



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD)No.17160 of 2020

K.Palanichamy

... Petitioner

- Vs -

1. The Inspector General of Registration,
Door No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,
Chennai - 600 028.

2. The Sub Registrar,
Manaparai,
Tiruchirappalli District.

... Respondents

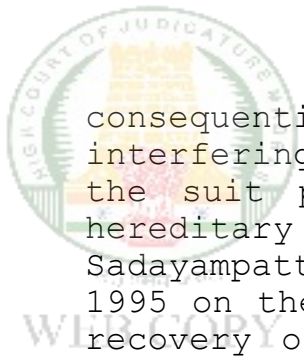
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned refusal check slip in RFL/Manaparai/4/2020, dated 08.10.2020 passed by the second respondent and quash the same and consequentially directing him to register the Will dated 14.05.2020 executed by the petitioner within a time frame that may be fixed by this Court.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.K.Sathiya Singh
Additional Government Pleader

ORDER

The properties in Survey Nos.214, 233/1A, 233/1B and 233/1C, situated in Kumaravadi Village, Manaparai Taluk, Trichy District, are endowed with Thekkamalai Ayyanar Kovil. The petitioner claims himself to be one of the hereditary trustees. He and another person filed O.S.No.408 of 1995 before the Sub Court, Kuzhithalai against the Commissioner, Hindu Religious and Charitable Endowment Department, Government of Tamil Nadu, claiming to be the hereditary trustee of Sri Seelaiyanayakkanpatti, Thoppampatti, Sadayampatti Thekkamalai Ayyanar Temple Trust, praying for a decree that a private party is not one of the trustees in the temple and for



consequential decree of permanent injunction to restrain him from interfering with their rights of the trusteeship and possession over the suit properties. The said private party claiming to be the hereditary trustee of Sri Seelaiyanayakkanpatti, Thoppampatti, Sadayampatti Thekkamalai Ayyanar Temple Trust filed O.S.No.600 of 1995 on the file of the Subordinate Court, Kuzhithalai, praying for recovery of possession and future mesne profits. Both the suits were jointly tried by the learned Sub Judge and by judgment and decree dated 21.09.1998 declared that the plaintiffs and the second defendant are the joint hereditary trustees of the subject temple and granted a decree of permanent injunction. Thus, the petitioner has been declared as one of the trustees of the said temples.

2. According to the petitioner, he has no male issues and however, he executed a Will dated 14.05.2020 bequeathing his right of hereditary trusteeship of the temples in question. The petitioner conveyed the hereditary trusteeship to his foster son one Mr. Ponnusamy, son of Thiruppathi Naicker. He presented the Will dated 14.05.2020 before the second respondent on 15.05.2020. The second respondent refused to register the document, namely, the Will vide refusal check slip dated 08.10.2020. The second respondent has refused to register the Will stating that the petitioner cannot have right to transfer the trusteeship as he is only a custodian of the property belonging to the temple and he has no independent title over the properties. Challenging the refusal check slip, dated 08.10.2020, the petitioner is before this Court.

3. The learned Counsel appearing for the petitioner would submit that the issue whether trusteeship could be a subject matter of a Will is no more *res integra* as the Courts have held that the hereditary trusteeship is a property which can be a matter of right and the hereditary trusteeship is transferable. The learned Counsel appearing for the petitioner would rely on three decisions of this Court in support of the legal contention viz., **1953 (66) Law Weekly 947 [Kidangazhi Manakkal Narayanan Nambudripad and others v. The State of Madras represented by the Secretary, Firka Development Department and another]**, **1995 (68) Law Weekly 26 [K. Sankaran Nair and others v. Nallacheri Govindan Nambiar and others]** and more particularly, **1970 (1) SCC 4 [Sambudamurthi Mudaliar v. The State of Madras and another]**. In all the decisions, according to the learned Counsel, the legal position has been very clearly enunciated that the hereditary trusteeship is a transferable right.

4. Notice was ordered in this Writ Petition and Mr. K. Sathiya Singh, learned Additional Government Pleader has entered appearance for the respondents.

5. A counter affidavit has been filed by the second respondent



dated 05.02.2021. In the counter affidavit, the second respondent has clearly admitted the legal position and accepted the claim of the petitioner in this regard which could be seen in paragraphs 4 and 5 of the counter affidavit as under:

"4.I submit that in the pith and substance of the said deed refused by register is transferring the hereditary rightship by an Existing hereditary trustee in favour of his foster son. In the judgment reported in 1953 (66) Law Weekly 947, 1995 (68) Law Weekly 26 and 1970 (1) SCC 4 it is held that hereditary Trusteeship is a property right hence is a transferable right. It is nothing to do with Temple property.

5.I submit that he filed a Suit in O.S.No.408 of 1995 and 600 of 1995 on the file of the Subordinate Court, Kulithalai and got a degree in his favour saying that the hereditaryship is a transferable right."

6.From the above averments, this Court does not see any dispute in regard to the claim of the petitioner, as the legal contention put forth by the learned Counsel for the petitioner is found favour with by the respondent themselves. By the above averments, the respondents have clearly conceded the claim of the petitioner namely that the hereditary trusteeship held by the petitioner is a transferable right and therefore, the refusal to register the Will is contrary to the legal position.

7.In the light of the above legal position, the Writ Petition is allowed. The impugned refusal check slip No.RFL/Manaparai/4/2020, dated 08.10.2020 is hereby set aside and the second respondent is directed to register the Will dated 14.05.2020 executed by the petitioner if the same is otherwise in order, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar

To

1. The Inspector General of Registration,
Door No.100, Santhome High Road,
Foreshore Estate,
Pattinapakkam,

<https://hcservices.hcsonline.gov.in/hcser/003/028>.



2. The Sub Registrar,
Manaparai,
Tiruchirappalli District.

+1 CC to Mr.T.R.JEYAPALAM, Advocate (SR-4709[F] dated 12/02/2021)

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-4881[F] dated 15/02/2021)

Order made in
WP (MD) No.17160 of 2020
11.02.2021

SRM
SRS/01.03.2021/4P/5C