IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

AS.No.1043 of 2012 and
CMP.No.6177 of 2020

The Fit Person,
Sri Ramalingeswarar Temple,
Edugampalayam, Sirumugai Village,
Mettupalayam Taluk,
Coimbatore District ... Appellant

Vs.

1.E.D.Deenappa Gowder
2.The Joint Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department,
Dr.Balasundaram Road,
Coimbatore – 18
3.The Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department,
Nungambakkam High Road,
Chennai 600 034
4.Devendran
(4th Respondent impleaded vide court order dated
13.04.2022 made in CMP.No.5147 of 2022 in
AS.No.1043 of 2012) ...Respondents

PRAYER: Appeal Suit is filed under Section 70(2) of the Tamilnadu Hindu Religious & Charitable Endowments Act, 1959 r/w Section 96 of the Code of

Civil Procedure against the judgment and decree dated 19.03.2012 made in OS.No.434 of 2009 on the file of the Principal Subordinate Judge at Coimbatore.

For Appellant	: Mr.V.Srikanth
For Respondents R1	: Died (steps due)
For R4	: Mr.M.R.Thangavel for Mr.T.Shanmugam
For R2 & 3	: Mr.K.Karthikeyan, Government Advocate(HR&CE)

JUDGMENT

This Appeal suit is filed against the judgment and decree dated 19.03.2012 passed in OS.No.434 of 2009 on the file of the Principal Subordinate Judge at Coimbatore.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The appellant is the first defendant and the first respondent is the plaintiff, who filed the suit for cancelling the order passed by the third

defendant dated 10.12.2008 thereby confirmed the order passed by the second defendant dated 02.11.2005 and declared the plaintiff as the hereditary trustee of Sri Ramalingeswarar Temple, Edugampalayam, Mettupalayam Taluk.

4. The case of the plaintiff is that Sri Ramalingeswarar Temple at Edugampalayam Village in Sirumugai, Mettupalayam Taluk is an ancient small village temple(hereinafter called as 'temple'). The administration and the maintenance of the temple were looked after by the plaintiff's family for the past about 100 years. At present, the plaintiff is doing pooja and other services to the temple. His family had done enormous development work in the temple by constructing mandapam, sub deity temple, digging up a well, constructing compound wall and performing kumbabisekam. On the basis of the acquaintance and involvement in the temple and its administration, the plaintiff filed a petition under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act (hereinafter called as 'Act') before the second defendant for declaration declaring him as a hereditary trustee of the temple. After detailed enquiry, the second defendant dismissed the same. He preferred an appeal in AP.No.39 of 2008 before the third defendant. After enquiry, the

appeal was also dismissed and confirmed the order passed by the second defendant.

4.1 The further case of the plaintiff is that the temple had been abandoned long ago and there was no worship or poojas in it. It is situated in a hilly place far away from the village. Therefore, the father of the plaintiff who found the abandoned temple, on his own interest, made arrangements to conduct poojas and also maintained the temple situated in the land comprised in SF.No.608 of Edugampalayam Village admeasuring 1 ½ acres. Apart from the said land, the temple had been dedicated to the minor inam land comprised in SF.No.493 to an extent of 9.09 acres and in SF.No.618 to an extent of 6.98 acres in EluppanathamVillage. Since it is a hilly area, there is no much worship to the temple. However, the plaintiff's father had taken care of the temple and its administration. After his demise, the plaintiff became an ardent devotee and had taken care of the administration and maintenance of the temple. Therefore, without considering the above, the second and third defendants dismissed the claim of the plaintiff. Hence, the suit.

5. Resisting the same, the first defendant filed written statement and stated that the plaintiff has not established that the right of the hereditary trusteeship remains in the families of the plaintiff and his ancestors for more than 100 years and for more than three generations. The plaintiff has not even appended genealogical tree either in the plaint or in the petition filed before the second defendant which is the minimum requirement under Section 6 (11) of the Act. Therefore, the plaintiff does not come within the definition of hereditary trustee and he is not entitled to be appointed as hereditary trustee under Section 63(b) of the Act. Even according to the plaintiff, his father is not the founder of the temple and no usage of custom was established by him to prove his claim, as embodied in the definition of hereditary trustee in the Act. The first defendant was appointed to the temple by the Assistant Commissioner of HR&CE(Admn) Department by an order dated 08.12.2006. He has been now functioning as Executive Officer and also as the fit person as ordered by the Commissioner of HR&CE(Admn) Department by an order dated 09.11.2009. In fact, prior to his appointment, the Assistant Commissioner of HR&CE(Admn) Department had appointment Trust Board consisting non-hereditary trustees i.e. S.Vellingiri and two others. The said Vellingiri was the Chairman of the Trust

Board and after appointment of fit person, he had taken charge of the temple from the said Vellingiri on 11.12.2006. Therefore, the plaintiff's claim was rightly rejected by the second and third defendants.

6. On hearing the rival pleadings, the learned trial Judge framed the following issues for determination of the suit :-

1. *Whether the plaintiff and his family were maintaining the suit temple for the past 100 years?*
2. *Whether the plaintiff is the hereditary trustee of the suit temple?*
3. *Whether the order dated 10.12.2008 passed by the HR&CE Commissioner is not valid and unenforceable?*
4. *Whether the plaintiff is entitled for declaration as prayed for?*
5. *To what relief?*

7. In support of the plaintiff's case, P.W.1 and P.W.2 were examined and two documents were marked as Ex.A.1 & Ex.A.2. On the side of the defendants, D.W.1 was examined and Ex.B1 to Ex.B4 were marked. The court marked a document as Ex.C1. On considering the oral and documentary

evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court decreed the suit. Aggrieved by the same, the first defendant has preferred this appeal suit.

8. The learned counsel for the first defendant would submit that the plaintiff filed petition under Section 63(b) of the Act for declaration declaring him as hereditary trustee of the temple. However, it was dismissed by an order dated 02.11.2005 and the same was confirmed by the appellate authority i.e. the third defendant in AP.No.39 of 2008 dated 10.12.2008. The plaintiff ought to have established (i) that the right to administer the religious institution devolved upon him by hereditary right, (ii) that the hereditary devolution is regulated by usage and (iii) that the hereditary devolution is specifically provided for by the founder. However, the plaintiff failed to establish by proper evidence to become entitled to hold the office as hereditary trustee of the temple. The temple stands in the poramboke land belonging to the Government. The temple has been dedicated with minor inam lands comprised in SF.No.493 & 618 in Ilupanatham Village. The temple has been in existence for several centuries. Founders of the temple have been lost in antiquity. While so, the

claim of the plaintiff as hereditary trustee cannot be countenanced in view of the long existence of the temple. In support of his contention, the learned counsel for the first defendant also relied upon the judgment in the case of ***V.A.Chidambara Gounder Vs. Commissioner, HR&CE Department, Chennai and another*** reported in ***2009 SCC Online Mad 953***.

9. Per contra, the learned counsel for the plaintiff would submit that the Inspector of HR&CE conducted detailed enquiry and his report was marked as Ex.C1. As per the report, the plaintiff without collecting any contribution from any outsiders, constructed temple and had raised 54 feet mandapam and 32x32 feet mandabam. He also constructed a temple on his own cost of Rs.7 lakhs. The temple is in existence for time immemorial and there is no particulars available in this regard. On perusal of depositions recorded by the Inspector of HR&CE, the general public deposed that the temple is administered by the plaintiff and all the poojas conducted by him. Further, it is a small temple and the affairs of the same is managed by the plaintiff. It is also admitted by the defendants, the plaintiff is managing the temple lands and affairs of the temple without any interference by any general public for long number of years.

Therefore, it has to be presumed that with the consent and acquiescence of the worshippers of the village, the poojahari is the trustee as well. Therefore, the trial court rightly decreed the suit. As such, he prayed for dismissal of the appeal suit.

10. Heard, the learned counsel appearing for the first defendant and the learned counsel appearing for the plaintiff.

11. On the submissions made by the learned counsel appearing on either side, the following points arise for consideration of this appeal suit:

1. *Whether the plaintiff fulfilled mandates as required under Section 6 (11) of the Act?*
2. *When the trial court found the issue No.1 against the plaintiff, whether the plaintiff is entitled for the releif of second issue?*
3. *When the statutory authorities decided the issue with regards to the appointment of hereditary trustee against the plaintiff, whether the plaintiff is entitled to be declared as hereditary trustee?*

12. Admittedly, the temple is a small temple and it had been dedicated with minor inam land comprised in SF.No.493 and 618 in Eluppanatham Village. The temple is situated in SF.No.608 of Edugampalayam Village. Even according to the plaintiff, though the temple is an ancient one, due to passage of time, the origin of the temple could not be traced out. However, the father of the plaintiff found the temple and conducted pooja. Thereafter, after his lifetime, the plaintiff is being the son, doing pooja services to the temple. Admittedly, the first defendant is looking after the administration of the temple. Though the plaintiff and his father developed the temple by constructing mandapams, well and compound wall, on the strength of the same, the plaintiff filed petition under Section 63(b) of the Act before the second defendant in OA.No.4 of 1997. On perusal of the petition, the plaintiff categorically stated that though the origin of the temple is not clearly known since the temple had been totally abandoned and there was no worship or poojas some time back. It is situated in a hilly area far away from the village. The plaintiff's father found the temple and conducted poojas. In order to appoint the plaintiff as hereditary trustee, he ought to have established the legal

requirements as contained in Section 6(11) of the Act for declaration as hereditary trustee of the temple. It is relevant to extract the provision under Section 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act hereunder:

> *Section 6(11). 'hereditary trustee' means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force;*

13. Thus it is clear that the plaintiff ought to have established (i) that the right to administer the religious institution devolved upon him by hereditary right, (ii) that the hereditary devolution is regulated by usage and (iii) that the hereditary devolution is specifically provided for by the founder. Admittedly, the plaintiff failed to establish through positive evidence to become entitled to have office as hereditary trustee of the temple. The report of the Inspector of HR&CE was marked as Ex.C1. On perusal of the report, he had examined general public and reported that the temple is renovated and poojas are performed by the plaintiff. However, the plaintiff failed to establish the requirements as contemplated under Section 6(11) of the Act. All the exhibits

produced by the plaintiff before the second defendant were not proved that the plaintiff and his father administered the temple for the past 50 years. Only in the year 2003, in the name of the temple, the electricity service connection was obtained. That apart, the plaintiff was appointed as non-hereditary trustee in the year 1992 for the period of three years. Therafter, in the year 1996, the first defendant was appointed to administer the temple. However, the plaintiff was permitted to conduct pooja. Therefore, he cannot be appointed as hereditary trustee and the second defendant rightly dismissed the petition filed under Section 63(b) of the Act. Aggrieved by the same, the plaintiff filed appeal before the third defendant and the same was also dismissed.

14. The learned counsel for the first defendant relied upon the judgment of this Court in the case of ***V.A.Chidambara Gounder Vs. Commissioner, HR&CE Department, Chennai and another*** reported in ***2009 SCC Online Mad 953,*** wherein it is held as follows:

> *9.Section 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 deals with Hereditary trustee which means "the trustee of a religious institution, the*

succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force".

10.Significantly, Section 6(20) refers to "temple" meaning "a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship".

11.Undoubtedly, in a civil suit, plaintiffs or the dominus litis and the same is not an universal rule. In Munuswamy Chetty (died) and others V. Commissioner H.R. & C.E. (1993) 1 MLJ at page 183 it is observed that there are three kinds of Hereditary trustees as per the definition.

(A) A trustee, succession to whose office devolves by hereditary right.

(B) A trustee, succession to whose office is regulated by usage.

(C) A trustee, succession to whose office is specifically provided for by the founder.

12.One cannot indulge in assumption or presumption to the effect that the appellants/plaintiffs are entitled to hold office as Hereditary trustees in the suit temple because of the fact that there is absence of contra *evidence in this regard. Moreover, the claim of Hereditary trusteeship right must be based on reliable and acceptable satisfactory evidence of sufficient proof in this regard.*

15. Thus it is clear that the hereditary trustee means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder. Therefore, one cannot indulge in assumption or presumption to the effect that the person entitled to hold office as hereditary trustee of the temple. That apart, the claim of hereditary trusteeship right must be based on reliable and acceptable satisfactory evidence of sufficient proof. It is also seen from the records that after completion of the plaintiff's tenure as non-hereditary trustee along with two others, he filed petition under Section 63(b) of the Act before the second defendant. Hence, the first point is answered as against the plaintiff. The trial court answered the first issue against the plaintiff, however the second issue was answered in favour of the plaintiff. The trial court concluded that the plaintiff has produced documentary evidence to prove that the temple was under the maintenance of the family of the plaintiff for the last 100 years. Only the people surrounding the temple deposed before the Inspector of HR&CE

Department, Mettupalayam that the administration and maintenance of the temple were looked after by the plaintiff and his father. Therefore, the plaintiff failed to produce any document to establish the requirements as contemplated under Section 6(11) of the Act. However, the trial court held the second issue in favour of the plaintiff on the pretext that the temple was renovated by the plaintiff and his father. He is managing the temple lands and affairs of the temple without any interference by the villagers for long number of years. Therefore, it is to be presumed that with the consent and acquiescence of the worshippers of the village, the plaintiff conducted pooja and be the trustee as well. Therefore, when the first issue was answered against the plaintiff, the second issue cannot be answered in favour of the plaintiff. Accordingly, the other points are answered in favour of the defendants and this Court finds infirmity and illegality in the judgment and decree passed by the trial court. As such, the same is liable to be set aside.

16. Accordingly, this appeal suit is allowed and the judgment and decree dated 19.03.2012 made in OS.No.434 of 2009 on the file of the Principal Subordinate Judge at Coimbatore are set aside. As such, the suit filed by the

plaintiff in OS.No.434 of 2009 is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.12.2023

Index : Yes / No
Internet : Yes / No
Speaking order /Non-speaking order
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To

1.The Principal Subordinate Judge at Coimbatore.
2.The Joint Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department,
Dr.Balasundaram Road,
Coimbatore – 18
3.The Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department,
Nungambakkam High Road,
Chennai 600 034
4.Section Officer,
V.R.Section,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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AS.No.1043 of 2012

21.12.2023