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A.S.No.79 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 2.11.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**A.S.No.79 of 2017**

1.Ranganathan (died)

2.Govindasamy

3.Murugesan

4.Perumal

5.Mariyappan

6.Palaniammal

7.Nadarajan

8.Sakrapani

9.Perumalsamy

... Appellants

(Appellants 6 to 9 brought on record as LR's of the deceased 1<sup>st</sup> appellant vide order of the Court dated 08.02.2020 made in C.M.P.Nos.2228, 2231 and 2232 of 2020 in A.S.No.79 of 2017)

VS

1.K.Madhan

1/26



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2.M.Krishna Jayanth

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3.The Joint Commissioner  
Hindu Religious and Charitable Endowments  
Sri Kottaimariamman Koil Mandapam  
Salem.

... Respondents

**Prayer:** First Appeal is filed under Section 96 of the Civil Procedure Code, prayer, to set aside the judgement and decree in O.S.No.234 of 2014 on the file of the learned Subordinate Judge, Uthangarai dated 17.04.2015.

|                |                                                 |
|----------------|-------------------------------------------------|
| For Appellants | : Ms.R.Poornima<br>for Mr.T.Panchatsaram        |
| For R1 and R2  | : Mr.T.Dhanasekaran                             |
| For R3         | : Mr.M.Bindran<br>Additional Government Pleader |

### **JUDGMENT**

The defendants 1 to 5 are the appellants.

2. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a suit in O.S.No.234 of 2014 for declaration that they are the joint hereditary trustees of the suit temple along with the appellants 1 to 5 herein and for a consequential direction to the 3<sup>rd</sup>



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respondent to pass a suitable order giving effect to such declaration. They also sought for injunction restraining the appellants from interfering with the right to function as hereditary trustees of the suit temple. The suit was decreed in part granting a decree in favour of the 1<sup>st</sup> respondent declaring that he is joint hereditary trustees along with the appellants 1 to 5 herein and for a consequential direction to the 3<sup>rd</sup> respondent to enforce the said decree of declaration. The Trial Court also granted an injunction restraining the appellants from interfering with the hereditary trusteeship of the 1<sup>st</sup> respondent. Holding that the 2<sup>nd</sup> respondent being son of the 1<sup>st</sup> respondent is not entitled to maintain suit during life time of 1<sup>st</sup> respondent, dismissed the suit in so far as he is concerned.

3. Aggrieved by the said decree, the appellants 1 to 5/defendants 1 to 5 filed this appeal. While pending the appeal, the 1<sup>st</sup> appellant passed away and hence, the appellants 6 to 9 were brought on record as his legal representatives.

4. According to the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs, a small village



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temple by name Sri Chendrayasamy Temple at Kudimenahalli Village, Agaram Post, Pochampalli Taluk, Krishnagiri District has been under management and poojariship of the 1<sup>st</sup> and 2<sup>nd</sup> respondents and their ancestors from time immemorial for several decades. The trusteeship and poojariship of the said temple vested with the ancestors of the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs. According to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, one Mattukaran @ Kali Gounder and his brother Chinna Gounder were their ancestors had been doing poojas and managing the affairs of the suit temple. The 1<sup>st</sup> and 2<sup>nd</sup> respondents and the appellants are the descendants of said Mattukaran @ Kali Goundar and his brother Chinna Goundar. It was averred in the plaint that in the year 1987, the deceased 1<sup>st</sup> appellant/Ranganathan and 3 others filed an application before the Deputy Commissioner of HR & CE Department, Salem under Section 63 (b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 22/1959 in O.A.No.254 of 1987 and got orders that they were the hereditary trustees of the suit temple without knowledge of the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs. It was stated that the petitioners therein were pangalis (sharers) of the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs. The applicants in O.A.No.254 of 1987 have



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suppressed the line of succession of the plaintiffs in the genealogy in the application filed before the department by leaving the plaintiffs and their ancestors in the genealogy. It was stated that the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs were descendants of said Mattukaran @ Kali Gounder as described in para 3 of the application in O.A.No.254 of 1987. It was further stated that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were the main persons in the management and performance of the poojas of the temple. Since the 1<sup>st</sup> appellant and the other applicants in O.A.No.254 of 1987 obtained an order behind their back as if they alone were holding the office as hereditary trusteeship. The 1<sup>st</sup> and 2<sup>nd</sup> respondents were constrained to file the suit seeking declaration.

5. The appellants herein filed a detailed written statement and resisted the suit, wherein the averment found in plaint that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were performing poojas and maintaining the temple was specifically denied. It was specifically mentioned that the 1<sup>st</sup> and 2<sup>nd</sup> respondents were poojaris of the temple but they were not hereditary trustees of the temple. It was admitted by the appellants that Mattukaran @ Kali Gounder and his brother



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Chinna Gounder and their ancestors had been doing poojas and managing the affairs of the temple. The appellants raised a plea that though the appellants and the 1<sup>st</sup> and 2<sup>nd</sup> respondents were descendants of the aforesaid persons, it was not true to say that all the descendants of the aforesaid persons were hereditary trustees of the temple. Especially plea was raised that all the descendants of the above said common ancestors had agreed and consented that eldest sons of Mattukaran @ Kali Goundar and Chinna Goundar by name Perumal Goundar and Pullar Goundar respectively and their heirs alone are entitled to maintain the temple as hereditary trustees on behalf of the other descendants. Thus, out of 126 descendants of Mattukaran @ Kali Goundar and Chinnaiya Goundar, the appellants/defendants 1 to 5 alone had been maintaining the suit temple as hereditary trustees to the knowledge and consent of other pangalis (sharers) including the 1<sup>st</sup> and 2<sup>nd</sup> respondents. It was further submitted that the hereditary trusteeship of the appellants was declared by the competent statutory authority viz., the 3<sup>rd</sup> respondent herein. It was also submitted that without challenging the order passed by the competent authority by filing an appeal in the manner known to law, the suit was not maintainable. That too after lapse of 23 years.



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WEB COPY 6. On these pleadings, the parties went to trial. On behalf the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs, five witnesses were examined as PW.1 to PW5 and 18 documents were marked as Ex.A1 to Ex.A18. On behalf of the appellants/defendants 1 to 5, three witnesses were examined as DW.1 to DW.3 and 5 documents were marked as Ex.B1 to Ex.B5.

7. The Trial Court on consideration of the oral and documentary evidences, came to the conclusion that the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs were entitled to declaration that they are joint hereditary trustees along with appellants and for a other consequential relief as mentioned above. Aggrieved by the said decree, the appellants/defendants 1 to 5 have come up with this appeal.

8. Ms.R.Poornima, learned counsel for the appellants submitted that the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs having failed to challenge the order passed by the Deputy Commissioner of HR & CE under Ex.A2, dated 07.08.1991 declaring that the deceased 1<sup>st</sup> appellant and other co-applicants therein as



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hereditary trustees of the temple, not entitled to maintain the present suit. The learned counsel for the appellants elaborated it by saying against the order passed by the Deputy Commissioner of HR & CE under Section 63 (b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, an appeal shall lie to the Commissioner of HR & CE under Section 69 of said Act and against the order passed in such an appeal, the parties are entitled to file a statutory suit under Section 70 of the said Act.

9. In the case on hand, the 1<sup>st</sup> and 2<sup>nd</sup> respondents without filing an appeal challenging the order, straight away filed a suit that too after a lapse of 23 years. Hence, the suit is not only maintainable but also time barred. The learned counsel further submitted that the power to declare that 1<sup>st</sup> and 2<sup>nd</sup> respondents as joint hereditary trustees along with appellants 1 to 5 is exclusively within the domain of the statutory authorities constituted under the HR & CE Act and hence, the suit is barred under Section 108 of HR & CE Act. In support of her contention, she relied on the judgement reported in **2013 (3) MWN (Civil) 35 (R.Balasundaram vs. M.Ramalingam)**.

10. Per contra, Mr.T.Dhanasekaran, learned counsel appearing for the



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1<sup>st</sup> and 2<sup>nd</sup> respondents submitted that the Deputy Commissioner or Joint Commissioner of HR & CE exercising jurisdiction under the Act can only decide whether the office of the trusteeship of the temple is hereditary or not and he cannot go into the further question as to who among the rival claimants to the hereditary trusteeship is entitled to act as a hereditary trustee. By relying on the judgement reported in **1981 (1) MLJ page 392**, the learned counsel submitted that if the question is who among rival claimants is entitled to act as a hereditary trustee, the said question can be decided only by the Civil Court not by the authorities constituted under the HR & CE Act.

11. The learned counsel also had taken this Court to the admissions of the deceased 1<sup>st</sup> appellant/1<sup>st</sup> defendant who was examined as DW.1 and submitted that the participation of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in the management of the temple was admitted by the 1<sup>st</sup> appellant himself and hence, the entitlement of the 1<sup>st</sup> respondent to manage the affairs of the temple stands proved by admission.

12. Heard the arguments of Ms.R.Poornima, learned counsel for the



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appellants and Mr.T.Dhanasekaran, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents and Mr.M.Bindran, learned Additional Government Pleader for the 3<sup>rd</sup> respondent and perused the typed-set of papers.

13. On the basis of the pleadings of the parties, the evidence available on record and contentions of the learned counsel, the following points are arising for consideration.

- (a) Whether the suit is maintainable without filing statutory appeal challenging the order passed by the Deputy Commissioner of HR & CE under Ex.A2.
- (b) Whether the suit is barred under Section 108 of HR & CE Act.
- (c) Whether the 1<sup>st</sup> and 2<sup>nd</sup> respondents are entitled to a declaration that they are joint hereditary trustees along with the appellants 1 to 5.

**Points: 1 to 3**

14. Since all the three points arising for consideration are interlinked, all the points are taken up for consideration jointly.

15. It is the contention of the learned counsel for the appellants that the



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suit is not maintainable by the 1<sup>st</sup> and 2<sup>nd</sup> respondents without challenging the order passed by the Deputy Commissioner of HR & CE Department under Ex.A2, dated 07.08.1991 recognising the 1<sup>st</sup> appellant and other applicants in O.A.No.254 of 1987 as hereditary trustees of the temple. Section 63(b) of the HR & CE Act, reads as follows:-

*“63. [Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters.-Subject to the rights of suit or appeal hereinafter provided, [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall have power to inquire into and decide the following disputes and matters:-*

*(a) .....*

*(b) whether a trustee holds or held office as a hereditary trustee”*

16. The reading of the above Section makes it clear that Joint Commissioner or Deputy Commissioner of HR & CE as the case may be appointed under the HR & CE Act, is empowered to decide the question whether the trustee of the temple holds or held the office as hereditary trustees. He can only decide about the nature and character of the trusteeship of the temple. In other words, the jurisdiction of the Deputy Commissioner is



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confined to the question whether the trusteeship of the temple is hereditary or non-hereditary. However, he is not competent authority to decide the question who are all entitled to act as a hereditary trustees. The moment he decides the office of the trusteeship of a particular temple is hereditary in nature his jurisdiction ceases. He is not entitled to go into the further question who are all the persons entitled to act as a hereditary trustees.

17. The Division Bench of this Court in a case law reported in **1968 (1) MLJ 119 (A.Krishnaswami Raja vs. Krishna Raja)** observed as follows:-

*“The jurisdiction of the Deputy Commissioner under Section 57(b) is confined to a decision whether a trustee holds or held office as a hereditary trustee. In other words, the Deputy Commissioner can only decide as to the status of the office of the trusteeship, namely, whether it is hereditary. He is not competent to go into the further question as to which of the competing claimants is a hereditary trustee or whether both are joint hereditary trustees. That is a matter not covered by Section 57 of the Act and has to be decided only by a separate suit.”*

18. In the above said case law, the appellant therein filed an application



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under Section 57(b) of the Madras Hindu Religious and Charitable Endowments Act (XIX of 1951) before the Deputy Commissioner of HR and CE. He held that the appellant therein was the sole hereditary trustee of the temple in question. The said order was challenged by the 1<sup>st</sup> respondent therein by filing an appeal before the Commissioner and the Commissioner allowed his appeal and set aside the order passed by the Deputy Commissioner. The order passed by the Commissioner in appeal was challenged by the appellant therein by way of statutory suit under Section 62 of the said Act. The Hon'ble Mr.Justice K.Veeraswami speaking for the Division Bench of this Court observed that the jurisdiction of the Deputy Commissioner under Section 57(b) of the Madras Hindu Religious and Charitable Endowments Act, 1951 (which was *pari materia* equivalent to the Section 63(b) of the present Hindu Religious and Charitable Endowments Act) is confined to a decision whether the trustee holds or held the office as a hereditary trustee.

19. It was held that the Deputy Commissioner can only decide as to the



status of the office of trustees viz., whether it is hereditary or not and he is not competent to go into the further question as to which of the rival claimants is hereditary trustee or whether both the claimants are joint hereditary trustees. It was also held that the said question has to be decided only by a separate suit.

20. The facts of the case dealt with by the Division Bench of this Court in ***A.Krishnaswami Raja vs. Krishna Raja*** reported in ***1968 (1) MLJ 119*** was identical similar to the facts of the present case. The similar view was expressed by a learned Single Judge of this Court in a case law reported in ***1971 (1) MLJ 358 (S.Rangayya Goundar vs. Karuppa Naicker)***. The relevant observations of this Court is as follows:-

*“7. In Velayudha Goundan v. Ponnuswami Udayar, Somayya, J., had to consider the identical question, that if the right of one set of villagers to conduct an Utsavam in a temple against the opposition of another set of villagers, and the learned Judge expressed that the right of an individual to worship in a particular form as in the past is a civil right, that he is entitled to the protection of the Court in exercise of that right, that a suit by one set of villagers against the aggressive*



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*set of other villagers who' prevented the plaintiffs from peacefully carrying on the proceedings and worship of a deity in a temple does not fall within Section 73 of Madras Act II of 1927, and that as such a suit is maintainable in a civil Court for a permanent injunction restraining the defendants from interfering with the performance of the utsavam in the suit temple. In **Chinnathambi Mooppan v. Mamundi Mooppan**, Veeraswami, J., (as he then was) expressed while dealing with a similar question that:*

*“the question, as is clear from the pleadings, is confined to the rival claims, whether the office is vested in the community of pallars or whether the first defendant is entitled to it as of right. Where the controversy centers round as to which of the rival claimants to the office is entitled to it, it squarely does not fall within the ambit of Section 63(e).....”*

*In Krishnaswami Raja v. Krishna Raja, a Division Bench of this Court had to consider the scope of a similar section, Section 57 (b) of Madras Act XIX of 1951 wherein it was observed:*

*“The jurisdiction of the Deputy Commissioner under Section 57(b) is confined to a decision whether a trustee holds or held office as a hereditary trustee. In other words, the Deputy Commissioner can only decide as to the status of the office of the trusteeship, namely, whether it is hereditary. He is not competent to go into the further question as to which of the competing claimants is*



*a hereditary trustee or whether both are joint hereditary trustees. That is a matter not covered by Section 57 of the Act and has to be decided only by a separate suit.”*

*Thirumalaiswami Naicker v. Villagers of Kadambur, Athur Taluk, is also a decision of a Bench wherein it has been expressed:*

*“Under Section 9, Civil Procedure Code, a litigant having a grievance of a civil nature has, independently of any statute, a right to institute a suit in a civil Court under the provisions of the Civil Procedure Code, unless cognisance of the suit is either expressly or impliedly barred. If a suit is otherwise within the jurisdiction of the civil Court the person who seeks to oust the jurisdiction of that Court must affirmatively establish the bar, every presumption being in favour of the jurisdiction of the Court. Exclusion of the jurisdiction of a civil Court in a case where a person asserts a right and seeks remedy cannot be readily inferred. Exclusion of the suit in question from the cognisance of the Court must be either expressed or clearly and necessarily implied. A reading of Section 93 shows that it does not impose an absolute bar on the maintainability of a suit in a civil Court. It provides, that a suit of the nature contemplated therein, can be instituted only in conformity with the provisions of the Act. Clearly a suit or other legal proceedings in respect of matters not contemplated in the section can be instituted in the ordinary way.”*

*It is clear from the principles laid down in these latter decisions that the relief claimed in the suit will not fall within the purview of Section 63 of the Act and as such the bar under*



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*Section 108 will not apply. For the same reason the orders passed in O.A. No. 79 of 1964 and O.A.No.78 of 1964 holding that the applications are not maintainable cannot also bar the suit (under Section 70 of the Act. As already stated the question here is not as to whether the office of the trusteeship in the suit temple is hereditary or not. Both the plaintiffs and defendants claim that they are entitled to be trustees of the temple and claim to have exercised their right hereditarily. Hence the substantial dispute between the parties is as to which of them are the persons entitled to be in management of the temple. The dispute centres round as to which of the rival claimants is entitled to celebrate the annual festival and such a dispute cannot fall within the ambit of Section 63.”*

21. If there are rival claimants to the office of the hereditary trusteeship, Civil Court alone is entitled to decide the rival claims and it is not within the domain of the statutory authorities constituted under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 to decide the said question.

22. In the case on hand, the deceased 1<sup>st</sup> appellant and 3 other persons under whom the 2<sup>nd</sup> to 5<sup>th</sup> appellants are claiming trusteeship filed an



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application before the Deputy Commissioner of HR and CE under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in O.A.No.254 of 1987 and got an order that they were holding office of the trusteeship of the temple in question as hereditary trustees. The 1<sup>st</sup> and 2<sup>nd</sup> respondents were not made as a party to the said application.

23. Admittedly, the appellants and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are descendants of Mattukaran @ Kali Goundar and his brother Chinna Goundar. It is also not in dispute that the hereditary trusteeship of the temple was held by the said Mattukaran @ Kali Goundar and his brother Chinna Goundar and their ancestors. Therefore, any order obtained by the deceased 1<sup>st</sup> appellant and other applicants in O.A.No.254 of 1987 without impleading the 1<sup>st</sup> and 2<sup>nd</sup> respondents who are all descendants of the very same family will not bind them or affect their right to hereditary trusteeship. On the other hand, the benefit of that order declaring trusteeship of the temple as hereditary, will enure to them. Under Ex.A2 it was declared by Deputy Commissioner that deceased 1<sup>st</sup> appellant and other applicants in O.A.No.254 of 1987 held the office as hereditary trustees. Therefore, the hereditary nature of the



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trusteeship of the temple was determined by the Deputy Commissioner and he was competent to decide the same. However, the said statutory authority is not entitled to go further and to decide who are all entitled to hold the office of the hereditary trusteeship. Since the application was filed by the deceased 1<sup>st</sup> appellant and other applicants before the Deputy Commissioner without impleading other descendants of the family, the authority concerned in its order declared that those applicants were holding the office of trusteeship as hereditary trustees. It does not mean other descendants of the family are not entitled to hereditary trusteeship. If the other descendants of the family makes a rightful claim for hereditary trusteeship, then there exist a rival claim to the office of hereditary trusteeship and consequently, the said question cannot be gone into by the statutory authority and it will fall within the jurisdiction of the Civil Court. Because the right to hereditary trusteeship of a temple depends on a civil status of a person (i.e. descendants of a common ancestor who held the office of hereditary trusteeship). He acquires the right to administer the temple as hereditary trustee by virtue of his birth in the family of aforesaid Mattukaran @ Kali Goundar and his brother Chinna Goundar. The said civil status of a person can never be decided by the statutory



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authorities constituted under the HR & CE Act. Therefore, I have no hesitation in holding that the present suit filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents for a declaration that they are joint hereditary trustees along with appellants 1 to 5 is very much maintainable before the Civil Court.

24. Though the present suit was stated to be filed under Order 7 Rule 1 to 6 read with Section 70 of the HR & CE Act, the perusal of the averments and relief sought for in the suit would make it clear that it is a suit for declaration of civil status of the person to act as a hereditary trustee and hence, it cannot be termed as a statutory suit filed under the Section 70 of the Act.

25. It is settled law quoting a wrong provision will never coming in the way of deciding the substantial rights of the parties. Further, there is no need for the 1<sup>st</sup> and 2<sup>nd</sup> respondents to challenge the order passed by the Deputy Commissioner in the sense they accept the order in so far as it declares the office of trusteeship of the temple is hereditary. As far as the rival claim of the 1<sup>st</sup> and 2<sup>nd</sup> respondents for the office of the trusteeship is concerned, in



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view of my discussions earlier, it is exclusively within the domain of the Civil Court. Therefore, I concur with the findings of the Trial Court that the civil suit is maintainable.

26. The learned counsel for the appellant by relying on the judgement reported in **2013 (3) MWN (Civil) 35 (R.Balasundaram vs. M.Ramalingam)** submitted that the suit filed by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is hit by Section 108 of HR & CE Act. In the aforesaid decision relied on by the learned counsel for the appellants, the plaintiff therein filed a suit for declaration that he was the hereditary trustee of the temple on a specific pleading that his father established the temple and acted as a trustee and managed the property. It was factually held in that case, plaintiff therein failed to substantiate the plea that the temple was established by his father and consequently it was held the plaintiff therein was not entitled to declaration he sought for. When a plea was raised before the Appellate Court that plaintiff was entitled to a lesser relief of declaration that he was entitled to act as hereditary trustees along with defendant therein, this Court held that in view of the fact defendant already obtained an order from Deputy Commissioner, the plaintiff



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was not entitled to maintain a suit. The fact of the present case on hand is completely different.

27. In this case, both the parties admits that they are descendants of Mattukaran @ Kali Goundar and his brother Chinna Goundar. Some of their descendants filed an application before the statutory authority and obtained a declaration that they held office as hereditary trustees. Now, other descendants who are not party to the proceedings before the statutory authorities wants a declaration that they are also entitled to act as hereditary trustees along with the persons who obtained an order before the statutory authorities regarding hereditary nature of the trusteeship.

28. When the entitlement of the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs to act as joint hereditary trusteeship is resisted by the appellants 1 to 5, it becomes a rival claims to the office of hereditary trusteeship and hence, as authoritatively held by the Division Bench of this Court in **1968 (1) MLJ 119 (A.Krishnaswami Raja vs. Krishna Raja)**, the question falls within the exclusive jurisdiction of the Civil Court. The nature of the trusteeship of the



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temple is already declared as hereditary by the statutory authority. Now, the only question to be decided by the Civil Court is whether the plaintiff in the present suit are entitled to act as hereditary trustees along with the defendants. The said rival claims set up by the plaintiffs based on his civil status has to be decided only by the Civil Court. Therefore, I hold that the main controversy involved in the suit which is relating to the civil status is not within the exclusive domain of the statutory authorities under the HR & CE Act and therefore, the bar created under Section 108 of HR & CE Act is not at all attracted.

29. Coming to the factual scenario, the 1<sup>st</sup> and 2<sup>nd</sup> respondents/plaintiffs side witnesses PW.1 to PW.5 deposed about the involvement of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in the administration of the temple. The deceased 1<sup>st</sup> appellant/1<sup>st</sup> defendant was examined as DW.1. In his cross examination, he admitted that the descendant of Chinnaiyan and the 1<sup>st</sup> and 2<sup>nd</sup> respondents are heirs of Nallan @ Rangasamy mentioned in his O.A.No.254 of 1987. He also admitted that Mattukaran @ Kali Goundar administered the temple along with his father Chinnaiyan. The vernacular portions of his admissions are as



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follows:-

“.....

நான் சின்னையன் வழி குடும்பத்தில் வந்தவர்.

.....S

அந்த ஒ.ஏ.- ல் சொல்லப்பட்டுள்ள நல்லான் (எ) ரங்கசாமியின் வாரிசுகள் தான் இந்த வழக்கின் மனுதாரர் என்றால் சரிதான். ஒ.ஏ.மனுவில் மாட்டுக்காரன் என்னுடைய பாட்டனார் சின்னையனுடன் சேர்ந்து கோயில் பூசை மற்றும் நிர்வாகம் செய்து வந்தார் என்பதை ஒப்புக் கொள்கிறேன்.”

30. The above admission of DW.1 read along with genealogy tree would make it clear that Mattukaran @ Kali Goundar and his brother Chinna Goundar administered the temple and the 1<sup>st</sup> appellant and other applicants in O.A.No.254 of 1987 are descendants of Chinna Goundar and this respondents 1 and 2 are descendants of Nallan @ Rangasamy s/o Mattukaran @ Kali Goundar. Therefore, it is clear that both the plaintiffs and defendants are descendants of common ancestors who held the trusteeship of the temple in question.

31. Now, under Ex.A2 the nature of the trusteeship of temple is held to be hereditary by the statutory authority. Some of the descendants of aforesaid common ancestors viz., 1<sup>st</sup> and 2<sup>nd</sup> respondents claim they are also entitled to



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act as a hereditary trustees by virtue of the declaration granted under Ex.A2 with regard to the nature of trusteeship. Therefore, the claim made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents seeking declaration that they are entitled to act as hereditary trustees along with the 1<sup>st</sup> to 5<sup>th</sup> appellants stands proved by very admission of DW.1.

32. In view of the discussions earlier, I do not find anything to interfere with the conclusions reached by the Trial Court.

**In nutshell :**

- (i) The First Appeal stands dismissed.
- (ii) However, by taking into consideration the relationship of the parties, there shall be no order as to costs.
- (iii) Consequently, the connected civil miscellaneous petition if any closed.

2.11.2022

Index : Yes / No  
Speaking Order : Yes / No  
dm



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**S.SOUNTHAR, J.**

dm

To

1.The Subordinate Judge,  
Uthangarai.

2.The Joint Commissioner  
Hindu Religious and Charitable Endowments  
Sri Kottaimariamman Koil Mandapam  
Salem.

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