



S.A.(MD).No.739 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.02.2023

Pronounced on : 02.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

S.A.(MD).No.739 of 2021

and

C.M.P.(MD).Nos.9871 and 9873 of 2021

AL.AR.K.VR.Chinnaveerappan

... Appellant/ Appellant/Plaintiff

Vs.

AL.AR.V.Kaalairaja Chettiar (Died)

1.AL.AR.V.K.Velliyan

2.The Joint Commissioner,
H.R & C.E. Department,
Thiruppathur Road,
Sivagangai,
Sivagangai District.

3.The Commissioner,
H.R. & C.E. Department,
119, Gandhi Road,
Nungambakkam,
Chennai.

4.The District Collector,
District Collector Campus,
Thiruppathur Road,
Sivagangai District.

... Respondents 1-4 / Respondents 2-5 /
Defendants 2-5



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V.K.Ravindran (Died)

5.V.K.Natesan

... 5th Respondent / 7th Respondent /
L.R. 1st Defendant

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree of the lower appellate court dated 30.07.2021 passed in A.S.No.111 of 2018 on the file of the Subordinate Judge's court, Sivagangai, confirming the Judgment and Decree of the Trial Court dated 24.09.2018 passed in O.S.No.5 of 2015 on the file of the District Munsif's Court, Sivagangai and to allow the Second Appeal.

For Appellant : Mr.P.Vinoth

For R-1 & R-5 : Mr.S.Lakshmanasamy

For R-2 to R-4 : Mr.C.Baskaran,
Government Advocate.

JUDGMENT

The plaintiff is the appellant in the Second Appeal. He had filed a suit for declaration that he is the hereditary trustee of the Kattalai known as Shri Swarnakaliswarar Temple Devakottai Jamindar Kattalai and restraining the respondents 1 and 5/defendants 1 and 2 from making any encumbrance of the said Kattalai and rendition of accounts and delivery of documents.



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2. It is the case of the plaintiff/appellant that one AL.AR.Ramasamy chettiar was the founder of the Kattalai known as Devakottai Jamindar Kattalai and the plaintiff is the direct lenial descendant of the said Ramasamy chettiar. The said Ramasamy chettiar executed a Will on 18.11.1899 stating that the first born male member in the family shall be the hereditary trustee. After the demise of Ramasamy chettiar, his elder son Arunachalamchettiar succeeded the trusteeship. After him, one Kalairajachettiar succeeded. The said Kalairajachettiar had a son by name Veerappachettiar, who had two sons, namely, the plaintiff/appellant and one Veerappan. The plaintiff/appellant as a son of Veerappachettiar was appointed as trustee of the Kattalai. While so, one Narayanachettiar claimed himself to be the direct descendant of Ramasamy chettiar and attempted to act as trustee of the Kattalai. The plaintiff's case is that the defendants 1 and 2/respondents 1 and 5 were not direct descendants. However, they claim trusteeship as against the plaintiff's rights.

3. The defendants 1 and 2/respondents 1 and 5 resisted the said suit stating that they are the descendants of one Arunachalamchettiar. They have stated that they being the descendants of one Arunachalamchettiar, who was the senior most male member, they are the hereditary trustees. They had filed a



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petition under Order 7 Rule 11 CPC for rejection of the plaint in I.A.No.206 of 2015 on the ground that a suit was not maintainable in view of Section 63(b) of the Hindu Religious and Charitable Endowments Act. The said petition was dismissed on the ground that there was a dispute between the plaintiff/appellant and the respondents/defendants as to who should be the hereditary trustee in respect of the temple concerned.

4. The Court found that the question as to whether who should act as a hereditary trustee is a question that cannot be decided by the Board and it is only for the Civil Court to decide such issues. The Court relied upon the judgments of this Court, wherein, this Court had held that when there are rival claimants as to who should be the hereditary trustee, the same cannot be decided by the Deputy Commissioner under Section 63(b) of the Hindu Religious and Charitable Endowments Act and the dispute has to be decided only by the Civil Court. This order had become final and there is no challenge to this order. While so, the first respondent raised a preliminary issue before the Trial Court as to the jurisdiction of the Civil Court to decide the instant case. The Trial Court took up the issue on maintainability of the suit which was framed as eighth issue. The Trial Court found that it had no jurisdiction to try the suit. The Appellate Court also confirmed the findings of the Trial Court and



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held that for the purpose of deciding whether the plaintiff is the hereditary trustee, there is an express provision made under the Hindu Religious and Charitable Endowments Act, namely, Section 63 and 108, to deal with such disputes.

5. This Court had admitted the Second Appeal on the following substantial questions of law:

(a) Whether the Courts below are right in law in directing the plaintiff to approach under Section 63 of Tamil Nadu Hindu Religious and Charitable Endowment Act is against the settled principles of law decided in 1974 (2) SCC 58, 2016 (1) SCC 141 wherein the Hon'ble Apex Court has held that the issue in respect of office of trusteeship could not be agitated before the authorities under Hindu Religious and Charitable Endowment Act?

(b) Whether the Courts below are right in law in dismissing the suit on the issue of jurisdiction, which has already been decided in the stage of Order VII, Rule 11 of the Civil Procedure Code which has become final?

(c) Whether the relief sought for in the suit pertains to rival dispute regarding the office of hereditary trusteeship will come under the purview of Section 92 of the Civil Procedure Code as erroneously laid down by the trial Court?



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(d) Whether the judgment and decree of the Courts below are sustainable since the quasi-judicial authorities under the Tamil Nadu Hindu Religious and Charitable Endowment Act cannot go into the rival disputes between the parties as to the office of the hereditary trusteeship under Section 63(b) of the Act?

6. Mr.P.Vinoth, learned counsel for the appellant would submit that the respondents having failed in their attempt to succeed in the application filed under Order 7 Rule 11 CPC, which has not been challenged, have come up with the preliminary issue which is nothing but filing the Order 7 Rule 11 application in a different format. The learned counsel further submitted that the prayer made by the plaintiff/appellant pertains to claim of office of hereditary trusteeship and hence, the Trial Court's finding that a suit ought to have been filed under Section 92 CPC is erroneous. The learned counsel further submitted that the Appellate Court had erroneously held that the appellant ought to have approached the authorities under Section 63(b) and 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The learned counsel submitted that it is settled law that where there is a dispute with regard to holding of office of trusteeship, it is only the Civil Court which is the competent forum to adjudicate the dispute.



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7. Mr.S.Lakshmanasamy, learned counsel for the respondents 1 and 5, on the other hand, submitted that the suit is not maintainable. The learned counsel relied upon the following judgments of this Court:

a) *Muthamil Selvam and others Vs. A.Manickam and others* reported in **2009 (4) CTC 377**,

b) *R.Balasundaram and others Vs. M.Ramalingam and others* reported in **2013(3) MadWN (Civil) 35** and

c) *The Principal Secretary, HR & CE Department, Chennai and others Vs. G.Paramasivam and others* reported in **2015 (8) MLJ 738**.

8. Heard the learned counsels on either side and perused the judgments of the Courts below and other records.

9. Admittedly, the respondents had earlier filed an application under Order 7 Rule 11 CPC on the ground that the suit was not maintainable in view of Section 63(b) and 108 of the Hindu Religious and Charitable Endowments Act and any dispute with regard to claim for hereditary trusteeship has to be only decided by the Joint Commissioner of the Hindu Religious and Charitable Endowments Department. The said petition was dismissed by the Trial Court on the ground that the suit is not for ascertaining that the office of trusteeship is



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hereditary, but the suit is for deciding who should be hereditary trustee in view of the rival claims made by the appellant and the respondents. The Trial Court further, on the basis of the judgments rendered by this Court, held that the dispute raised in the suit was whether the plaintiff was entitled to act as hereditary trustee or the respondents. This dispute has to be decided only by the Civil Court and the Joint Commissioner had no authority to decide the said dispute.

10. The respondents have not challenged the said order and that order has become final. However, in their written statement, they had specifically pleaded that the jurisdiction of the Civil Court is barred under Section 108 of the said Act. The Trial Court had framed as many as eight issues and the eighth issue is as follows:

“Whether the Court has jurisdiction to try the suit?”

Answering this question first, the Trial Court had stated that as per Section 92 of CPC, the suit was not maintainable since leave has not obtained in terms of Section 92 of CPC from the competent court. The Appellate Court held that the suit was not maintainable in view of express provisions under the Hindu Religious and Charitable Endowments Act, namely, Section 63 and 108.



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11. This Court is of the view that both the Courts below have erroneously come to the conclusion that the suit is barred in law. The Trial Court's finding that Section 92 CPC is applicable is wrong. Section 92 CPC has no application in the facts and circumstances of the case. The Appellate Court's finding that the dispute ought to have been decided only by the Joint Commissioner in view of Section 63 and 108 of the Hindu Religious and Charitable Endowments Act is also based on erroneous understanding of the issue involved in the suit. The question before the Trial Court was not whether the trusteeship right is hereditary or not. The issue is who among the rival claimants is entitled to the hereditary trusteeship. If the question is whether the trusteeship right is hereditary or not, it is settled that such a question has to be decided only by the Joint Commissioner under Section 63(b) of the Hindu Religious and Charitable Endowments Act. The judgments relied upon by the learned counsel for the respondents 1 and 5, namely, ***Muthamil Selvam and others Vs. A.Manickam and others*** reported in **2009 (4) CTC 377**, ***R.Balasundaram and others Vs. M.Ramalingam and others*** reported in **2013(3) MadWN (Civil) 35** and ***The Principal Secretary, HR & CE Department, Chennai and others Vs. G.Paramasivam and others*** reported in **2015 (8) MLJ 738** are not applicable to the facts of the instant case. In ***Muthamil Selvam's*** case cited supra, the issue



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was whether the plaintiff was entitled to receive honour from the suit temple.

In that case, this Court held that by virtue of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the competent authority to decide any dispute with regard to honour is either the Joint Commissioner or the Deputy Commissioner. That case will not be of any use to the respondents.

In **R.Balasundaram's** case cited supra, the Trial Court had held that the temple and its properties were joint family properties of the plaintiff and the first defendant and hence the relief of declaration as hereditary trustee cannot be granted. In that context, the Appellate Court held that in view of Section 63 (b), it is only for the Joint Commissioner or the Deputy Commissioner to decide whether a trustee holds office or held office as a hereditary trustee. Likewise, in **G.Paramasivam's** case cited supra, the issue was whether the plaintiff has any right of administration or management of the suit temple and whether he was the trustee in respect of the suit temple. This Court in such circumstances held that the issue had to be decided only by the authorities under the Hindu Religious and Charitable Endowments Act.

12. However, in the instant case, it is the claim of the respondents that they are entitled to hereditary trusteeship, which is clear from their written statement, which reads as follows:



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“7.It is submitted that the Kattalai has been performing the duties as enshrined and enumerated in the earlier deeds of 1923. The expenses and the documents pertaining to the same will be produced during trial of the case. The Thiruppani of the temple had been performed on various occasions and the Kumbabishegams were performed that in and by virtue of the wishes and dictates of the elder and ancestor AL.AR.Ramasamy Chettiar, by his Will, the members of the family will be the hereditary trustees with the Managing trustee shall be with the senior most male member by age with the completion of the paternal side before the administration descends to the next line. AL.AR.Arunachalam Chettiar and not his son Kalayaraja Chettiar, though he was alive at that time. AL.AR.Vellaiyan Chettiar lived upto 1945 and was the trustee and later on only Kalayaraja Chettiar became trustee. Thus the senior most person has been administering the trust till date.”

13. In view of the specific claim made by the respondents that they are the hereditary trustees, the issue therefore is who is entitled to the hereditary trusteeship. This question has to be decided only by the Civil Court and the Joint Commissioner has no authority to decide as to who among the rival claimants is entitled to hereditary trusteeship. This has been reiterated by this Court in several judgments. This Court in the case of ***M.Chellamuthu Vs. Sengalmalai Arulmigu Varadaraja Perumal and Venkatramanswamy***



Vagaiyara Thirukoils represented by its hereditary trustees reported in 2016

(6) CTC 392 had held as follows:

“29. Now it is to be seen as to whether the jurisdiction of the trial Court is expressly or impliedly barred under Section 108 of the Act from taking cognizance of the present suit. Insofar as Section 63(b) of the Act is concerned, it is thus made clear that the decision of the Joint Commissioner or Deputy Commissioner to be confined to the status of trusteeship viz., whether it is hereditary or not. Insofar as the present suit in O.S. No. 312 of 2015 is concerned, the core question is as to who among the respondents 1 to 3/plaintiffs and the revision petitioner is the hereditary trustee. Therefore, this issue is not covered by the provision of 63(b) of the Act and hence the jurisdiction of the civil Court is not ousted and as such the trial Court is having competency to entertain the suit. This view has been supported by the decision of this Court in Aviyur Mariamman Temple, by hereditary trustee Parasuraman v. T.N. Sundaramoorthy Pillai reported in (1981) 94 L.W. 375; 1981 (1) MLJ 392. In the said case Justice Ramanujam, a learned single Judge of this Court as he then was has observed as under:

“It is by now well-settled that the jurisdiction of the Deputy Commissioner under Section 57(b) of the Hindu Religious and Charitable Endowments Act of 1951 corresponding to Section 63(b) of Tamil Nadu Act XXII of 1959 is confined to a decision whether a trustee holds or held office as a hereditary trustee, i.e., that decision should be in relation to the status of the office of trusteeship, namely whether it is hereditary or not and that it is not competent for the Deputy Commissioner to go into the further question as to



who among the competing claimants is a hereditary trustee as such a matter is not covered by the above provision. This is clear from the decisions in Krishnasami Raja v. Krishna Raja (sic) and Rengayya Goundar v. Karuppa Naicker, (1971) 84 L.W. 137; (1971) 1 M.L.J. 358. In view of the above decisions with which I am in entire agreement, the question as to who as between the rival claimants is a hereditary trustee cannot be decided by the Deputy Commissioner under Section 63(b) of Tamil Nadu Act XXII of 1959 and if such a decision had been referred by him under Exhibit A-4 the same cannot bind the civil Court and the civil Court has to decide that question independently on the evidence adduced by the parties.”

30. In an another case in the State of Madras represented by the Secretary to Government, Revenue Department Fort St. George, Madras-9 v. A.V. Rathnasabapathy Gurukkal reported in 1993-2-L.W. 47, Justice J. Janarathanam, a learned Judge of this Court has held that the facts of the case are so eloquent to speak for themselves that the trusteeship of the suit temple was hereditary for the family of T, as demonstrated by the proceedings. The relief claimed for in the suit is for a declaration that the plaintiff is the only legal heir entitled to succeed to the office of the hereditary trusteeship of the suit temple. Such a question cannot at all be decided by the authorities under the provisions of the Act; but a civil Court alone is competent to deal with such a question.

31. On coming to the instant case on hand, admittedly the dispute is between two parties viz., respondents 1 to 3/plaintiffs on the one hand and the revision petitioner/first defendant on the other hand. Hence, the Hindu Religious and Charitable Endowment Department is not directly concerned with the issue prevailing between the two parties. Therefore, the civil Courts jurisdiction is



not take away and therefore, it has got jurisdiction to try the civil suit of this nature. This view has been supported by the decision of this Court in Sri Vallaba Ganesar Devasthanam, Sannadhi Street, Tiruvannamalai, represented by 1) Kailasa Mudaliar v. A Anandavadivelu Mudaliar reported in (1980) Madras Law Journal Reports 140. In the said case Justice S Padmanabhan, a learned single Judge of this Court as he then was has observed as under:

“The principle on which the jurisdiction of the civil Court is excluded under Section 108 of the Tamil Nadu Act XXII of 1959 are now well settled. If the dispute raised in the suit relates to the administration or management of a religious institution or any other matter for the determination of which a provision has been made in the Act, the bar under Section 108 of the Act will be attracted. On the other hand if the question arising for adjudication falls outside the scope and ambit of Section 108 of the Act, then the civil Court will have jurisdiction to entertain the suit and the bar of exclusion of jurisdiction provided for under Section 108 cannot be invoked.”

It is also observed as follows:

“It is equally settled that if, in a suit, any matter in respect of which a provision is made under the Act had to be incidentally decided the jurisdiction of the civil Court will not be excluded. To be more specific if any other question in respect of which the power is conferred on the Deputy Commissioner to decide under Section 63 of the Act, arises incidentally, for consideration in a suit, the jurisdiction of the civil Court will not be excluded. Notwithstanding Section 108 of the Act, where the dispute relating to a temple is only between two private parties and the board is not directly concerned, the civil Court has jurisdiction to try the suit.”



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14. The aforesaid judgment is squarely applicable to the facts of the instant case. Since the written statement makes it clear that the issue is with regard to rival claims for the office of hereditary trusteeship, it has to be decided only by the Civil Court. In view of the written statement filed by the respondents admitting that the office of trustee is hereditary, the question whether the appellant/plaintiff or the respondents/defendants are entitled to succeed as hereditary trustees is beyond the scope of jurisdiction of the authorities under Section 63 of the Act. Further, the respondents have not challenged the order of the Trial Court passed in the application under Order 7 Rule 11 CPC, in which the Trial Court had clearly held that the suit was maintainable since the issue in the suit was with regard to rival claims for hereditary trusteeship. However, if during the course of evidence, it is found that the office of trustee is not hereditary in nature and the suit is a ruse to indirectly declare the status of trusteeship as hereditary, then of course the Trial Court can pass appropriate judgment in accordance with law.

15. For the above reasons, the substantial questions of law are answered in favour of the appellant. The Second Appeal is allowed and the judgments of the Courts below are set aside. The Trial Court is directed to conduct the trial



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as expeditiously as possible and in any event, within a period of one (1) year from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Joint Commissioner,
H.R & C.E. Department,
Thiruppathur Road,
Sivagangai, Sivagangai District.
- 2.The Commissioner,
H.R. & C.E. Department,
119, Gandhi Road,
Nungambakkam, Chennai.
- 3.The District Collector,
District Collector Campus,
Thiruppathur Road, Sivagangai District.
- 4.The Sub Court,
Sivagangai.
- 5.The District Munsif Court,
Sivagangai.
- 6.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

Lm

Judgment made in
S.A.(MD).No.739 of 2021

02.03.2023