



A.S.(MD)No.197 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)No.197 of 2017

K.Packiam Pillai (died)

- 1.Shenbagavalli
- 2.Muthiah Pillai
- 3.M.Natarajan
- 4.M.Subramanian
- 5.M.Sivaraman
- 6.M.Parameshwaran

...Appellants

[Appellants 2 to 6 are brought on records as legal heirs of the deceased sole appellant]

Vs.

- 1.The Commissioner,
HR & CE Administration Department,
Chennai-34.
- 2.The Joint Commissioner,
HR & CE Administration Department,
Palayamkottai,
Tirunelveli.
- 3.The State of Tamil Nadu,
Represented through the District Collector,
Kokkirakulam,
Tirunelveli.

...Respondents/Defendants



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PRAYER: This Appeal Suit is filed under Section 96 r/w 41, Rule 1 & 2 of the Civil Procedure Code, against the judgment and decree passed in O.S.No.125 of 2017 dated 28.03.2017 on the file of the Principal Sub Court, Tirunelveli.

For Appellants : Mr. H.Arumugam
For Respondents : Mr.D.Sasikumar
Additional Government Pleader

JUDGMENT

This appeal has been directed against the judgment and decree passed by the Principal Sub Court, Tirunelveli in O.S.No.125 of 2017 dated 28.03.2017.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

(i) Originally one K.Packiyam Pillai has filed an application before the Commissioner for appointing her as hereditary trustee in the temple namely Arulmigu Maha Ganapathy Srimuga Santhi Vinayagar Temple at Palayamkottai



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(hereinafter referred to as 'the suit temple' for the sake of brevity). The said application was dismissed. Challenging the same, an appeal has been filed before the Commissioner of Hindu Religious and Charitable Endowment Department. By an order dated 08.10.2001, the appeal was also dismissed. As against the said dismissal order, the suit has been filed under Section 70 of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as 'the Act' for the sake for brevity).

(ii) During the pendency of the suit, the said Packiyam Pillai died and thereafter, one Shenbagavalli was impleaded as second plaintiff. She claimed such right on the basis of the Will said to have been executed by the said Packiyam Pillai.

(iii) The Will executed by the original founder, namely Sivasubramania Pillai was marked as Ex.A1 and Ex.B1 by both sides. As per the Will one Chinnathambia Pillai was appointed as trustee and he has to appoint the next trustee and if he failed to appoint the next trustee, the eldest son of Chinnathambia Pillai has to take over the trusteeship.



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4. Based on the oral and documentary evidence, the trial Court had framed the following issues:

1. Whether the plaintiff is entitled to declare him as the hereditary trustee of Schedule temple by setting aside the order passed by the first defendant in A.P.No.9 of 2002 dated 08.10.2004?

2. Whether this Court has Jurisdiction to entertain the suit claim?

3. To what other reliefs and costs?

5. Before the trial Court, on the side of the plaintiff P.W.1 to P.W.7 were examined and Ex.A1 to Ex.A6 were marked. On the side of the defendants D.W.1 was examined and Ex.B1 to Ex.B17 were marked. Further, witness documents were marked as Ex.X1 to Ex.X4.

6. After analyzing the evidence, the trial Court has found that after Chinnathambiah Pillai, his son namely, Sivasubramanian was managing the temple. Therefore, the trial Court has concluded that since the Will did not authorise an appointment of trustees other than the branches of Chinnathambiah Pillai, the plaintiffs 1 and 2 are not entitled to be appointed as hereditary trustee and dismissed the suit. Challenging the same, the present appeal came to be filed.



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7.The learned counsel for the appellants/plaintiffs would submit that the present appellants are also the legal heirs from the Cinnathambia Pillai branch. Even applying the recitals in the Will, they are entitled to be appointed. Even the trial court has also recorded the same. Therefore seeks to set aside the judgment passed by the trial Court.

8.The learned Additional Government Pleader appearing for the respondents submitted that if the appellants seek appointment as hereditary trustee contending that they are the legal heirs from Chinnathambia Pillai Branch, they will have to file an application before the Joint commissioner under Section 63(B) of the Act and they cannot canvass the same before this Court.

9.In the light of the above submission, now the point arises for consideration in this appeal are as follows:

(i)Whether the appellants impleaded after death of the original plaintiff is entitled to be appointed as hereditary trustee as per the Will left by the original founder M.Sivasubramania Pillai?



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10. Heard the learned counsel appearing on either side and perused the materials available on record.

11. The fact that the suit temple was originally founded by the original founder namely Sivasubramania Pillai is not disputed by both sides. He left the Will under Ex.A1, dated 19.10.1928. In the said Will, the original founder has appointed one Chinnathambia Pillai as a trustee to manage the suit temple, who is none other than the son-in-law of the original founder. The recitals of the Will further indicate that the said Chinnathambia Pillai, who was appointed as trustee, has to appoint the next trustee and if he failed to appoint the next trustee, the senior most legal heir of Chinnathambia Pillai has to be appointed as trustee to take over the trusteeship. From the recitals of the Will, it is made clear that the trustees should be appointed from the descendants of Chinnathambia Pillai, who was originally appointed as trustee under the will, Ex.A1.

12. It is admitted by both sides that the said Chinnathambia Pillai has a son namely Sivasubramanian, who had three daughters namely Arumugathammal, Sankara Vadivammal and Valliammal. It is also admitted by both sides that Arumugathammal and Valliammal had not claimed any right of trusteeship. One



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Sankara Vadivammal had a son namely Natarajan. The second plaintiff in the suit namely, Shenbagavalli is the daughter of the said Natarajan. These facts are not disputed by both sides.

13.Now the said Shenbagavalli/ second plaintiff also died. Her legal heirs have been brought on record in this appeal. The second appellant is the husband of the second plaintiff in the suit and the appellants 2 to 6 are the legal heirs of the second plaintiff. This relationship has not been disputed by the learned Additional Government Pleader appearing for the respondents.

14.Such view of the matter, this Court is of the view that as long as other daughters of the Sivasubramania Pillai had not claimed any right of trusteeship, the legal heirs of Shenbagavalli are entitled to be appointed as trustee. However, since the suit related to the claim on the basis of the Will said to have been executed by Packiam Pillai, the trial Court has rightly rejected the claim of the appellants. Such view of the matter, as the Will executed by the original founder of the suit temple is not disputed by both sides and the legal-heirship of the appellants are also not in dispute, if the appellants want to pursue their remedy to appoint them as trustee, the senior most legal heir in the line of succession among



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the appellants has to file necessary application before the authorities under Section 63 (B) of the Act. If such application is filed, the same shall be considered by the authorities concerned and reasoned orders shall be passed on its own merits in accordance with law.

15. Accordingly the points are answered and the Appeal Suit is dismissed. It is made clear that dismissal of the appeal suit will not stand in the way of appointing the legal heirs of Shenbagavalli, as hereditary trustee of the suit temple. No costs.

15.03.2023

NCC : Yes/NO
Index : Yes/No
Internet : Yes/No
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N.SATHISH KUMAR, J.

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Judgment made in
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