiffs as Managers and not as Hereditary Trustees. Ex.A-9 also shows the name of the Temples alone and the same helps this Court to arrive a conclusion that the plaintiffs are Hereditary Trustees.

23.12. In paragraph-20 of the judgment, the Trial Court observed that Ex.A-16 is the notice for land acquisition. Ex.A-17 also pertains to the Temples and also refers the plaintiffs as Poojaris. The same is the case in respect of Ex.A-30 also. The plaintiffs have not objected to the same and they could very well have done the same. Ex.A-53 is the counterfoil for the receipts in which the manufactured seals have been affixed. Thus, all the documents would go to show that the plaintiffs are only Poojaris and not Hereditary Trustees.

23.13. In paragraphs-20 and 22 of the judgment, the Trial Court observed that the first defendant in the suit is a stranger, who was running Touring Talkies. He has been made as party in bad faith.

23.14. In paragraph-21 of the judgment, the Trial Court observed that the contention of Hereditary Trustees-cum-Poojaris and it cannot be presumed because Hereditary Trustees never share their income with the suit Temple.

23.15. In paragraph-24 of the judgment, the Trial Court observed that the issue whether the fifth defendant in the suit is the Hereditary Trustee of Athanooramman Temple and the same cannot be decided in this suit.

23.16. In paragraph-25 of the judgment, the Trial Court considered the deposition of PW-2, wherein the PW-2 (second plaintiff) has admitted that the administration of both the Temples are one and the same.

23.17. In paragraph-26 of the judgment, the Trial Court discussed about various documents of the defendants to reiterate the earlier conclusions that the fifth defendant is not the Hereditary Trustee.

23.18. In paragraph-28 of the judgment, the Trial Court came to the conclusion that the third defendant had powers to appoint the Trustees.

23.19. In paragraph-29 of the judgment, the Trial Court observed that the fourth defendant has got powers to seek possession of the suit Temple.

24. The learned counsel for the appellants relied on the judgment in the case of Muthuswami Gurukkal vs. Aiyaswami Thevar [(1964) 77 LW 129], wherein a Division Bench of this Court held as under:-

"We are with great respect unable to agree with this view of the learned Judge. We are of the opinion that on the evidence in this case and on his own reasoning it should have been held that the strong presumption arising in favour of the plaintiff has not been rebutted at all. In the case of small village temples where the temple property is of insignificant value and the income is hardly sufficient even to meet the routine expenses of the temple, if the archaka or the pujari is left in the management of the temple lands and the affairs of the temple without any interference by any of the villagers for a long number of years, it must be presumed that with the consent and acquiescence of the worshippers of the village the pujari is the trustee as well. This Court has been consistently taking the view that in our parts it is frequently found that the office of archaka and manager of trustee are found united in the same person, that is the archaka.

In Andavar vs. Periathambi(1) Balakrishna Aiyar, J., took the view that in the absence of any control or check by the villagers exercised over the management of the properties of the temple or its affairs by the pujaris and in the absence of any demand for and rendition of accounts by the pujaris

to the villagers, it must be held that the pujaris themselves have been functioning as trustees with the consent and acquiescence of the worshippers of the temples. The learned Judges followed the decision in Ramaswami vs. Ramaswami (2).

Our attention was drawn to a few recent unreported judgments of this Court in which the same view has been taken. In A. S. No. 76 of 1956 one of us held that whatever may be the position with regard to temples having large endowments, in the case of small temples owning small extent of properties, the pujari himself functions as the trustee. In this decision it was held that the unreported judgment of a Bench of this Court in L. P.A. No. 36 of 1958 is not authority for the position that the office of hereditary trustee and hereditary pujari could not be combined and vested in the same person, or that it would be illegal for the same individual to be both a hereditary trustee as well as a hereditary pujari. It was pointed out that there is no such general rule and the matter has to be decided upon the facts of each case.

In A. S. No. 800 of 1959, Venkatadri, J., has also taken the same view. In that case the inam lands endowed to the temple known as Chennarayaswami temple in Chokkarangara-goundanahalli in Dharmapuri Taluk, Salem District, were of an extent of 10½ acres and it was found that from about 1825 onwards the archaka was in possession and management of the lands of the temple and its affairs without any interference or control by the villagers. The learned Judge followed the decision in Ramaswami vs. Ramaswami (2) and held that there was a strong presumption that under those circumstances, both the offices were united in the pujari, and that the Bench judgment in A. S. No. 76 of 1956 (unreported) is not authority for the position that it is legally impossible for both the offices to vest in the same person.

It may also be mentioned that the learned Judge has followed a judgment of Jagadisan, J. himself in A. S. No. 177 of 1958, in which the learned Judge has taken the view that there is no legal obstacle in a person functioning both as a trustee and pujari and that in such a situation it is not likely that the interests of temple will suffer by a person holding both the offices.

Very recently Ramakrishnan, J. has also taken the same view in App. Nos. 231 and 244 of 1960. In that case the temples were small village temples with an endowment of lands about 29 acres in extent with an income of Rs. 1000. The learned Judge followed the aforesaid unreported judgment and has held that there was nothing illegal in hereditary trusteeship and pujariship being combined in the same person specially in the case of small temples where there has been no interference or any control by any of the villagers. We are therefore of the opinion that in such cases there will be a presumption that the pujari himself is the hereditary trustee of the temple, and the note of warning given by Rajamannar, C. J. in the unreported judgment in L. P. A. No. 36 of 1955 that by reason of conflict between interest and duty it would be a bad precedent for the office of hereditary trusteeship and pujari to be combined in one and the same person should not be applied to small temples where the villagers do not take any interest and everything has got to be attended to by the pujari himself. In fact, that judgment itself shows that the Bench has made a distinction in the case of small temples. We are therefore unable to agree with the reasonings of Jagadisan, J. that where the evidence is consistent with the pujari having acted as the trustee there should be any "further" or "particular" evidence that the pujari expressly claimed the right of trusteeship as well. As the evidence shows that for over hundred years the plaintiff and his ancestors have been functioning as pujaris and attending to the management and

affairs of the temples it must be held that the plaintiff has made out his right to the hereditary trusteeship, and that the appointment of defendants 1 to 5 as non-hereditary trustees is invalid and" that cannot affect the rights of the plaintiff and defendants 6 to 12."

25. However, the abovesaid Division Bench judgment of this Court may not have application with reference to the present scenario in view of the fact that the appellants/plaintiffs have not established before the Trial Court that they are the Hereditary Trustees of the suit Temple and further there is no document to establish that they were continuing as Hereditary Trustees. This apart, the appellants are not performing any pooja services in the suit Temple for the past many years and there is no managing affairs of the Temple. This being the factum, the judgment, cited supra, is of no avail to the appellants/ plaintiffs for the purpose of considering the grounds raised.

26. This apart, the Trial Court has categorically considered the documents produced by the plaintiffs as well as the evidences and found that the plaintiffs are not entitled for the relief of declaration. The plaintiffs have not approached the Court with clean hands. Setting out all these reasons, the Trial Court arrived a conclusion that the plaintiffs are not entitled for the relief as sought for in the plaint.

27. The fact remains that the suit was instituted in the year 1983 and numbered as O.S.No.396 of 1983 and subsequently the said suit was transferred and renumbered as O.S.No.204 of 1985 and the judgment and decree was passed on 07.11.1994 and the present appeal suit was filed in the year 1995 and it is taken up for hearing by this Court in the year 2020. After a lapse of about 37 years from the date of institution of the suit, many changes took place in the suit Temple and the learned counsel for the appellants also brought to the notice of this Court that the HR&CE Department is now administering the Temple and the appellants are not performing any Pooja services for the past many years. The appellants are not managing the affairs of the Temple and they are totally unconnected with the Temple activities as of now. The HR&CE Department is exercising complete control over the Temple and the Executive Officer is managing the affairs of the Temple and the Trustees were appointed and the appellants/plaintiffs are not Hereditary Trustees and they are not doing any pooja

services in the suit Temple. This being the factum, at this length of time, the relief of declaration to declare the appellants as Hereditary Trustees cannot be granted by this Court.

28. In view of the discussions made above, this Court has no hesitation in arriving a conclusion that the judgment and decree dated 07.11.1994 passed by the learned Sub Judge, Sangagiri in O.S.No.204 of 1985 is confirmed and consequently, the present appeal suit, namely, A.S.No.11 of 1995 stands dismissed. However, there shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn
To

The Sub Judge,
Sangagiri.

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A.S.No.11 of 1995

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