



C.R.P.No.3947 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3947 of 2022
and C.M.P.No.20572 of 2022

1.A.Nagaraj
2.A.Ramesh
3.A.Babu
4.A.Sundaram
5.S.Nataraj Achari
6.N.Yuvaraj

...Petitioners

Vs.

Arulmigu Kasi Vishwanathar Temple
Big Vinayagar Street, Nadupet,
Gudiyatham Town, Vellore District,
rep. Herein by its Hereditary Trustee
R.N.Subramaniyan (Died)

S.Sivakumar

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the fair and decretal order dated 24.08.2022 made in I.A.No.2 of 2022 in O.S.No.91 of 2020 on the file of the Additional District Judge (FTC), Vellore District.

For Petitioners : M/s.V.M.G.Ramakannan
For Respondents : No Appearance

ORDER

This Civil Revision Petition is filed by the revision petitioners challenging the order passed by the Court below allowing the amendment application filed by the respondents.



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2. The 1st respondent/plaintiff is a temple which was represented by hereditary trustee R.N.Subramaniyan. The suit was filed by the respondents against the petitioners seeking declaration of respondent's title and for other reliefs. Pending suit the original hereditary trustee R.N.Subramaniyan passed away and his son namely S.Sivakumar filed a petition to substitute his name as a hereditary trustee in the place of deceased father. In order to substitute his name he filed a petition in I.A.No. 2 of 2022 seeking amendment of the plaint so as to include his name in shorter and longer cause title of the plaint in the place of the deceased father.

3. The said application was resisted by the petitioners herein on the ground that the proposed hereditary trustee namely S.Sivakumar had only filed an application before the HR & CE Department seeking his formal recognition as hereditary trustee. When no order has been passed by the department, he is not entitled to pursue the suit as a hereditary. Rejecting the said contention of the petitioners and the Court below allowed the amendment application and aggrieved by the same the petitioner is before this Court.

4. It is settled law hereditary trustees are not appointed by the HR & CE



Department. The moment earlier hereditary trustee dies, the next person in the line of succession will step in to the shoes of the original hereditary trustee. It may be useful to refer to the observations of this Court in ***N.Muthuvali Vs The Joint Commissioner*** reported in ***[2002 (5) CTC 31]***. In the above said case, a learned Single Judge of this Court, after referring to the decision of a Division Bench of this Court, observed as follows:-

“6. Section 54 of the Tamil Nadu Hindu Religions and Charitable Endowments Act, deals with filling up of vacancies for the post of hereditary trustee, according to which, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.

*7. This Court, in **Prem Anand v. The Commissioner, H.R. & C.E.** reported in 1990 (1) LW 144, interpreting Section 54 of the Act, has held as follows:*

“A fit person had been appointed earlier when the proceedings were pending as against the petitioner's father. The petitioner had applied to the first respondent that he being the person entitled to succeed his father as hereditary trustee, should be appointed and no fit person should be appointed in that place. The first respondent passed an order on 15.3.1989 to the effect that the appointment of fit person was only a temporary measure which would



not impinge on the right of the petitioner to succeed when the permanent vacancy arises under S. 54(1) of the Act. The petitioner was, therefore, requested to wait till the enquiry against his father was over. After the enquiry was over and the petitioner's father was removed by order of the first respondent on 24.7.1989, the petitioner sought for a direction from the first respondent to the fit person to hand over charge to the petitioner herein as the next hereditary trustee. The petitioner received an order from the first respondent on 22.8.1999 that he should apply to the Deputy Commissioner for appropriate orders under S. 54(1) of the Act as the Deputy Commissioner is the competent Authority. The petitioner sent a reply through his advocate on 1.9.1989 inviting the attention of the first respondent to the position that there is no necessity for making any application for the succeeding hereditary trustee and that succession is automatic as recognised by the provisions of the Act. According to the petitioner, there is no reply so far to the said communication.

Under S. 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next



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in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act.”

*8. Since the explanation to Section 54(3) of the Act contemplates that the Joint Commissioner and the Deputy Commissioner shall have due regard to the claim of the members of the family, if any, entitled to succeed to the office of hereditary trustee, a Division Bench of this Court, by order dated 19.10.1994 made in W.A. No.440 of 1994 and W.P. No. 20075 of 1993, following the decision in **Prem Anand v. The Commissioner, H.R. & C.E.** reported in 1990 (1) LW 144, held that in the absence of rival claimants, the next member of the family need not get a declaration that he is a hereditary trustee.”*

5. The order passed by the HR & CE Department recognizing the next person in the line of succession as a next hereditary trustee is only a formal one and it is only declaratory in nature. The next person in the line of succession succeeds to the office of trusteeship by virtue of his status as a next person in line of succession, not based on the order passed by the HR & CE Department. Therefore, even in the absence of a formal order passed by the HR & CE Department, the next person in line of succession is entitled to assume all charges of hereditary trustee and discharge the duties of the hereditary trustee. If at all, it is only a rival claimant



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to the office of hereditary trustee can question his function as hereditary trustee and

it is not open to the third party revision petitioner to question the same. Therefore, I

do not find any illegality or irregularity in the order passed by the Court below.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently,

connected miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

1.The Additional District Judge (FTC),
Vellore District.



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S.SOUNTHAR, J.

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