



A.S(MD)Nos.345 of 2005 & 53 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S(MD)Nos.345 of 2005 & 53 of 2009

and

CMP(MD)No.2528 of 2006

A.S.No.345 of 2005:-

1. V.Vellapandi Thevar (Died)

2. Muthiah Thevar

3. Irulappa Thevar

4. Chelliah Thevar (Died)

5. Murugaiah

6. Paramayee

7. Murugaraj

(A5 to A7 are brought on record as legal heirs of the deceased A1 vide order dated 14.12.2020 in CMP(MD)Nos.8477 to 8482 of 2017 in A.S(MD)No.345 of 2005)

8. Seenithai

9. Poosai Pandian

10. Velthuraichi

11. Paramasivam

12. Muthupandian

... Appellants

(A8 to A12 are brought on record as legal heirs of the deceased A4 vide order dated 14.12.2020 in CMP(MD)Nos.8477 to 8482 of 2017 in A.S(MD)No.345 of 2005)



A.S(MD)Nos.345 of 2005 & 53 of 2009

VS.

1. C.Balasubramanian
2. The Special Commissioner and Commissioner,
H.R & C.E Department,
Nungambakkam,
Chennai-34.
3. The Joint Commissioner,
H.R & C.E Department,
Trivandrum Road,
Palayamkottai,
Tirunelveli.
4. The Assistant Commissioner,
H.R & C.E Department,
South High Ground Road,
Tirunelveli.
5. State of Tamil Nadu, rep. through
the District Collector,
Kokkirakulam,
Tirunelveli District,
Tirunelveli.

... Respondents

Appeal Suit filed under Section 70(ii) of the Hindu Religious and Charitable Endowments Act, 1959, against the judgment and decree dated 21.11.2005 made in O.S.No.49 of 2004 on the file of the Principal Sub Court, Tirunelveli.

For Appellants : Mr.V.Meenakshi Sundaram
For R1 : Mr.Samuel Gunasingh
For R2 to R5 : Mr.Lingadurai
Special Government Pleader



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A.S(MD)No.53 of 2009:-

1. The Special Commissioner and the Commissioner,
Hindu Religious and Charitable Endowments
Admn Department, office located at Nungambakkam,
Chennai-34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments
Admn Department, office located at Tiruvananthapuram Road,
Palayamkottai, Tirunelveli.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Admn Department, office located at South High Grounds Road,
Tirunelveli-2. ... Appellants

vs.

1. Balasubramanian
2. Vellappandi Thevar
3. Muthia Thevar
4. Irulappa Thevar
5. Chelliahthevar
6. The State of Tamilnadu, through the District Collector,
Office located at District Collector Compound,
Kokkirakulam, Tirunelveli District. ... Respondents

Appeal Suit filed under Section 75(2) of the Hindu Religious and Charitable Endowments Act, 1959, against the judgment and decree dated 21.11.2005 made in O.S.No.49 of 2004 on the file of the Principal Sub Court, Tirunelveli.



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A.S(MD)Nos.345 of 2005 & 53 of 2009

For Appellants : Mr.Lingadurai
Special Government Pleader
For R1 : Mr.Samuel Gunasingh
For R3 & R4 : Mr.V.Meenakshi Sundaram

COMMON JUDGMENT

The first respondent in both the appeals as a plaintiff filed a suit in O.S.No.49 of 2004 on the file of the Principal Sub Court, Tirunelveli, against the officials of the HR & CE Department, District Collector, Tirunelveli and four other private parties, to set aside the order passed by the first defendant/Special Commissioner and the Commissioner, HR & CE., Chennai, in A.P.No.22/2002, dated 26.09.2003 and for a declaration to declare the plaintiff as hereditary trustee of the suit temple. After trial, the trial Court, by judgment and decree dated 21.11.2005, decreed the suit. Aggrieved by the said judgment and decree, the private defendants filed A.S(MD)No.345 of 2005 and the officials of the HR & CE Department filed A.S(MD)No.53 of 2009.

As pleadings and submissions are common, both the appeals are heard together and disposed by this common judgment.



2. Brief facts stated in the plaint are as follows:-

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About 100 years ago, one Arunachala Thevar established the suit temple namely, Thanthondri Amman Kovil in Veeranam Village. Originally, the suit temple was formed in zamin land and after the enactment of Zamindari Abolition Act, 1950, the land in which, the suit temple was established, was classified as grama natham. From that date, the said Arunachala Thevar administered and developed the suit temple through his income and the funds collected from the villagers. After his death, his son Chinna Puliappa Thevar administered the suit temple from 1982. He purchased properties for the suit temple in the capacity of managing trustee of the suit temple and the patta for the suit temple also stands in his name as managing trustee. During his life time, he developed the suit temple by constructing a compound wall, obtaining electricity connection and dug well. He also put up the idols of lord Karuppasamy and Kathavarayan in the suit temple and purchased Gold Thali and silver eye flower for Thanthondri Amman. After the death of Chinna Puliappa Thevar, his son/plaintiff administered the suit temple as managing trustee and the officials of the HR & CE Department also recognised him. During his life time, he purchased brass and aluminum



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vessels for the suit temple and further, kept a deposit in the Indian Overseas Bank, Veeranam. In this way, the plaintiff, his father and grandfather administered the suit temple as managing trustees without any objection by the villagers. However, now the fifth defendant and his relatives objected to the rights of Dharmakarta and filed O.A.No.8/90 before the Joint Commissioner, HR & CE/second defendant. After hearing both sides, the second defendant passed an order in favour of the plaintiff that he is the hereditary trustee of the suit temple. Against the said order, the fifth defendant and two others filed an appeal in A.P.No.22/2002 before the first defendant/Special Commissioner and the Commissioner, HR & CE., Chennai, who after considering the oral and documentary evidence adduced on either side, passed an order dated 26.07.2003, holding that the office of the trusteeship of the suit temple is non hereditary. According to the plaintiff, without considering the above-stated factual position and the order passed by the second defendant, the first defendant erroneously allowed the appeal thereby denying the hereditary trusteeship of the plaintiff to the suit temple. Hence, the suit.



3. Brief facts in the written statement are as follows:-

The official defendants 1 to 4 have filed a written statement stating that the suit is not maintainable due to lack of territorial jurisdiction of the trial Court and that the suit is also barred by limitation since it was not filed within 90 days of the order dated 26.09.2003 passed in A.P.No. 22/2002. The suit temple was established by the villagers in the zamin inam land and now it is classified as grama natham and the inam land register reveals that one Palani is the worshipper of the suit temple. There is no evidence that Arunachala Thevar established the suit temple and administered the same and that the suit temple was not established in the patta land of the plaintiff and his ancestors. The suit temple has landed properties measuring an extent of 8 acres and 68 cents in Survey No.111 and 71 cents in Survey No.258/8. Even in 1976, the suit temple was brought under the control of the HR & CE Department. The plaintiff's father and grandfather was elected as Dharmakarta to the suit temple by the village committee of Veeranam Village and they were granted permission by the village committee to access Bank Account No. 184. The purchase of properties for the suit temple by Chinna Puliappa Thevar was only in the capacity of Dharmakarta of the suit temple and



that the said properties were purchased out of the funds collected from the villagers which is evident from the recitals of those documents. Thus, the plaintiff cannot claim hereditary trusteeship. After the death of Chinna Puliappa Thevar, applications were invited for the post of trustee of the suit temple and as per the order dated 21.03.1984 of the Assistant Commissioner, HR & CE., the plaintiff was appointed as trustee to the suit temple. There were two groups in the village and they conducted kodai festival in the alternate years and for the festival, tax will be collected from the villagers. Thereafter, in the peace committee meeting held by the Tahsildar, the said two groups agreed to conduct festival separately. While so, the plaintiff sought permission to conduct kumbabishekam for the suit temple and at that time, the private defendants filed a writ petition before the High Court and pursuant to the order passed in the writ petition on 19.06.2002, kumbabishekam was conducted with the help of the department and festival committee of the suit temple. The plaintiff has no right to be a hereditary trustee. As per the directions of the High Court in the writ petition, a Thakkar was appointed for the suit temple, but the plaintiff did not hand over the administration and control of the suit temple to him. Even in O.S.No.



357/88 filed before the District Munsif, Tenkasi, the plaintiff has averred that the administration of the suit temple has been greatly done by the villagers and he specifically stated the duties and responsibilities of each person. Even before the second defendant, the plaintiff has stated that he was an appointed trustee of the suit temple and he had not stated that he is the hereditary trustee. Further, explanation has been given under Section 6(2) of the HR & CE Act and therefore, the plaintiff cannot claim hereditary trusteeship. Since no suit notice was served, the suit is not maintainable. Hence, the suit is liable to be dismissed.

3.1. Reiterating the above averments, the private defendants also filed a written statement stating that the plaintiff is not a hereditary trustee, whereas, he is only an appointed trustee by the HR & CE Department. Further, the plaintiff has not added necessary parties and hence, the suit is bad for non joinder of necessary parties.

4. Based on the above pleadings, the trial Court framed the following issues:-

(i) Whether the Court has territorial jurisdiction to try the suit?



(ii) Whether the suit is barred by limitation?

(iii) Whether it is correct to say that since the suit temple is a village public temple, the plaintiff cannot claim hereditary trusteeship?

(iv) Whether the plaintiff is entitled to the relief of declaration?

(v) To what other reliefs, the plaintiff is entitled to?

The following additional issue was also framed before the judgment:-

(i) Whether the suit is bad for non joinder of necessary parties?

5. In order to substantiate the case, on the side of the plaintiff, three witnesses were examined as PW1 to PW3 and 11 documents were marked as Exs.A1 to A11. On the side of the defendants, three witnesses were examined as DW1 to DW3 and 19 documents were marked as Exs.B1 to B19.

6. The trial Court, considering the pleadings, oral and documentary evidence, by judgment and decree dated 21.11.2005, decreed the suit. Aggrieved by the said judgment and decree, the private defendants filed A.S(MD)No.345 of 2005 and the officials of the HR & CE Department filed A.S(MD)No.53 of 2009.



7. The learned counsel for the appellants in A.S(MD)No.345 of 2005 would submit that the first respondent/plaintiff has not proved the hereditary trusteeship and he has not proved that his grandfather established the suit temple. The entries in Columns 16 and 17 of Ex.B7 show that one Palani, worshipper of the suit temple is shown as the person entitled to receive the inam grant. Thus, Ex.B7 proves that the suit temple was in existence even in the year 1865, when the Inam Fair Register was prepared and Ex.B7 proves that the 1st respondent's ancestors had nothing to do with the suit temple. Thus, Ex.B7 is a most significant document which was not considered by the trial Court while decreeing the suit. He would further submit that there are number of descendants to Arunachala Thevar, who had three sons and they had also sons. The father of the 1st respondent namely, Chinna Puliappa Thevar had five sons and the 1st respondent has not established how he alone became the trustee when there are other heirs. Thus, the first respondent has completely failed to prove the hereditary trusteeship. It is further submitted that the trial Court failed to consider the recitals of Exs.A1 to A4, where it is clearly stated that the property was purchased out of the funds belonging to Thevar community living in the north street



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of the village which shows that the first respondent had not contributed anything for purchase of properties. The said documents also prove that the father of the first respondent had not claimed hereditary trusteeship. The trial Court ought to have taken note that since the first respondent's father was the Village Munsif, Exs.A1 to A4-sale deeds have been concluded in the name of the 1st respondent's father out of respect for him. Further, Exs.B3 to B5 would prove that the first respondent applied to the HR & CE Department for being appointed as trustee of the suit temple and accordingly, he was appointed as trustee by the department. Even in Ex.B6-deposition of the first respondent in O.A.No.8/90, the first respondent has categorically admitted that he has been appointed as trustee to the suit temple by the Assistant Commissioner, HR & CE and he has also admitted that kodai festival of the suit temple is to be conducted in alternate years by the Thevar community people in the north street. Further, without considering Exs.A9 and A10 and B17, the trial Court simply decreed the suit. Hence, the learned counsel would pray for setting aside the judgment and decree passed by the trial Court. For a proposition that after the commencement of the 1951 Act, the Act did not recognise a person who was nominated by the other trustees, as



hereditary trustee, the learned counsel relied on a judgment of the Hon'ble Supreme Court reported in **(2000) 3 SCC 548, D.Srinivasan vs. Commissioner and others.**

8. The learned Special Government Pleader appearing for the appellants in A.S(MD)No.53 of 2009 would submit that the office of the suit temple is not hereditary one and the first respondent has not substantiated that the suit temple was founded and continuously managed by his forefathers. The father of the first respondent was acting as Dharmakarta of the suit temple not by means of any succession, but by means of nomination of the village committee. He also purchased properties in favour of the suit temple out of the funds collected from the villagers for meeting out the expenses of the suit temple. Further, the suit temple is situated in the grama natham land and not the patta land of the first respondent or his ancestors. Ex.B7 clearly proves that the temple was in existence even from the year 1802 and inam lands were given in the name of the temple by the then rulers to meet the pooja expenses of the suit temple. Thus, Ex.B7 completely disproves the version of the first respondent that his grandfather



established the suit temple. Further, no document or accounts filed to prove that his forefathers continuously managed the suit temple as hereditary trustees and therefore, he is entitled to hereditary trusteeship. Mere receipt of kist and electricity bill will not confer any hereditary right to the first respondent and he is not coming under Section 6(11) of the HR & CE Act and the first respondent cannot claim hereditary trusteeship as a matter of right. Even the decision of the Hon'ble Supreme Court reported in 2004-6-SCC-497 has not been followed by the trial Court since the father of the first respondent was acting as village officer and so, his official post not only facilitated him to select to act as Agthar of the temple, but also paved way for molding the revenue records in tune of his need.

9. The learned Special Government Pleader would further submit that the trial Court failed to consider that in olden days, village officers namely, Karnams or Accountants or Headman or Munsif, being the representative of the former rulers to collect revenues from the villagers, were the official administrators of the ancient village temples and creating documents and evidences in favour of them for crowning



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themselves as hereditary trustees and being a village officer, the father of the first respondent also made this case. Even assuming that the grandfather of the first respondent was nominated to appoint trustee of the temple by the village committee, after the commencement of 1951 Act, the persons who are nominated by other trustees could not be recognised by hereditary trustees. Thus, the office of trusteeship to the suit temple is not hereditary one and the onus to prove otherwise lies on the first respondent and he failed to substantiate the same and therefore, he cannot claim hereditary trusteeship as a matter of right. The trial Court failed to consider the above facts and erroneously decreed the suit. For a proposition that the person nominated or appointed as trustees for a specific period, even by a body having authority to do so, cannot be treated as hereditary trustees, the learned Special Government Pleader placed reliance on a judgment of the Apex Court reported in **(2004) 6 SCC 497, Commissioner, HR & CE, Madras and another vs. Vedantha Sthapna Sabha.**

10. The learned counsel for the first respondent would submit that the suit temple namely, Thanthondri Amman Kovil in Veeranam Village,



was originally established by the grandfather of the 1st respondent namely, Arunachala Thevar, 100 years ago. Originally, the suit temple was formed in zamin land and after the enactment of Zamindari Abolition Act, 1950, the suit temple's land was classified as grama natham. From that date, the said Arunachala Thevar administered and developed the suit temple through his income and the funds collected from the villagers. After his death, his son Chinna Puliappa Thevar, father of the first respondent succeeded to the management of the suit temple from the year 1982. During his life time, he made several improvements to the suit temple. After the demise of Chinna Puliappa Thevar, his son/plaintiff assumed the office of hereditary trusteeship of the suit temple as managing trustee and the officials of the HR & CE Department also recognised him. During his life time, he purchased brass and aluminum vessels for the suit temple and further, kept a deposit in the Indian Overseas Bank, Veeranam. In this way, the first respondent, his father and grandfather administered the suit temple as managing trustees without any objection by the villagers. However, the fifth defendant and his relatives objected to the rights of Dharmakarta and filed O.A.No.8/90 before the Joint Commissioner, HR & CE/second



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defendant. After hearing both sides, an order was passed in the said O.A., holding that the first respondent is the hereditary trustee of the suit temple. Against the said order, the fifth defendant and two others filed an appeal in A.P.No.22/2002 before the first defendant/Special Commissioner and the Commissioner, HR & CE., Chennai, who by order dated 26.07.2003, allowed the appeal, holding that the office of the trusteeship of the suit temple is non hereditary. Hence, the first respondent filed the present statutory suit and the trial Court rightly considered all the materials and declared the first respondent as hereditary trustee. Once the forefathers of the first respondent were found to be administering the suit temple as hereditary trustees, then the successor also will get right as hereditary trustee and accordingly, the first respondent has rightly been declared as hereditary trustee by the trial Court. Thus, he would pray for dismissal of both the appeals. For a proposition that if the office of trusteeship of a particular religious institution has been hereditary in a particular family, it would constitute hereditary trusteeship, the learned counsel placed reliance on a judgment of this Court reported in **AIR 1997 Madras 378, Devaki vs. Hindu Religious & Charitable Endowments Department**. He would



also place another judgment of this Court reported in **AIR 1986 Madras 41, C.C.Nanjappa Chettiar vs. S.N.Kuppuswami Chettiar**, for a proposition that law of succession applies to the office of hereditary trustee also and hereditary trustee succeeds to the office as of right and in accordance with rules governing succession.

11. Heard both sides and perused the records.

12. Admittedly, the first respondent was appointed as trustee by the HR & CE Department. Originally, the fifth defendant and his relatives objected to the appointment of the first respondent as trustee and filed O.A.No.8/90 before the second appellant in A.S(MD)No.53 of 2009 who accepted the case of the first respondent and declared him as hereditary trustee of the suit temple. The fifth defendant filed appeal before the first appellant in A.S(MD)No.53 of 2009 who after considering the oral and documentary evidence, allowed the appeal and set aside the order of the second appellant. Challenging the same, the first respondent filed the present suit. The main contention of the first respondent is that his grandfather Arunachala Thevar was the founder of the suit temple and he



administered the temple and made several improvements. After his demise, his son Chinna Puliappa Thevar administered the suit temple and after him, the first respondent was administering the temple and the officials of HR & CE also recognised the first respondent as hereditary trustee of the suit temple and the properties to the suit temple were also purchased in the name of his father and they also purchased several ornaments and articles for the temple. Therefore, once permanently one family members are continuously managing the suit temple as trustees, they can be treated as hereditary trustees. Though one of the relatives filed O.A.No.8/90 against the first respondent, an order was passed in his favour declaring him as hereditary trustee, but however, on appeal, the said order was set aside.

13. The only question to be decided in this case is, whether the forefathers of the first respondent acted as trustees continuously and as a matter of right, whether the first respondent can claim hereditary trusteeship. Though the first respondent has stated that his grandfather Arunachala Thevar founded the suit temple and administered the same as managing trustee, absolutely there is no record or evidence to show



that the temple was established by Arunachala Thevar. Even the first respondent himself has stated that his forefathers improved the temple by collecting funds from the villagers and even the recitals in Exs.A1 to A4 clearly show that out of the village common fund, the above properties were purchased. Further, there is no evidence to show that the father of the first respondent acted as hereditary trustee. Even during the life time of Arunachala Thevar, the father of the first respondent had not claimed hereditary trusteeship. Even the Kumbabishekam was conducted by the first respondent with the permission of the HR & CE Department out of the funds collected from the villagers. Therefore, it is not the only contribution of a particular family or particular property alone, the suit temple was maintained, whereas, it is only out of the funds collected from the villagers, improvements and maintenance of the suit temple were done. There is absolutely no evidence that out of their own funds, the forefathers of the first respondent constructed the suit temple, made improvements and purchased properties. As per Ex.B7-copy of Inam Fair Register, the suit temple was in existence from the year 1802 and there is no record to show that who constructed it and during which period, it was



constructed. Though originally the suit temple was in the zamin lands, later it was classified as grama natham and nowhere, it is stated that the suit temple is situated in the patta lands or the lands of the first respondent's forefathers. The recitals in Exs.A1 to A4 also show that the properties under the said sale deeds were purchased from the village common fund.

14. As rightly contended by the officials of HR & CE, the first respondent cannot claim hereditary trusteeship as a matter of right, since his forefathers had not acted as hereditary trustees and there is no record to prove the same. Even the forefathers of the first respondent were appointed as trustees only by the village committee and they were under the control of the HR & CE Department. Except the pamphlet and other papers issued for Kumbabishekam, wherein, the first respondent has been shown as hereditary trustee, there is no permanent document to prove the hereditary trusteeship. In the absence of any ancient document or official document, the first respondent cannot be treated as hereditary trustee.



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15. Thus, the first appellant/Special Commissioner and the Commissioner, HR & CE., Chennai, after carefully considering the oral and documentary evidence, rightly rejected the claim of the first respondent regarding hereditary trusteeship to the suit temple and allowed the appeal in A.P.No.22/2002, by order dated 26.09.2003, but the trial Court failed to appreciate the entire evidence in proper perspective and erroneously decreed the suit which is legally not sustainable. The decisions relied on by the first respondent are not applicable to the fact of the present case, whereas, the decisions relied on behalf of the appellants in both the appeals are applicable to the facts of this case.

16. Accordingly, the judgment and decree dated 21.11.2005 made in O.S.No.49 of 2004 on the file of the Principal Sub Court, Tirunelveli, are set aside and the order passed by the first appellant/Special Commissioner and the Commissioner, HR & CE., Chennai, in A.P.No. 22/2002, dated 26.09.2003, is confirmed.



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17. In the result, both the Appeal Suits are allowed. No costs.
Consequently, connected miscellaneous petition is closed.

bala
Index : Yes / No
Internet : Yes

18.07.2022

To

The Principal Subordinate Judge,
Tirunelveli.



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COMMON JUDGMENT MADE IN
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DATED : 18.07.2022