

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.01.2020

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.137 of 2012

and

M.P.No.1 of 2012

S.Krishnamurthy

..Appellants/Plaintiffs

Vs.

1.The Commissioner

H.R.&C.E.Administration

Having Office at Uttamar Gandhi Salai

Chennai-600 034.

2.The Deputy Commissioner

H.R & C.E. Administration,

Having Office at Uttamar Gandhi Salai

Chennai 600 034.

3. G.Premanand

..Respondents/Defendants

PRAYER: First Appeal filed against the Judgment and decree in O.S.No.4766 of 2003 dated 19.04.2010 on the file of the XIV Assistant Judge City Civil Court, Chennai.

For Appellants :Mr.R.V.Srikanth
for Mr.G.Mohanraj

For Respondents :Non-appearance for R1 to R3

O R D E R

The appeal suit is directed against the judgment and Decree dated 19.04.2010 made in O.S.No.4766 of 2003 on the file of the XIV Assistant Judge City Civil Court, Chennai.

2. The plaintiff is the appellant before this Court. The defendants 1 and 2 are the officials of the H.R & C.E Department. The appellant/plaintiff instituted a suit to set aside the order dated 28.02.2003 passed by the Commissioner, H.R & C.E Department, Chennai in SMR.No.11/1996 and for permanent injunction restraining the defendants from appointing any non-hereditary trustee or Executive Officer to the suit temple.

3. The suit was instituted by the plaintiff by stating that he is the hereditary trustee of the suit temple and he was

declared as hereditary trustee in pursuance of a proceedings in O.A.No.3/1992 filed under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The grand father of the plaintiff one Thiru.Murugappa Archagar established the suit temple nearly 125 years ago and he had endowed landed properties to the temple during 1890's for the upkeep the maintenance of the temple. After the life time of his grand father, plaintiff's father one Thiru.Subbaraya Archagar was managing the affairs of the suit temple till his death in the year 1962. Thereafter. The plaintiff's elder brother one Thiru.Sivalingam was incharge of the affairs of the temple till his death in the year 1966. The suit temple was maintained by plaintiff's grand father, elder brother, his mother, until he took over the management. The temple was intended for the worship of the family members of the plaintiff and no one else could worship as a matter of right. At the time of the death of plaintiff's elder brother Thiru.Sivalingam, in the year 1966, the plaintiff was a minor and hence the plaintiff's mother Tmt.Sowbaghyathammal filed O.A.No.93/1969, under Section 63(b) of the Act claims hereditary Trusteeship to the temple and the application was dismissed. The appeal No.20 of 1972 before the Commissioner was also dismissed on 10.10.1972 and he instituted a suit in O.S.No.1313/1973 on the file of the City Civil Court, Madras which was also dismissed. Further, A.S.No.810 of 1975 was filed before this Court, this Court dismissed the appeal with a direction to the plaintiff to seek appropriate relief before the Forum Constituted under the Act. The plaintiff on attaining majority once again filed O.A.No.86 of 1981 under Section 63(a) of the act for a declaration to declare that the suit temple does not come under the purview of the H.R & C.E Act. The application was also dismissed by the Deputy Commissioner. Appeal No.62 of 1987 before the Commissioner was also dismissed. Thereafter, once again the plaintiff filed O.A.No.3 of 1992 before the 2nd defendant seeking relief under Section 63(a) and (b) of the Act to declare that the suit temple is not coming under the purview of the Act and as well declare the plaintiff as the hereditary trustee of the suit temple contending inter alia that the decision rendered by the authority is not final, in view of the decision of this Court in 1975 MLJ 152. The second defendant conducted a detailed enquiry and considered the documents filed by the plaintiff for the purpose of establishing that his grand father was maintaining the suit temple. The Deputy Commissioner passed an order on 17.06.2003 declaring that the plaintiff as the hereditary trustee of the suit temple and granted relief under Section 63 (b) and by the same order disallowed the relief claimed under Section 63(a). As such, the plaintiff was functioning as the hereditary trustee of the suit temple and was discharging his duties as such trustee. Subsequently, the appellant/plaintiff filed in O.S.No.8185 of 1996, to restrain the mischief mongers from in any manner interfering with the affairs of the suit

temple. At that point of time, the first defendant had exercised suo-moto revisionary jurisdiction under Section 69(2) of the Act and had set aside the order declaring the plaintiff as hereditary trustee in proceedings dated 28.02.2003 made in S.M.R.No.11/1996. By order dated 28.02.2003 passed by the first defendant in S.M.R.No.11 of 1996, the plaintiff has chosen to file the present appeal suit.

4. The contention of the appellant/plaintiff is that the suit filed in O.S.No.4766 of 2003 is a continuation of the earlier proceedings before the respondents and therefore, a notice under Section 80 C.P.C is not required.

5. The contention of the appellant/plaintiff was denied by the respondent in their written statement by stating that the order passed by the second defendant appointing the plaintiff as Hereditary Trustee has been set aside by the order, which is challenged in this suit. Hence, the plaintiff is not hereditary trustee and such a claim is false and misleading. Non-hereditary trustees to the temple were appointed as early as by order dated 29.07.1939 in which one Duraisamy Mudaliar and Mariappa Mudaliar were appointed as Non-Hereditary Trustees. The temple has always been treated as a public temple. The other allegations regarding filing of O.A.No.93/69, dismissal of the same, subsequently, the suit and the appeal before this Court are true and it is a matter of record.

6. It is mainly contended that the appellant/plaintiff has suppressed the filing of Special Leave Petition before the Hon'ble Supreme Court in S.L.P.No.3358/1980 as against the order of this Court and the same was dismissed in the admission stage itself. The second defendant dismissed the petition under Section 63(a) and allowed the petition under Section 63(b) appointing the plaintiff as hereditary trustee but the date of order has been wrongly given as 17.06.2003 in the plaint, instead of 17.05.1993. The first respondent/first defendant exercised powers under Section 69(2) of the Act and set aside the order of the second defendant.

7. The Trial Court framed the issues as to whether the plaintiff is entitled for the relief of declaration as prayed for? Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? To what other relief, the plaintiff is entitled?

8. On the plaintiff side P.W.1 has been examined and Exs.A1 to A26 have been marked. On the defendant side D.W.1 has been examined and no exhibit is marked.

9. With reference to the issue no.1, it is an admitted fact that against the order of the first defendant SMR

No.11/1996(54856/96D-2) dated 28.02.2003, this statutory suit has been filed by the plaintiff under Section 70(1)(ii) of the Hindu Religious Charitable Endowments Act, 1959 r/w Order VII Rule 1 of CPC. It is further admitted that the said order in Ex.A26 has been passed on suo moto revision by the first defendant setting aside the order of the second defendant dated 17.05.1993 in OA.No.3/1992 preferred by the appellant/plaintiff. The said order is marked as Ex.A25. It is further admitted that the mother of the plaintiff had filed a petition before the then Deputy Commissioner, HR & CE to declare the plaintiff as hereditary trustee in O.A.No.93/1969 after the death of the father of the plaintiff and the said petition on dismissal was taken on appeal in 20/1972 before the then Commission of H.R.&C.E, which was also dismissed on 10.10.1972. Against the said order, statutory suit in O.S.No.1313/1973 had been filed on behalf of the plaintiff, who was minor then by his mother. It is also admitted that the said suit was dismissed by the learned I Assistant Judge of the City Civil Court, Madras and on behalf of the plaintiff, an appeal was preferred before this Court in AS.No.810/1975, which was also dismissed. All these facts are evident from Exs.A20 and A21.

10. It was contended on behalf of the respondent/defendant that the plaintiff had wantonly suppressed all these facts that as against the judgment of the High Court of Madras in AS.No.810/1975, on behalf of the plaintiff Special Leave Petition was preferred before the Hon'ble Supreme Court in 3558/1980, which was also dismissed by the Apex Court of India. The plaintiff as PW-1 during cross examination, though pleaded ignorance about the institution of the above said OS.No.1313/1973, admitted regarding the dismissal of appeals by the High Court as well as by the Hon'ble Supreme Court.

11. Under those circumstances, the issue was concluded. With reference to the declaration sought for to declare the plaintiff as hereditary trustee, it is an admitted fact that the mother of the plaintiff on his behalf, when he was a minor, instituted and proceeded with the suit and the mother went up to the Hon'ble Supreme Court of India and the claim of the plaintiff for declaration as hereditary trustee was negatived when the issue were already adjudicated regarding the declaration of the plaintiff as hereditary trustee, institution of the present suit would not be arise and the same is liable to be rejected by invoking the principles of res-judicata. The Trial Court considered all these admitted facts with reference to the orders passed by the City Civil Court, High Court as well as the Hon'ble Supreme Court and finally arrived at a conclusion that the mother of the plaintiff is duty bound to inform the the plaintiff about the legal proceedings instituted on his behalf when he was a minor. The relief in this suit and the relief in the earlier proceedings, which were went up to the Hon'ble

Supreme Court are one and the same involving the hereditary trusteeship of the plaintiff. The Hon'ble Supreme Court negatived the relief of declaration sought for by the plaintiff. Under these circumstances, the Trial Court has not accepted the principles of res judicata on behalf of the plaintiff, his mother instituted the proceedings and finally the issues were decided by the Hon'ble Supreme Court of India and therefore, the suit cannot be entertained at all. The present suit is also filed for the very same relief for declaration to declare the plaintiff as hereditary trustee of the suit mentioned Temple.

12. This being the factum, the Trial Court ultimately arrived at a conclusion that the plaintiff had not only suppressed the fact regarding the orders passed by the City Civil Court as well as the High Court and the Hon'ble Supreme Court, the very same prayer sought for on behalf of the plaintiff by his mother was adjudicated and the adjudications were concluded. This being the findings of the Trial Court, this Court considers that there is no perversity and infirmity as the grounds raised by the appellant/plaintiff in the present appeal and the suit itself is barred by res judicata.

13. In view of the fact that the very same issue was already decided by the Hon'ble Supreme Court of India as the mother of the plaintiff went up to the Hon'ble Supreme Court for declaration to declare the plaintiff as hereditary trustee of the suit mentioned Temple. Therefore, the judgment and decree dated 19.04.2010 passed in OS.4766 of 2003 is hereby confirmed and the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The XIV Assistant Judge City Civil Court, Chennai.

2.The Section Officer
VR Section
High Court, Madras 104.

A.S.No.137 of 2012
and
M.P.No.1 of 2012

RV (CO)
SP(30/11/2020)