



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

A.S. No.86 of 2018

Pandurangan

..Appellant/Plaintiff

Vs.

The Commissioner,
Hindu Religious and Charitable,
Endowment Department,
Nungambakkam,
Chennai - 600 034.

..Respondent/Defendant

Appeal Suit filed under Section 70(2) of the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959, to set aside the judgment and decree of the learned Subordinate Judge, Virudhachalam, dated 20.12.2016 made in O.S. No.1 of 2010 and allow the above first appeal.

For Appellant :Mr. G.Sumitra
For Respondent :Mr. Edwin Prabakar
Government Advocate

JUDGMENT

This is a statutory appeal filed under Section 70(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, as against the judgment and decree in O.S. No.1 of 2010 on the file of Principal Sub Court, Virudhachalam.

2. The appellant originally filed an application in O.A. No.14 of 2002 before the Joint Commissioner, Hindu Religious and Charitable Endowments (hereinafter referred as "H.R. & C.E.") Department, Myladuthurai, to declare him as a hereditary trustee in respect of temple known as Arulmigu Ayyanar and Selliamman Temple. Though the appellant claimed that the temple was under the management of the appellant and his forefathers, as hereditary trustees, the Joint Commissioner, H.R. & C.E. Department, dismissed the application filed by the appellant under Section 63(b) of Tamil Nadu H.R. & C.E. Act. Before the Joint Commissioner, several witnesses were examined by the



appellant. All the witnesses who were examined on behalf of the appellant finally gave statement during the cross examination, quite contrary to the stand taken by them in the chief examination. In short, it can be said that the appellant did not produce any material document or reliable evidence before the Joint Commissioner to declare that the appellant was holding office as hereditary trustee.

3. Aggrieved by the order of Joint Commissioner, the appellant preferred an appeal before the Commissioner, H.R. & C.E. Department, in A.P. No. 30 of 2006. The appeal was also dismissed by the Commissioner specifically holding that the temple is a public temple and that the same was always maintained by the local villagers. It is also found by the Commissioner that non-hereditary trustees were being appointed by the H.R. & C.E. department, periodically and that the appellant himself was appointed as a non-hereditary trustee by the Assistant Commissioner, in or around the year 1972. The Commissioner also found that the appellant, somehow, was inducted into the management of the temple pursuant to his appointment as non-hereditary trustee made by the Assistant Commissioner, H.R. & C.E. Department, Cuddalore in the year 1972. Thereafter, the appellant filed a statutory suit under Section 70 of Tamil Nadu H.R. & C.E. Act, 1959, in O.S. No. 1 of 2010, before the Sub Court, Virudhachalam, to set aside the order dated 11.09.2009 passed by the Commissioner in A.P. No.30 of 2006 and to grant appropriate relief. The suit was contested by the respondent. After framing necessary issues, the lower Court dismissed the suit holding that the plaintiff is not a hereditary trustee of the temple and that the order of the Joint Commissioner as well as the Commissioner of H.R. & C.E. Department, are perfectly valid. Aggrieved by the judgment and decree of Sub Court, Virudhachalam, the plaintiff has preferred the above appeal. The only point that arise for consideration in this appeal is whether the orders passed by the defendant declining to recognize the appellant as Hereditary Trustee of the temple is valid.

4. The learned counsel for the appellant submitted that the lower Court has not considered the pleadings and material evidence particularly the oral evidence of witnesses examined on behalf of appellant. By referring to the documents and oral evidence, it is submitted by the learned counsel for the appellant that the appellant is entitled to hereditary rights and that the lower Court ought not to have confirmed the order of Commissioner, H.R. & C.E., passed without reference to the admitted facts.



5. Section 6(11) of the Tamil Nadu H.R. & C.E. Act, a hereditary trustee is defined as follows:

“Hereditary trustee” means 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;”

Under Section 63(b) of the Tamil Nadu H.R. & C.E. Act, the Joint Commissioner or the Deputy Commissioner is given power to decide few disputes including a dispute whether a trustee holds or held office as hereditary trustee. The power of officer under the Act is specifically defined. In the present case, the appellant claim that he is the hereditary trustee on the ground that he and his forefathers were holding the office as hereditary trustee. Though the appellant has examined several persons, it is seen that the witnesses examined on his side have given statements contrary to their version in the chief examination. This only leads anyone to think that the witnesses examined on behalf of the appellant are not trustworthy. The Joint Commissioner as well as the Commissioner has found that the temple is being administered by the persons who are elected by the villagers. It is further found that the temple is under the control of village people but the office is not hereditary. Though the claim of the appellant was negated, the Joint Commissioner and the Commissioner could have declared the hereditary character of office as the plea of villagers was accepted. The right to hold office as hereditary trustee can be regulated by custom. If the temple has to be administered by the elected representatives of the village, then it can be said that any person who is elected by villages holds office as hereditary trustee.

6. The appellant filed the statutory suit challenging the order of Joint Commissioner as well as Commissioner rejecting his application to declare that the temple in question is being administered by his family members. Though it is contended that the temple was being managed by a particular family for a long time, this Court finds that the appellant has not filed any concrete material or other evidence to prove his case. Though the plaintiff has examined himself as P.W.1 and examined another person by name Muthukumarasamy as P.W.2, no materials were produced by the appellant to prove his case. P.W.2 is not trustworthy. After making such a huge claim to declare his status as hereditary trustee, the appellant failed to produce any evidence to support his case except the inconsistent oral evidence adduced by P.W.2.



7. This Court is unable to find any serious error or irregularity in the findings of the lower Court, the Commissioner and Joint Commissioner. The Joint Commissioner and the Commissioner of H.R. & C.E. Department, have considered the vital issues and found that the temple in question is administered by the villagers through their elected representative. Though this Court has got ample power to go into all the disputed questions of facts and to reappraise evidence, no material irregularity in appreciation of evidence is brought to light. It is not pointed out that some material evidence was ignored by the trial Court. The judgment of trial Court is supported by reasons and hence this Court has no reason or ground to interfere with the judgment and decree passed by the lower Court confirming the order of Commissioner, affirming the dismissal of petition filed under Section 63(b) of the Tamil Nadu H.R. & C.E. Act. From the nature of findings, it may be open to the representatives of the villagers to agitate their rights to elect any of their representatives to hold office as hereditary trustee.

8. Accordingly, this appeal suit is dismissed as devoid of any merits. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bkn

To:

The Subordinate Judge, Virudhachalam.

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to M/s.G. Sumithra, Advocate sr 60434

+1 CC to The Government Pleader sr 60476.

A.S. No. 86 of 2018

RSI (CO)
SP(21/01/2022)