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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 16.06.2022	Orders pronounced on 14.07.2022

Coram

THE HONOURABLE MRS. **JUSTICE S.KANNAMMAL**

A.S.No.224 of 2009

1. The Commissioner
   Hindu Religious and Charitable
   Endowments Administration Department
   Chennai – 600 034.
2. The Joint Commissioner
   Hindu Religious and Charitable
   Endowments Administration Department
   Coimbatore – 641 018. ... Appellants

Vs

1. U.Jagadeesan
2. U.Rajendran
3. U.Chandrasekaran (deceased)
4. U.Vivekanandan
5. R.Narayanaswami Naidu
6. R.Govindarajulu Naidu
   (Respondents 5 and 6 are impleaded as respondents, vide order dated 18.04.2009 made in M.P.No.3 of 2009)
7. Vishnu Siddharthan
8. Mahavishnu
   (Respondents 7 and 8 are brought on record as legal representatives of the deceased third respondent vide order dated 14.03.2019 made in M.P.Nos.1 to 3 of 2009)

.. Respondents

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Appeal suit filed under Section 70(2) of the HR & CE Act 22 of 1959 against the judgment and decree passed in O.S.No.568 of 2006 dated 14.02.2008 on the file of II Additional Subordinate Judge, Coimbatore.

For Appellants	..	M/s.S.Yashwanth
For Respondents 2 to 4	..	M/s.R.Kannan
For Respondents 7 and 8	..	M/s.T.Ravikumar

Judgment

This appeal is filed against the judgment and decree passed in O.S.No.568 of 2006 dated 14.02.2008 on the file of II Additional Subordinate Judge, Coimbatore.

2. For the sake of convenience, the parties herein are referred to as they are referred to in the Original Suit.

3. The case of the plaintiff/first respondent herein is as follows:-

Arulmighu Palamalai Ranganathar Temple is situated in an extent of 11.85 acres in Palamalai Hills, Naickenpalayam Village, Coimbatore North Taluk. Father of the plaintiff late.Unganna Gowder obtained

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permission to occupy the said 1.85 acres of forest land for the temple from the District Forest Officer, Central Division, vide order Ref.No.5413/66-D, dated 25.11.1969 as Managing Trustee of the temple. Originally, the said Palamalai Ranganathar Temple was founded by one Kalidass, ancestor of the plaintiff. The said Kalidoss found a Suyambulingam in the said Palamalai Hills and was performing Neyvedhyam to the said Suyambulingam. He put up a Parnasalai to the said Suyambulingam. After his death, his successor Unganna Gowder, belonged to his Vamsam, then his son Nanjunda Gowder were performing poojas. Subsequently, when the said Nanjunda Gowder planned to construct Mandapams for the temple, God appeared before him in his dream and as per the instructions of the God, he found sand and stones near the temple premises in the month of Vaikasi of Tamil Keelaga Varusham and put up various constructions and mandapams of the temple along with his only son Karae Gowder and was conducting functions of the temple performing poojas to the Suyambulingam diety and Vigrahams. After the death of the said Nanjunda Gowder, his son Karae Gowder was managing the temple. After the death of Karae Gowder, his son Rangai Gowder, grand father of the plaintiff was

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managing the temple as its trustee. After the death of Rangai Gowder, his son Unganna Gowder, father of the plaintiff was managing the temple as its Managing Trustee till his death in the year 1972. His father Unganna Gowder was paying the lease amount to the forest land, wherein the temple situates. During his life time, he obtained Electricity Service Connection, put up Pillaiyar temple and other temples, dug wells, constructed water tanks, installed motor pump sets to the well, converted 4 acres of land into Mango and Coconut Thope from out of his pocket, made several constructions and improvements to the temple by spending amount from out of his own pocket and from out of the funds collected from the public. After his death, his son U.Rajendran, elder brother of plaintiff, was managing the temple as Managing Trustee since 1973. In the year 1979, the plaintiff became the Managing Trustee of the temple and was managing the temple looking after all the affairs of the temple. In 1979, plaintiff was appointed as a Managing Trustee of the temple by the HR & CE Department. Chitra Pournami car festival, Puratasi Saturday Festival Special Poojas are being performed in grand manner. Regular Poojas are being performed three times every day in all days by the poojari appointed by the plaintiff. Jewels of the temple and other

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properties of the temple have been under the care and custody of the plaintiff and his ancestors. Electricity charges and lease amount due to the forest department is being paid by the plaintiff. The plaintiff is submitting the accounts of the temple to the audit of the HR & CE Department every year. Contribution amount to the temple are also being paid by the plaintiff to the HR & CE Department. Ever since the deity of the temple was found and the temple was constructed by the plaintiff's ancestors, the plaintiff and his ancestors were trustees of the temple hereditarily. The office of the trusteeship of the temple has been vested with the family of the plaintiff for more than five generations in an unbroken line of succession from father to son, within the meaning of Section 6(11) of HR & CE Act. The plaintiff is entitled to manage the temple as its hereditary trustee. Therefore, in 1990, the plaintiff filed an application in O.A.No.16 of 1990 before the second defendant under Section 63(b) of TN HR & CE Act for recognition of his right and for declaration that the office of the trusteeship of the temple is hereditary in the hands of the plaintiff. After due verification and examination of witnesses and after completion of all formalities as contemplated under HR & CE Act, second defendant passed an elaborate order dated

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03.09.1990 declaring the office of the trusteeship of the said Palamalai Ranganathar Temple is hereditary and that the plaintiff is the hereditary trustee of the said temple. The said order was communicated by the second defendant to the first defendant and the same was confirmed by the first defendant. Subsequent to the above said order of the second defendant, the plaintiff has converted the forest ghat road as motorable road with the help of the surrounding villagers. He has put up a 'Raja Gopuram' and seven other 'Gopurams' and compound wall to the temple with the help of donors and public. He has electrified the entire temple and the temple premises with the co-operation of public and donors. He has cleared all the arrears of lease amount to the forest department. He has converted the single phase electricity service connection of the temple into three phase service connection and fixed safety syrons, made drinking water facility to the temple, with the support of the public. While so, ten years after the above said order of the second defendant, the first defendant, suo-motu initiated revision in S.M.R.No.3/2000 D2 under Section 69(2) of the HR & CE Act on flimsy grounds as if the first defendant had not discussed any documentary evidence to hold that the plaintiff has hereditary right in the management of the temple and as if

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the deity of the temple could not have been founded by the ancestors of the plaintiff as if it was a 'suyambu'. No suo-motu revision proceeding was initiated when the copy of the order dated 03.09.1990 by second defendant was communicated to the first defendant. Having kept quiet for more than 10 years, all of a sudden, first defendant posted the revision petition for final disposal without notice to all interested parties, and by an order dated 04.05.2006, first defendant set aside the order of the second defendant made in O.A.No.16 of 1990, directing the second defendant to formulate a scheme under Section 64(1) of the HR & CE Act providing for appointment of non-hereditary trustees in Gowda and Naidu Communities observing that there were non-hereditary trustees to the temple, that executive officer of the temple had been appointed under Section 45(1) of HR & CE Act, that the plaintiff has not produced any documents to prove his right and that therefore, the trusteeship of the temple is not hereditary. But, the plaintiff has proved his right by the evidence of the competent witnesses and by the evidence of the department witnesses and also by way of documentary evidences. After confirmation of the order of the second defendant by the first defendant, the first defendant cannot exercise his power under Section 69(2) of HR

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& CE Act. During emergency under Act 24/1976, a fit person seems to have been appointed and he did not function as such in the temple. Therefore, such an appointment will not take away the hereditary rights of the plaintiff. The direction of the first defendant for formulation of a scheme providing for appointment of non-hereditary trustees from Gowda and Naidu communities is not valid under law. Palamalai Ranganathar Temple is a public temple, it does not belong to any particular community or communities. The said direction of the first defendant is unsound and it is not supported by any evidence. Such a direction cannot be given when the temple is already under the control of the second defendant. Reasons given in the order of the first defendant for initiation of suo-motu proceeding is an after thought. In the above circumstance, the order of the first defendant dated 04.05.2006 made in S.M.R.No.3 of 2000 D2 (RC 39448/2000) is illegal, it is nullity. After the order of first defendant, defendants 1 and 2 are taking steps to remove the plaintiff from the management and administration of the temple. The plaintiff has, therefore, laid this suit under Section 70 of HR & CE Act for setting aside the above said order of the first defendant dated 04.05.2006 and confirming the order of second defendant dated

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03.09.1990 and also for consequential permanent injunction to restrain the defendants from in any way interfering with the plaintiff's management and administration of the said Palamalai Ranganathar Temple.

4. The case of the first defendant/first appellant herein, as per his written statement, is as follows:-

The suit is false, frivolous, vexatious and unsustainable both in law and on facts. The defendant does not admit any of the allegations contained in the plaint and puts the plaintiff to strict proof of all of them. The genealogy referred herein has not been proved by acceptable documentary evidences. Even assuming that any of the ancestors were worshipers, it was like any other worshiper. It was not on the basis of any hereditary right. The narration about the construction of temple is on the basis of hearsay evidences and not based on any documentary evidences. None of the members of the plaintiff 's family was ever exercising any rights as hereditary trustee. Admittedly, the plaintiff was non-hereditary trustee on the basis of appointment by HR & CE Administration Department. Hereditary rights claimed by the plaintiff is

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an afterthought. The plaintiff is estopped from making claim as hereditary trustee. The HR & CE Department is entitled to collect contribution, audit fee in respect of the income from the temple under the provisions of HR & CE Act. Hereditary right cannot begin from the date of construction unless the office is regulated by the usage or specifically provided any scheme of succession. The plaintiff filed O.A.No.16/1990 before the Deputy Commissioner under Section 63(b) of HR & CE Act, without disclosing the true and proper facts. It is false to allege that first defendant has confirmed the order of second defendant in O.A.No. 16 of 1990. It is admitted by the plaintiff that the facilities in the temple were provided with the help of public. The order passed by this defendant in SMR No.3/2000 D2 dated 04.05.2006 is a well considered order. There is proper discussion in the order as to how the plaintiff has proved his case by examining competent witnesses and through the departmental witnesses. There is no such clinching evidence in favour of the plaintiff. The shortcomings in the order passed by the Deputy Commissioner are highlighted in the order passed by this defendant. While initiating suo-motu proceedings under Section 69(2) of the Act, the infirmities found in the order of the second defendant and were communicated to the parties

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concerned. It has been specifically pointed out in the notice that when there was 'suyambu', one cannot found or installed in the temple. So, on the basis of false allegations, the second defendant has arrived at a decision to declare the plaintiff as a hereditary trustee. The suo-motu powers can be exercised at any time and there is no time limit to exercise the power as held in a case reported in 1994 (1) MLJ 155. While appointing non-hereditary trustees, proper persons must be appointed from the members of the community at large including Gowders and Naidus who have taken a leading role in the management of the temple. Section 64 of the Act empowers the authorities to decide such claim while appointing the trustees to the temples. So observations and the direction are legal and valid. There is no cause of action for the suit and the plaintiff cannot claim any hereditary right or to be in the management to the exclusion of others and he is not entitled to claim any permanent injunction as if he alone is entitled to management and administration of the temple, when all these years no such exclusive management was exercised. In O.A.No.16/1990, the plaintiff did not implead the other persons interested in the affairs of the temple. The plaintiff also did not disclose all the relevant materials which are necessary for the disposal of

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the case under Section 63(b) of HR & CE Act. The order dated 04.05.2006 was passed by this defendant supported by valid reasons. It is incorrect to state that the fit person appointed under Act 24 of 1976 did not function and the appointment of non-hereditary trustees for the temple previously will not have any bearing on the alleged hereditary rights of the petitioner. The defendants and Department have power for appointment of trustees and such powers were exercised to the knowledge of the plaintiff, who did not come forward with any such claim as a hereditary trustee at the time of appointment of non-hereditary trustee. His ancestors also did not put forward any such claim. Hence, the plaintiff is estopped from putting forward any such contentions now. Swayambu Lingams are not founded or installed by any one and if it were to be so, it would not be swayambu. The circumstances under which prior appointments of non-hereditary trustees were made are not considered by the Deputy Commissioner, that is the reason as to why suo-motu powers were exercised and notices were issued. Notices issued contained grounds of revision and were sent to the plaintiff in accordance with the provisions of HR & CE Act and rules. The plaintiff was represented by counsel. There are other defendants also, viz., members

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of the family of the plaintiff, who did not put forward any hereditary right. If really, there was any such hereditary right available in the family, they would not have remained absent inspite of notice during enquiry. The counsel for the plaintiff was duly heard and the records were also perused. In order to prove hereditary right, the plaintiff ought to have proved that the management vested in him and his family members for three generations continuously without any interruption and nobody else outside the family functioned as trustees or interfered with the management of the temple. Even under the orders passed by the Deputy Commissioner dated 03.09.1990, it was noticed that for a long time, non-hereditary trustees were being appointed by the Department from the village public. Such facts are contradictory to the claim made by the plaintiff that he was managing the affairs of the temple as hereditary trustee without the participation of anybody outside the family. The Executive Officer was appointed under Section 45(1) of the HR & CE Act previously. There are documents to show that non-hereditary trustees were appointed on several occasions and they were functioning as trustees. The plaintiff was also appointed as one of the non-hereditary trustees a few times. There was no objection from any

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quarter against the appointment of non-hereditary trustees. Ex.A1 contains names of several persons as trustees for the temple besides the name of Unganna Gowder, father of the plaintiff. Mere presence of names of some of the members of the family of the plaintiff along with other persons cannot be regarded as a circumstance to show that any right of hereditary trusteeship was available with the plaintiff or his fore-fathers. Persons belonging to Naidu Community and Irula Community were also functioning as trustees, besides a person belonging to Brahmin community. The name of Sri.A.Rangasamy Naidu was consistently found as one of the trustees in the festival notices. Only in view of these facts among others, the impugned order was passed by this defendant and it was held that the office of trusteeship is not hereditary and Joint Commissioner, Coimbatore was directed to consider formulating a scheme under Section 64(1) of the Act for appointment of non-hereditary trustees to give proper representation to the members of the locality, since other communities have also consistently figured in the list of trustees. Only opportunity was given to the parties concerned to approach the Joint Commissioner for framing a scheme, if so advised. None of the points raised in the orders of this defendant are seriously

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challenged or controverted in the plaint or the affidavit in support of the injunction application. The fact that the members outside the plaintiff's family were functioning as trustees will show that the plaintiff or his family members alone were not managing the affairs of the temple as hereditary trustees. The Deputy Commissioner himself provided for the appointment of two or four additional non-hereditary trustees. This will clearly show that the right of the Department to appoint non-hereditary trustees was never given up. In fact, the Deputy Commissioner has even given a direction to the Assistant Commissioner as to how the functioning of the Executive Officer slipped away from his hands to the trustees and he stated that the Executive Officer should assume charge. Hence, this defendant prays to dismiss the suit with costs.

5. Based on the pleadings the trial court framed the following issues:

1. *Whether the order dated 04.05.2006 passed in SMR No.3/2002 by the first defendant is to be cancelled, as prayed for by the plaintiff in the suit ?*

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2. *Whether the order dated 03.09.1990 passed in O.A.No.16/90 by the second defendant is to be confirmed?*

3. *Whether the plaintiff is entitled to permanent injunction as prayed for ?*

4. *Whether the plaintiffs are not acting as hereditary trustees ?*

5. *Is it true the suit temple, rajagopuram and compound wall are constructed by plaintiffs ?*

6. *To what relief they are entitled to ?*

6. Before the trial Court, on the side of plaintiff, PW.1 – Jagatheesan (plaintiff) and PW.2 (Pandurangan alias Rangasamy) were examined and Exs.A.1 to A.12 were marked. On the side of defendants, one Thiru.R.Selvaraj was examined as DW.1 and Exs.B1 to B29 were marked.

7. Learned trial Judge, on considering the oral and documentary evidence and also the arguments of both side learned

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counsels, came to a conclusion that plaintiff and his ancestors are hereditary trustees of Palamalai Ranganathar temple and accordingly, set aside the order passed by the first defendant on 04.05.2006 and granted permanent injunction to restrain the defendants from in any way interfering with the plaintiff's management and administration of the said Palamalai Ranganathar Temple. Challenging the same, the defendant is before this Court by way of this appeal.

8. Heard the learned counsel for the appellant/defendant and learned counsel for the respondent/plaintiff.

9. Learned counsel for the appellants/defendants submitted that the first respondent, as the plaintiff, is bound to establish his case and the trial Court has erred in proceeding on the footing that Ex.A1 order were right, that Ex.A2 order were wrong and that the burden is on the appellants/defendants 1 & 2 to disprove the claim of the first respondent/plaintiff and to establish the validity of Ex.A2 order presumed by the trial Court to be wrong. The trial Court failed to see that a tall claim made in the plaint that the trusteeship is vested in the

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family of the plaintiff hereditarily for seven generations and that the family of the plaintiff have expended extensively for the construction, maintenance, renovation and development of the religious institution; there is absolutely no evidence to sustain this tall claim; even the line of succession and genealogy are not established in any manner known to law and absolutely no documentary evidence is forthcoming in this regard. Hence, the appellants/defendants 1 & 2 prayed for allowing the appeal, thereby to dismiss the suit filed by the first respondent/plaintiff.

10. Learned counsel for the first respondent/plaintiff submitted that ever since the deity of the temple was found and the temple was constructed by the plaintiff's ancestors, the plaintiff and his ancestors were trustees of the temple hereditarily. The office of the trusteeship of the temple has been vested with the family of the plaintiff for more than 5 generations in an unbroken line of succession from father to son within the meaning of Section 6(11) of HR & CE Act. Petitioner was appointed as Managing Trustee in Ref.No.Pa.Mu.2564/78 dated 04.10.1979 with two other members as trustees. He is maintaining regular accounts and is paying electric consumption charges etc., The plaintiff has produced oral

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and documentary evidence to prove his claim. Considering the same, second appellant passed the order dated 03.09.1990 that the plaintiff is the hereditary trustee of the temple. Having kept quiet for more than 10 years, all of a sudden, first defendant posted the revision petition for final disposal without notice to all interested parties and by an order dated 04.05.2006, first defendant set aside the order of the second defendant made in O.A.No.16 of 1990. The learned trial Judge, convinced by the oral and documentary evidences produced by the plaintiff, came to the conclusion that the order of second defendant is correct and accordingly set aside the order of the first defendant dated 04.05.2006 and , decreed the suit as prayed for by the plaintiff. Hence, learned counsel for the first respondent prays for dismissal of this appeal.

11. Learned counsel for the respondents 2 to 4 and learned counsel for the respondents 7 and 8 reiterated the submissions made by the learned counsel for the first respondent/plaintiff.

12. Considered the rival submissions made on both sides and perused the records.

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13. The points for consideration are,

(i) Whether the plaintiff has proved through oral and documentary evidence that plaintiff and his ancestors are hereditary trustees of Palamalai Ranganathar temple?

(ii) Whether the order of first appellant setting aside the order of second appellant is correct?

(iii) Whether the appeal is to be allowed and the judgment and decree of the trial Court warrants interference from this Court ?

14. **Point No.1:**

From the perusal of the records, it is seen that the case of the respondent/plaintiff is that plaintiff and his forefathers/ancestors are the hereditary trustees of Arulmighu Palamalai Ranganathar Temple and his forefathers constructed the temple for 'swayambu' deity, which was found by Kalidoss, one of the ancestor of the plaintiff. After his death, his successor Unganna Gowder belonged to his Vamsam was performing

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poojas. After the death of Unganna Gowder, his son Nanjunda Gowder constructed the temple. After his death, his son Karae Gowder, thereafter, his son Rangai Gowder/grand father of the plaintiff, then his son Unganna Gowder/father of the plaintiff, have made developments in the temple and were managing the temple as its trustee. After the death of his father Unganna Gowder, his son U.Rajendran/brother of the plaintiff was managing the temple as Managing Trustee since 1973. In the year 1979, the plaintiff was appointed as Managing Trustee of the temple by HR & CE Department and was managing the temple, looking after all the affairs of the temple. To declare him as hereditary trustee, he filed RC.O.A.No.16/90 B1 before the Deputy Commissioner. From the perusal of the order of the Deputy Commissioner, it is seen that the Deputy Commissioner after thoroughly examining the oral and documentary evidences produced by the plaintiff before him viz., PW.1-U.Jagadeesan (plaintiff herein), PW.2-R.Srinivasan, S/o.Rangulu Naidu, PW.3-B.Balamalai Gowder, Poojari of the temple and Exs.A1 to A8 and also the evidence and report of Thiru.R.Balasubramaniam, Inspector, HR & CE, Administration Department, Mettupalayam, came to the conclusion that the evidences and documents produced are in favour of

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the plaintiff and allowed the petition filed by the plaintiff and declared that the office of the trusteeship of Arulmighu Palamalai Ranganathar Temple, Naickenpalayam, Coimbatore Taluk is hereditary and plaintiff is the hereditary trustee of the same. After the said order, the plaintiff continued as a hereditary trustee and conducted festivals for the said temple and managing the affairs of the said temple, without any interruption from any body and no complaint from the villagers/common public. However, after a period of 10 years, first appellant had taken a suo-motu Revision and passed the order that the existence of particular method of succession has not been put forth by the plaintiff, since the second defendant himself has found that there were non-hereditary trustees appointed by the Department on several occasions and the plaintiff was also appointed as non-hereditary trustee a few times and the Exhibits marked by plaintiff show that they contain names of several persons, belong to different communities, as trustees, besides the name of forefathers of the plaintiff and mere presence of names of forefathers of the plaintiff in the festival notices cannot by itself confer any right on the plaintiff to claim hereditary trustee of the temple. Challenging the order of first appellant/first defendant, plaintiff has filed the suit. On hearing

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both sides and upon analysis of oral and documentary evidences, the trial Judge set aside order of first appellant/first defendant and declared the plaintiff as hereditary trustee and granted injunction as prayed for by the plaintiff. Therefore, the appellants/defendants 1 & 2 are before this Court by way of this appeal.

15. The main contention of the appellants/defendants is that absolutely there is no evidence to sustain the claim of hereditary trustee and even the line of succession and genealogy are not established in the manner known to law and absolutely no documentary evidence is forthcoming in this regard and the first respondent, as the plaintiff, is bound to establish his case.

16. From analysing the oral evidence adduced on the side of the plaintiff before the second defendant/Deputy Commissioner and also the trial Court it is clear that plaintiff and his ancestors were constructing and managing the suit temple and performing poojas as hereditary trustees, for more than five generations. One Thiru.R.Srinivasan, S/o.Rangulu Naidu, who belonged to Naidu Community was examined as PW.2

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before the Deputy Commissioner and he himself deposed that,

> *"Petitioner (plaintiff herein) is mananging the affairs of the temple for the past 11 years. Prior to that, his brother Rajendran was managing the temple for about 5 to 6 years. He has constructed the Swargavasal to the temple. Prior to him, his father Unganna Gowder managed the same and providing water facilities and planted mango and bananas and brought electricity to the temple, constructed water tank, installed pumpset etc., He leased out the thope and managed the temple with the income. He constructed the Alwar and Vinayagar temple inside Ranganathar temple. Prior to him, his father and prior to him, his forefathers managed the same. Noboby else managed the same."*

One B.Palamalai Gowder, who is the poojari of the temple was examined as PW.3 before the Deputy Commissioner. He deposed that,

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"His family is performing poojas in the temple hereditarily. He is doing poojas for the past 11 years. The petitioner is managing the temple for the past 11 years, prior to him, his brother and prior to him his father Unganna Gowder and prior to him, their forefathers were managing the temple."

That apart, Plaintiff side witnesses examined before the trial Court has also deposed that the plaintiff and his ancestors were managing the temple. It is settled proposition of law that if no documentary evidence is available to prove the genealogy, the oral evidence itself is sufficient to prove the same and the oral evidence can be accepted. Accordingly, this Court accepts the oral evidence on the side of plaintiff to prove the genealogy and also that plaintiff and his ancestors were managing the temple as hereditary trustees.

17. Apart from the oral evidences on the side of plaintiff, in this case the documentary evidences are also available to prove that the plaintiff and his ancestors were managing the temple. The documents

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viz., patrikas for the years 1964 to 1972 describes the sthalavaralaru, wherein the worship of the deity by one Kalidoss, who belonged to Kouthamy Maharishi Gothram by constructing Parnasalai is mentioned. In subsequent Partrikas, the name of Unganna Gowder is mentioned as the Managing Trustee though there are also other trustees. In Patrikas for the years 1973 to 1976 the name of U.Rajendran as Chairman Borad of Trustees, was found along with other trustees. In Patrikas for the years 1980 to 1990 the name of U.Jagadeesan is found as trustee during 1980 & 1981 and as Chairman, Board of Trustees from 1982, 1984 to 1990. In 1983, plaintiff's name is found as Fit Person. Order of Deputy Commissioner dated 04.10.1979 shows the name of plaintiff as trustee along with 2 other trustees. The Permit order dated 25.11.1969 shows that the said order was issued to Unganna Gowder, Managing Trustee of Palamalai Ranganathar Temple. Similarly, all the documents produced by the plaintiff contain the names of plaintiff or his ancestors as trustees/managing trustees/Chairman, Board of Trustees. Thus, this Court is of the view that the plaintiff has proved through oral and documentary evidence that plaintiff and his ancestors are hereditary trustees of Palamalai Ranganathar temple and if non-hereditary trustees

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were appointed, hereditary trustees can have right to prove them as hereditary trustees. Point No.1 is answered accordingly.

18. **Point No.2:**

Before passing the order by second defendant, due notice of enquiry was published in the office notice O.A.No.16/90 B1 dated 16.05.1990 and it was served on the plaintiff and respondents therein and the same was also published in the temple, in the village Chavadi and in the Panchayat Office through the Inspector, HR & CE Department, Mettupalayam and atakshies received. Based on the oral and documentary evidences produced by the plaintiff and 'no objection' memo filed by the counsel appearing for the respondents therein, the second defendant has come to the conclusion that the plaintiff and his ancestors were managing the temple for more than three generations continuously without break; though the plaintiff and his brother were appointed as Trustees by the Department, the management of the temple has always been vested with them and the appointment done by the department will not take away the right to claim the hereditary trusteeship as they have not parted with the management of the temple.

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This order of the second appellant was passed on 03.09.1990.

19. Ten years after the above said order of the second defendant, the first defendant, suo-motu initiated revision in S.M.R.No.3/2000 D2 under Section 69(2) of the HR & CE Act on the ground that the first defendant had not discussed any documentary evidence to hold that the plaintiff has hereditary right in the management of the temple and as if the deity of the temple could not have been founded by the ancestors of the plaintiff as if it was a 'suyambu'. All of a sudden, first defendant posted the revision petition for final disposal without notice to all interested parties and by an order dated 04.05.2006, first defendant set aside the order of the second defendant made in O.A.No.16 of 1990, directing the second defendant to formulate a scheme under Section 64(1) of the HR & CE Act providing for appointment of non-hereditary trustees in Gowda and Naidu Communities observing that there were non-hereditary trustees to the temple, that executive officer of the temple had been appointed under Section 45(1) of HR & CE Act, that the plaintiff has not produced any documents to prove his right and that therefore, the trusteeship of the temple is not hereditary.

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20. It has been specifically pointed out in the notice issued by the first defendant that that when there was 'suyambu', one cannot found or installed in the temple. Even the deity is a Suyambu, poojas can be performed and temple for the said Suyambu could be constructed only after the deity was found by somebody and in this case, it is the case of the plaintiff that Kalidoss has found the Suyambu deity and plaintiff's ancestors constructed the temple, made developments and performing poojas to the deities in the temple. To refute the same, no evidence is produced on the side of the defendants. Apart from that, no complaint received from the villagers/public/any community people, like Naidus, Irulas etc., on declaring the plaintiff as hereditary trustee, even though the name of community people, like Naidus, Irulas etc., shown as trustees in the Patrikas produced by the plaintiff. Apart from that, one Thiru.R.Srinivasan, S/o.Rangulu Naidu, who belonged to Naidu Community was examined as PW.2 before the Deputy Commissioner and he himself deposed that petitioner and his ancestors were managing the affairs of the temple and noboby else managed the same. Hence, this Court comes to the conclusion that the other community people like

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Naidus, Irulas are only non-hereditary trustees and this plaintiff and their ancestors alone are hereditary trustees. Even though the first defendant has the power of suo-moto revision and no time limit fixed for suo-motu revision, the order passed by the first defendant suo-motu, without giving notice to the plaintiff, defendants 3 to 5 is contrary to Section 68(1) of HR & CE Act. Apart from that no complaint received from anybody or other communities/non-hereditary trustees, viz., Naidus and Irulas about declaring the plaintiff and his ancestors as hereditary trustees. Even though the Irula Community people like Kuppusamy and Duraisamy acted as trustees, they cannot be hereditary trustees, but they can be non-hereditary trustees and their generations of Irula community has not challenged the hereditary trusteeship of plaintiff and their ancestors. As against the order of the second defendant passed in O.A.No.16/1990, there was no regular appeal by any one in the village or in the surroundings under Section 69(2) of HR & CE Act. No one in the village approached the first defendant and gave any petition to initiate suo-motu revision against the order of the second defendant, which shows that the villagers have accepted the management of the temple by the hereditary trustee of the temple all these years. Hence, this Court

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answers this point that the order of first appellant in setting aside the order of the second appellant is not correct.

21. **Point No.3:**

As already discussed, this Court came to the conclusion that plaintiff, before the Deputy Commissioner as well as the trial Court, has proved through oral and documentary evidence that plaintiff and his ancestors are hereditary trustees of Palamalai Ranganathar temple. Therefore, the plaintiff stands on his own legs. But the appellants/defendants have not produced any oral or documentary evidence to disprove the genealogy stated by the plaintiff. There is no evidence produced on the side of the defendants to refute the statement made by the plaintiff that the plaintiff and his ancestors are managing the affairs of the temple as hereditary trustees and temple jewelleries are in the hands of plaintiff and his ancestors and they are subject to audit and the trustees appointed during emergency were not administering the temple and they cannot do the administrative work of the temple properly/wholly and they can only frame resolution under Section 47(2) of HR & CE Act. Eventhough non-hereditary trustees were appointed by

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the department, it cannot take away the right of plaintiff as hereditary trustee in managing the affairs of the temple and the plaintiff cannot relinquish his right of hereditary trusteeship. Even if the plaintiff relinquishes his right as hereditary trustee, the other family members of the plaintiff can play the role of hereditary trustee and nobody can interfere with the management and administration of the temple by the plaintiff or his family members as hereditary trustees. Hence, this Court is of the view that the trial Court has elaborately analysed all the aspects and came to the correct conclusion and therefore, the judgment and decree of the trial Court warrant no interference from this Court. Accordingly, Point No.3 is answered

22. In fine, this Appeal Suit is dismissed. The judgment and decree dated 14.02.2008 passed in O.S.No.568 of 2006 by the learned II Additional Subordinate Judge, Coimbatore is hereby confirmed. No costs.

Mra 14.07.2022
Index : Yes / No
Internet : Yes
Speaking order : Yes / No

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To,

1. The II Additional Subordinate Judge,
   Coimbatore.

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

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A.S.No.224 of 2009

S.KANNAMMAL, J.,

mra

Judgment in
A.S.No.224 of 2009

14.07.2022