



A.S. (MD).No.127 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.03.2024

PRONOUNCED ON : 12.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

A.S. (MD) No.127 of 2016

and

C.M.P.Nos. 3403 of 2013, 3843 of 2014,
10224 of 2022 and 4017 of 2024

1. P.P.Natesan

2. K.P.Muthusamy

M.Paramasivam (Died)

Ponnusamy @ Kandasamy (Died)

3. Ramasamy

4. Balasubramani

... Appellants

Versus

1. The Commissioner,
T.N.H.R. & C.E. Department,
No.119, Uthamar Gandhi Salari,
Chennai City, Chennai.

2. The Joint Commissioner,
H.R.&C.E, Thanjavur,
S.M. Road, Thanjavur Town,
Thanjavur District.



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WEB COPY 3. V.Viswanathan

4. V.S.Ganesan

5. V.N.Gopalan

6. R.Narayanan

7. Ramalingam

... Respondents

PRAYER: The Appeal Suit is filed under Section 70(2) of the Hindu Religious Charitable Endowment Act, 1959, as against the judgment and decree passed in O.S.No.119 of 2013 on the file of the Principal Subordinate Judge, Thanjavur, dated 29.02.2016.

For Appellants : Mr. V.K.Vijayaraghavan

For Respondent : Mr. M. Ramesh, Government Advocate
Nos.1 and 2

For Respondent : Mr. Niranjana Rajagopalan
Nos.4 and 6 for Mr.G.Kumar

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JUDGMENT

This Appeal Suit has been preferred as against the decree and judgment passed in O.S.No.119 of 2013 on the file of the Principal Subordinate Judge, Thanjavur, wherein the appellants herein have filed a suit before the trial Court to set aside the order passed by the first respondent in A.P.No.90/2010/D2, dated 10.04.2012.



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2. The trial Court dismissed the suit. Aggrieved over the said decree and judgment, the present Appeal has been preferred by the plaintiffs.

3. The brief facts of the plaint averments are as follows:-

The plaintiffs have filed the suit under Section 70(2) of the Hindu Religious Charitable Endowment Act, 1959, to set aside the order of the Commissioner of H.R.& C.E., Chennai, passed in A.P.No.90/2010/D2, dated 10.04.2012. Originally, the plaintiffs have filed an application under Section 64(1) of H.R.&C.E Act, before the Joint Commissioner of H.R.&C.E, Thanjavur, in O.A.No.8 of 1994 praying to frame a scheme of administration of temple Arulmigu Athanur Peramanar Temple situate at Varahoor Village, Thiruvaiyaru Taluk, Thanjavur District against defendant Nos. 2 to 5 and the Joint Commissioner was pleased to order in favour of the plaintiffs framing draft scheme of administration of the said temple. Against the said order, defendants 2 to 5 herein have filed an appeal before the Commissioner of H.R.&C.E, Chennai, and the said appeal was allowed through order dated 10.04.2012.



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3.1. Sri Peramanar temple was founded by the forefathers of these plaintiffs for the benefit and betterment of their family. The plaintiffs are belonging to Vellalar Community. They have been worshipping the deity as their *kula deivam*. The community people vacated the village due to the Nawab was willing to marry the Vellalar Community lady, but, they refused to perform marriage to the Nawab due to the reason, they have vacated the local village and have settled at various places. The fore fathers of the plaintiffs acquired landed properties in favour of the deity to perform poojas out of the income derived from the landed property, the fore fathers of the plaintiffs performed *Kumbabishegam* and also built up a compound wall around the temple with their own costs and also put up an iron gate in front of the temple. The plaintiffs also built up a *Mandabam* with AC roofing in front of *Moolasthanam* and have also constructed one *Pongu Mandapam (Madapalli)* and *Thangu Mandapam (Rest Room)* in the year 1971. The temple and tank is situate in 3 acres and 29 cents at Varahoor Village. Virtually, it is a denominational temple exclusively belonged to Vellalar Community. Now most of the community people at Kitchipalayam, Palamedu, Pandamangalam and Trichy. Though they are



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residing in different places, they worship and maintain the temple by spending their own fund.

3.2. While the facts are being so, these defendants 2 to 5 have stealthily grouped this temple with other temples in which they are declared as hereditary trustees. They filed O.P.No.60, 61 and 64 of 1949 before the District Munsif Court, Thiruvaiyaru, for declaration that they are the hereditary trustees and the Siva and Vishnu temples are exempted temples. The matter went up to this Court and obtained order in their favour. In the above said O.Ps., the five Sethis in Varahoor Villge, who are the representatives of five families, formed heads of five Sethis in Varahoor and they belong to Brahmin Community. Several years ago, the said Brahim Community endowed lands for Siva and Vishnu temples in the village and thereafter, they functioned as trustees to the above-mentioned temples examining for the performance for the services. They have not endowed any landed properties to this suit temple. They have not acted as trustees to the suit temple. At an earlier stage, they have claimed those two temples are the private temple. Subsequently by reason of a compromise decree in O.S.No.144 of 1925 on the file of the District Munsif, Thanjavur,



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they were recognised as public temples, where the members of the other Hindu communities could also worship. But, that compromise kept in that the right to the hereditary trusteeship in five heads of the families of Sethis. The Assistant Commissioner, H.R.&C.E Board, took proceedings against them and they could not claim to be defuse trustees with hereditary right of succession. In those O.Ps. and suit, these plaintiffs or other Hindu community people were not added as parties and it was confined with Brahim community and the H.R.&C.E Department.

3.3. Against the proceedings of the Assistant Commissioner of the H.R.&C.E, the forefathers of the respondents 3 to 5 have filed an appeal before the District Court praying to declare that they were the hereditary trustees and those two temples were exempted one. It was upheld by the then District Judge. The District Court was pleased to uphold the hereditary trusteeship, but, it declined to grant decree for exempted temple. As far as the administration of suit temple is concerned, it is not administrated by the respondents 3 to 5. The first respondent Commissioner H.R.&C.E has not gone to that extent to go through the evidence of administration of this suit temple hereditary. Hence, it is just



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and necessary to set aside the order of the Commissioner by confirming the order of the Joint Commissioner of H.R.&C.E, Thanjavur and further, it is also just and necessary to settle a scheme of administration among the plaintiffs.

4. The brief averments of the written statement filed by the second defendant and adopted by the first defendant are as follows:-

The suit is not maintainable either in law or on facts and as such it is liable to be dismissed in limine. The averments made in the plaint para (III) 1 to 5 of the plaint are not correct. The Joint Commissioner passed order in O.A.No.8/1994 in favour of the plaintiff and the same was challenged through appeal in A.P.No.90/2010 and the same was allowed and the order passed by the Joint Commissioner in O.A.No.8/1994 was cancelled. In fact, as per the order of the District Court, Thanjavur, in O.P.No.61/1949, dated 26.11.1959, the said temple was administered by the hereditary trustees. The Department has accepted that this temple was among the temple of Arulmigu Venkatesa Perumal temple group. As per the H.R.&C.E Act, there is no provision to appoint more than five persons as trustees. The plaintiff has not filed any document in his favour to ask the



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scheme. The property of Arulmigu Peramanar temple is available in the property register of Arulmigu Venkatesa Perumal temple property and the same was found in the order of the Assistant Commissioner and the Deputy Commissioner, H.R.& C.E. The administration of Arulmigu Peramanar temple already is included in the administration of Arulmigu Venkatesa Perumal temple, Varahoor. Therefore, no need for any interference in the order of the Commissioner of H.R.& C.E. Therefore, the suit is liable to be dismissed.

5. The brief averments of the written statement filed by defendant No.7 and adopted by defendant Nos.5, 6 and 8 are as follows:-

The suit is not maintainable either in law or on facts and it is liable to dismiss in limine. These defendants does not admit that the temple Peramanar was founded by the forefathers of the plaintiffs for the benefit and betterment of their family in particular and their community in general and they belonged to Vellalar Community and they have been worshipping the deity as their *kula deivam* and also denied that the plaintiffs forefathers acquired landed properties in favour of their deity and perform poojas out of the income derived from the landed property and a tank was also



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constructed by the forefathers. It is false to state that the forefathers of the plaintiffs performed *Kumbabishekam* and also they have constructed a mandapam as stated in the plaint. In fact, the suit temple called as Peramanar temple absolutely belong to defendant Nos.3 to 8 and their forefathers of Varahoor village and the suit temple is not Aathannor Peramanar Temple and it is Varahoor Village, where the Peramanar temple is situate. The temple has several deities which is made of clay which in open place and there is no Gopuram for any deity in the Peramanar temple which is worshipped as *Ellai Kaval Theivam* by Varahoor village people. The defendants forefathers, who belonged to five families of Brahmin of Varahoor village established and founded the suit temple, which is a sub temple as it is grouped with main temple Arulmigu Venkatesa Perumal Temple by dedicating properties some 150 years ago for the maintenance of the temple established by them. The petitioners forefathers belong to five Sethis of Brahmin are in control and management of all above four temples which are in management of hereditary trustees of five Sethis of defendants Brahmin families of Varahoor village and except Brahmin of five Sethis nobody including petitioners and their forefathers were never in management of suit temple.



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The suit temple management with main temple was already recognised by the H.R.&C.E Department.

5.1. In fact, the Venkatesa Perumal Temple and three other temples at Varahoor in Thanjavur District was established by these defendants forefathers some 150 years ago. The Varahoor Village was habituated by majority Brahmin community people and most of the lands in the village were owned by those Brahmin community people. These defendants forefathers endowed lands for the establishment and management of the four temples at Varahoor. The defendants ancestors were of consisted of five Sethis and each of the Sethis had 20 vellis and the total extent of land in the village being 100 vellis. The first Sethi was called as Venkatrama Iyer Sethi, the second Sethis was called as Samy Iyer Sethi, the third Sethi was called as Vengu Iyer Sethi, the fourth Sethi was called as Vembu Iyer Sethi and the fifth Sethi was called as Panchanatha Subbaih Sethi. Services in the temple and the Uthsavams of the temple are conducted by the trustees the defendants herein each representing the family of one of the original Brahmin heads of each Sethis.



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5.2. These defendants forefathers from the date of establishment of above temples including the suit temple are in management of the temple as hereditary trustee of the temple which was also upheld by competent Court of law and hence, it cannot be reopened by the plaintiff herein as it barred by the principle of *res judicata*. The H.R.& C.E. Department had passed order dated 12.08.1949 to take over the management of the suit temple in O.A.No.7/1949 which was challenged by these defendants in O.P.No.61/1949 against the H.R.& C.E. department before the Principal District Court, Thanjavur, for declaration that the defendants forefathers who were petitioners in the above Original Petitions are hereditary trustee of the temple and two other Original Petitions in O.P.No.60/1949 were filed in respect of Sri Venkatesa Perumal and Kailasanathar Temple and O.P.No.62/1949 was filed in respect of Ayyanar Temple for the same relief before the Principal District Court, Thanjavur,. The said orders were challenged by way of appeal by the H.R.& C.E. Department before this Court. This Court remanded the matters to the Principal District Court, West Thanjavur and after remand, the Principal District Judge, Thanjavur, reheard the matter and allowed the petitions by



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holding that the suit temple was established by these defendants forefathers and they were in management as hereditary trustees of the suit temple. Again the said order was challenged by the H.R.& C.E. Department before this Court and the said appeals were dismissed by confirming the order of the Principal District Judge, Thanjavur. Therefore, as per the order of this Court, these defendants forefathers are the hereditary trustees of the suit temple and other three temples. The suit temple poojas are performed by poojari, who are appointed by these defendants, which are recognised by the second defendant and the Peramanar temple is also having a fish tank which are auctioned by these defendants in the presence of official of the second defendant which would clearly show that this suit temples are in control and management of these defendants as hereditary trustees of the temple.

5.3. The petitioners community people by name Natesan and four others have filed a petition in O.A.No.8/94 under Section 64(1) of the H.R.& C.E. Act against the defendants and two other trustees of the temple to frame scheme to include them in management of the temple and the same was allowed by the Joint Commissioner, H.R.& C.E. Department,



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Thanjavur, through order dated 15.10.2010. These defendants had preferred appeal in A.P.No.90/2010 before the Commissioner, H.R.& C.E. Department and the same was allowed through order dated 10.04.2012. The Kumbabishekam for the suit temple was performed by these defendants with the approval of the second defendant along with other temples which are in control and management of these defendants. Therefore, the claim of the plaintiffs that they performed the Kumbabishekam for the suit temple is absolutely unsustainable.

5.4. Further, the suit temple is said to be *kula deivam* for the petitioners and their community people which cannot enable the petitioners to make a claim of right in the administration of the suit temple. The petitioners appointment of poojari to do poojas in the suit temple are not recognised by the second defendant and the petitioners are said to have sent payment to poojari from Salem without the consent and recognition of the second defendant which would show that the petitioners have made payment to poojari only for the purpose of creating a right over the management of the temple. The petitioners constructed buildings like Pongu and Thangu Mandapam and compound wall are only in the capacity



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of worshipers and devotee of the suit temple and the constructions in the temple are made only out of donations by the worshippers of the temple, which cannot clothe the petitioners to make a claim of administration of the temple. Therefore, the suit is liable to be dismissed.

6. Based on the said pleadings, the trial Court has framed the following issues:-

(1) Whether the plaintiffs are entitled to get the relief to set aside the order of the first defendant passed in A.P.No. 90/10, dated 10.04.2012?

(2) Whether the plaintiffs are entitled to get the relief of framing a scheme of administration of the temple A/M.Peramanar?

(3) Whether this suit is barred by res judicata by the judgments in earlier O.Ps.?

(4) Whether the suit temple is grouped with main temple of A/M Venkatesa Perumal temple and is under the control and management of defendants as hereditary trustees?

(5) to what other reliefs the plaintiffs are entitled to?



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7. Before the trial Court, on the side of the plaintiffs, P.W.1 to P.W.4 were examined and Exs.A1 to A70 were marked . On the side of the defendants, D.W.1 to D.W.4 were examined and Exs.B1 to B35 were marked.

8. The trial Court, after considering the evidences adduced on both sides, dismissed the suit. Aggrieved over the decree and judgment passed by the trial Court, the unsuccessful plaintiffs have preferred an appeal before this Court.

9. The learned counsel appearing for the appellants would contend that five persons belonging to Soliya Vellalar Community filed an application before the Joint Commissioner, H.R.& C.E., Thanjavur, for framing of a scheme in O.A.No.8 of 1994. On 15.10.2010, the Joint Commissioner passed an order and framed draft scheme after giving opportunity to both parties. After calling for an objection, the draft scheme posted for enquiry on 18.01.2011 and the Scheme comes into effect as per clause (1) after it is published in the District Gazette. In the draft scheme,



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the Joint Commissioner held that in addition to hereditary trustees, who obtained declaration under Section 54(1) of TN H.R.& C.E. Act, five persons belonging to Varahoor, Vellala Pillai Community would be appointed to administer the temple. One condition imposed by the Joint Commissioner in the draft scheme was that hereditary trustees in office should establish their heirship or right in the line of succession under Section 54(1) of the Act and non-hereditary trustees should possess qualification as per Section 26 of the Act.

9.1. On the date of passing order by the Joint Commissioner, no hereditary trustee was having declaration under Section 54(1) of the Act to hold the office of trusteeship and therefore, the said condition was imposed in the draft scheme. After the draft scheme, appeal was filed in A.P.No. 90/2010 before the Commissioner, H.R.& C.E., Madras, and it was allowed on 10.04.2012. The appellants have filed Civil Suit under Section 70 of H.R.& C.E. Act before the Principal Sub Court, Thanjavur, in O.S.No.119/2013 to set aside the order passed by the Commissioner dated 29.02.2016. Issue relating to heirship was not raised by the Sethi residents. The appellants/plaintiffs have filed Exs.A1 to A70 to show that the



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management of the temple and the constructions made by them, but, the trial Court has failed to consider those documents. The defendants/ hereditary trustees examined themselves and marked documents under Exs.B1 to B35 and no issue relating to heirship was framed to confirm that the trustees in office are the heirs or descendants of hereditary trustees for all temples. The heirs or hereditary trustees did not get declaration under Section 54(1) of the Act, for managing the temple, hereditary trustees have right. Though hereditary trustees of persons belonging to Sethis was confirmed as per order passed in O.P.No.61/1949 and judgment in A.S.No. 261/1962 of this Court, whether the persons in office or whether the legal heirs of hereditary trustees are in management of temple require to be established. Till date, the incumbents in the office of temples have not proved that they are descendants or heirs to hereditary trustees as per Section 54(1) of the Act. Therefore, the defendants cannot claim right of management to the temple and the persons in management are not hereditary trustees. The order of appointment of five persons hailing from Soliya Vellalar Community for administration of temple was justified and the order of the Joint Commissioner did not suffer due to any legal infirmity.



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9.2. The appellants are interested persons as per Section 6(15) of the H.R.& C.E. Act. The documents filed by the plaintiffs would confirm their conduct and interest towards the temple. The hereditary trustees in office have not established their rights or proved their heirship. The subsequent events of action taken by the Government as per G.O.Ms.92 and the dismissal of application under Section 54(1) of the Act by the Joint Commissioner, Cuddalore, are relevant for confirming that persons in office are not having heirship to the hereditary trusteeship. As the persons in office have not proved their heirship to the office as per draft scheme dated 15.10.2010, vacuum in the temple administration arose and no hereditary trustee is available to look after temple interest. The Sethi people cannot succeed unless they prove and establish that the persons in office are hereditary trustees as per Section 54(1) of the Act. Therefore, the appointment of five persons belonging to Vellalar Community has to be approved and they may be allowed to administer the temple.

9.3. Section 64 of the H.R.& C.E. Act is a special provision which contemplates appointment of non-hereditary trustees in addition to



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hereditary trustees in the administration of temple. Section 47 of the H.R.& C.E. Act has no application. The institution has not been included in the list published under Section 46 of the Act and scope of Section 64 has not been correctly referred by the persons claiming hereditary trusteeship.

9.4. The petitioners have already filed a petition under Order 41 Rule 27 to receive the documents that is order of proceedings relating to hereditary trustees. By receiving the said documents, no further enquiry needed as per Order 41 Rule 28 C.P.C. Therefore, the said documents can be received as additional documents. The trial Court has failed to consider the above-said aspects and dismissed the suit. Therefore, the decree and judgment passed by the trial Court are liable to be set aside.

9.5. To support his contention, the learned counsel appearing for the appellants would rely on the following judgments:-

(1) ***T.Goraknathan Vs. S.N.Kulothungam & Another*** reported in ***2022-2-L.W.278***.

(2) ***Lachmeshwar Prasad Shukul and Others Vs. Keshwar Lal Chaudhuri and Others*** reported in ***A.I.R.1941 Federal Court 5***.

(3) ***E.Thirumurthy and another Vs. Collector of Chennai, Collector Office, Chennai and Others*** reported in ***1998 Writ L.R.347***.



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(4) *Anbazhagan and Others Vs. The Commissioner, H.R. & C.E.*

Department, in W.P.No.25020/2019 .

(5) *Varghese Daniel Vs. Balakrishnan and Another* reported
in 1999 (1) L.W. 159.

10. The learned counsel appearing for the 3 to 7 respondents would contend that the suit Peramanar Temple is managed and administered by hereditary trustees and the same is confirmed by judgment of the Division Bench of this Court in Appeal No.261 of 1962, dated 29.08.1966. The said Peramanar Temple is grouped with Sri Venkatesa Perumal Temple, Varahoor Village. All the expenses of Peramanar Temple including poosari salary are met out from the income of Sri Venkatesa Perumal Temple, Varahoor. The H.R.& C.E. Department approved the annul budget of Rs.5,000/- to Rs.6,000/- in the books of Sri Venkatesa Perumal towards yearly expenses for Sri Peramanar Temple. There are four temples namely, Sri Venkatesa Perumal Temple (main temple), Sri Maha Kailasanathar Swamy Temple (sub temple), Sri Ayyanar Temple (sub temple) and the suit temple Sri Peramanar temple (sub temple) all are maintained and administered by the hereditary trustees and the same was also confirmed by the Division Bench of this Court. Sri Venkatesa Perumal Temple is listed under Section 46(3) of H.R.& C.E. Act and other temples,



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specifically, the suit temple, Sri Peramanar Temple, is not listed under the Act. The right of hereditary trusteeship pertaining to the temple was settled by the Division Bench of this Court. The Division Bench of this Court in the order dated 29.08.1966 held that only the descendants of the five original heads of the Sethis can take the management and affairs of the temple and confirmed the order of the District Court, West Thanjavur.

10.1. While so, the plaintiffs claiming to be administering the affairs of the temple sought for settling of a scheme in the interest of proper administration of the temple and its properties among them. The above-said prayer directly or indirectly seeking non-hereditary trustees rights, which is outside the scope of Section 64 or 65s of the H.R.& C.E. Act. The evidence and the pleadings before the Joint Commissioner and thereafter, were only in the nature of claiming the right to administer the temple, and no allegations of mismanagement, etc, were made. The second respondent framed a draft scheme in O.P.No.8 of 1994 dated 15.10.2010, at that time it records that the temple is governed by the order of this Court, however, provided that along with hereditary trustees, the non-hereditary trustees, who are involved in the welfare and activities of the



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temple, should be added as non-hereditary trustees. The correctness of the said scheme came to be questioned before the Commissioner, H.R.& C.E., Department, in A.P.No.90 of 2010 and the same was allowed by setting aside the draft scheme on the ground that no annexure to the order to find out whether the Joint Commissioner arrived at, subject to satisfaction and the grounds on which the Joint Commissioner relied in arriving at a conclusion, as to whether a scheme is required or not.

10.2. The respondents/appellants have not filed any documentary evidence to support their claim. In the absence of proved misconduct or incompetence, the existing hereditary trustee's powers cannot be interfered by appointing additional non-hereditary trustees. Further, when the Act contemplates not less than 3 and not more than 5 trustees, the temple is already managed by 5 trustees, and there is no reason or jurisdiction to appoint additional trustees and the matter is covered by the order of the competent Court, and is a group temple of Venkatesa Perumal temple. Therefore, on the above-said grounds, the order of the Joint Commissioner was set aside. The said order of the Commissioner, H.R.& C.E. was challenged through this suit before the Principal Sub Court, Thanjavur, and



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the trial Court has framed proper issues and answered to the issues properly based on the evidences adduced on both sides. The suit is barred by the principle of *res judicata* since this Court has already decided the hereditary trusteeship of the Peramanar Temple and further, the trial Court held that the finding of the Joint Commissioner does not satisfy the Section 64 of the H.R.& C.E. Act nor is there any plea of mismanagement made out and proved. Therefore, the judgment passed by the trial Court is well reasoned and also the appellants have filed application under Order 41 Rule 27 of C.P.C and the said documents are subsequent to the suit.

10.3. The learned counsel further contended that Section 64 of the H.R.& C.E. Act contemplates appointment of non-hereditary trustees in the place of or in addition to the hereditary trustees. The said provision is subject to the powers of appointment under Section 47 and Section 49 of the H.R.& C.E. Act Act. As per Section 47, where a religious institution included in the list published under Section 46 or in respect of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee. As per Section 47(1), it will apply only in cases where there are no hereditary trustees. As per Section 47(2) contemplates



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appointment of non-hereditary trustees, despite presence of Hereditary Trustees only for reasons to be recorded that the affairs of the institution are not likely to be managed by the hereditary trustees.

10.4. Once it is found that the authority under the Act has not recorded any satisfaction, the order has to go and the Court cannot substitute satisfaction in place of the original authority. The Court can only frame a scheme, alter, modify or cancel only where the subjective satisfaction exists. In the absence of any subjective satisfaction recorded by the competent authority under Section 64, the question of the grant of prayer (2) in the suit namely, framing of a scheme of administration of the temple does not arise.

10.5. Insofar as the question of *res judicata* is concerned, the said issue arises only in the light of the plaintiffs claiming an exclusive right by framing scheme. The original Joint Commissioner's draft scheme does not exclude the hereditary trustees, acknowledging the judgment. The plea of the appellants however, goes beyond what has been granted by the



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Joint Commissioner and hence, the question of whether the right of trusteeship arises in favour of the appellant came into consideration. The question of hereditary trusteeship is a *right in rem* and will apply against everyone else. Starting from 1966 to 1994, the appellants have not asserted any right contrary before any legal forum. Therefore, it can be presumed the plaintiffs family had never had such a right, there is no plea of fraud in getting the decree. While the department in the draft scheme itself treated plaintiff/appellant family only as non-hereditary trustees, a superior claim made in the suit by claiming sole administrative rights is not only beyond what is recognised by the department, but clearly barred by *res judicata*.

10.6. The proceedings under Section 70 of H.R.& C.E. Act is to test the correctness of the order of the Commissioner. It may approve, modify or cancel such order. As the proceedings are in challenge of an order, though called a suit, the proceedings are essentially in the nature of an appeal and are not an original proceedings like the one filed under Order VII Rule 1 of C.P.C. Further, an appeal under Section 70(2) of the Act is a statutory appeal under H.R.& C.E. Act and cannot be equated with a first appeal under Section 96 of C.P.C., though the nomenclature in



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numbering the appeal suggests so. The appellants have not taken any steps to substitute their legal heirs in time and no reasons have been stated by them. Therefore, the trial Court, after taking into consideration of all the aspects, rightly dismissed the suit and therefore, the appeal is liable to be dismissed.

10.7. To support his contention, the learned counsel appearing for the respondents would rely on the following judgments:-

(1) ***R.Valliammal V. Area Committee for Madras City*** reported in (1962) 1 MLJ 320.

(2) ***R.Venkataramani V. The Madras Hindu Religious and Charitable Endowments Boards*** reported in (1967) 1 MLJ 40.

(3) ***Navaneetham V. Commissioner, H.R.&C.E.*** reported in (1963) 2 MLJ 474.

(4) ***T.S.Pichu Ayyangar V. Sri Perarulalar Ramanujam Jeeyar Swamigal*** reported in A.I.R 1940 Mad 756.

(5) ***T. Govindachetty V. K.Lingusamy Chetty*** reported in (1960) 2 MLJ 205 and

(6) ***Prem Anand V. Commissioner, H.R.& C.E.*** reported in 1990 1 L.W 144.

For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the trial Court.



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11. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

12. Upon hearing the learned counsel appearing for the appellants and the learned counsel appearing for the respondents, the following points are framed for determination in this First Appeal:-

(1) Whether C.M.P.No.3403 of 2023 is to be allowed or not?

(2) Whether the suit temple is grouped with Venkatesa Perumal main temple and listed under Section 46 of H.R.& C.E. Act?

(3) Whether the suit temple is under the management of descendants of defendant Nos.3 to 8, who are the hereditary trustees of the temple?

(4) Whether the suit is barred by principle of res judicata by the judgments in earlier proceedings?

(5) Whether the plaintiffs are entitled to get a relief of framing a scheme of administration of the suit temple?



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(6) Whether the plaintiffs are entitled to get a relief to set aside the order of the first defendant passed in A.P.No. 90/10, dated 10.04.2012? and

(7) Whether this appeal is to be allowed or not?

13. **Point No.1:-** This appeal has been preferred as against the decree and judgment passed in O.S.No.119 of 2013 and the trial Court dismissed the suit. Before the trial Court, the appellants herein have filed a suit for framing of a scheme as per Section 64 of the H.R.& C.E. Act. Already the appellants have filed a petition before the Joint Commissioner, H.R.& C.E. Department and the said petition in O.A.No.8 of 1994 was allowed and the same was challenged through appeal before the Commissioner of H.R.& C.E. Department and the same was set aside. As against the said order, the appellants have filed a suit before the trial Court. The said suit was dismissed, against which, they preferred this appeal.

13.1. During the pendency of the appeal, the appellants have filed a petition to receive the documents as additional evidence under Order 41 Rule 27 of C.P.C. According to the petitioners, the respondents are not the hereditary trustees of the said temple and the Government has



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issued ***G.O.(P).No.92, Tourism, Culture and Endowments (Aa.Ni.3-1)***

Department, dated 08.09.2020, declaring that the legal heirs of five Sethis of Brahmin residing at Varahoor Village were not managing the institution that the complaints were received in the matter of renovation work and Arulmigu Peramanar Temple that there are irregularities in the temple administration that the Commissioner has reported the said details to the Government and recommended for appointment of a fit person under Section 53(1) of the H.R.&C.E Act. After accepting the report of the Commissioner, H.R.& C.E. Department, a fit person was appointed by the Government under Section 47(1) of the H.R.&C.E Act. The said Government Order was challenged before the Hon'ble High Court in W.P.No.13527 of 2020 and this Court issued some directions and the said Government Order was set aside and the Commissioner, H.R.& C.E Department, was directed to conduct an enquiry whether the petitioners in the Writ Petition would constitute hereditary trustees of the temple. The Joint Commissioner, H.R.&C.E Department, passed an order dated 20.04.2022 declining to accept the hereditary trusteeship of the writ petitioners. Against which, the writ petitioners have preferred the appeal to the Commissioner, H.R.&C.E Department, and in the meantime, orders



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were passed in W.P.No.13527 of 2020 and W.P.No.25812 of 2021 by directing the Commissioner, H.R.&C.E Department, to pass final order in terms of order dated 06.07.2021 after giving an opportunity to the members of Sethis Community and the local devotees within the period of four months. As the respondents are not entitled to be declared as hereditary trustees, the order passed by the Joint Commissioner, H.R.&C.E Department, Cuddalore, dated 20.04.2022 is in force and the same has not been set aside. Hence, the said order along with the writ order passed by the Hon'ble High Court are essential to prove the case. Therefore, those documents have to be received as additional evidence in this appeal.

13.2. According to the respondents, the present case is not an appeal under Section 96 of C.P.C. read with Order 41 Rule 1 of C.P.C., but under Section 70(2) of the H.R.&C.E Act. Therefore, the application filed under Order 41 Rule 27 C.P.C., is not maintainable. Moreover, the documents sought to be received are subsequent to the decree and during pendency of the appeal. As per direction of the Hon'ble High Court, the Commissioner, H.R.&C.E Department, is yet to hear and adjudicate the issue concerned. The core of allegations made by the relatives of the



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appellants' family in the said matter is that *thiruppani* works are being done without due permission and the Hon'ble High Court has clearly held that the earlier order was passed without hearing the respondents herein. Hence, there is no adverse finding as against these respondents. Therefore, the said documents are no way helpful to decide the appeal.

13.3. The main objection raised by the respondents is that the petition filed under Order 41 Rule 27 C.P.C., is not maintainable since it is not under the regular appeal. It is well settled law that as per Section 141 of C.P.C, the procedures provided in the Court in regard to the suits shall be followed as far as it can be made applicable in all proceedings in any Court of Civil Jurisdiction. Admittedly, this appeal is filed before this Court under the Civil Jurisdiction. Therefore, as per Section 141 of C.P.C. the procedures provided in the Code of Civil Procedure shall be applicable to this appeal. Hence, the contention of the learned counsel for the respondents is not acceptable one. The petitioners have filed the petition to receive the documents as additional evidence and the documents sought to be received and marked are the order passed by the Joint Commissioner, H.R.& C.E. Department in respect of administration of the suit temple and



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the orders of this Court. The said orders are subsequent to the suit and pendency of this appeal.

13.4. As rightly contended by the learned counsel appearing for the appellants that as per judgment of this Court in the case of ***T.Goraknathan Vs. S.N.Kulothungam & Another*** reported in ***2022-L.W. 278***, the subsequent events can also be looked into for moulding the relief. However, the document sought to be marked is the order passed by the authorities and the same is now under challenge before the appellate authority and this Court also in W.P.No.25812 of 2021 directed the Commissioner, H.R.& C.E. Department to pass orders after hearing both sides and till now the matter is pending before the Commissioner, H.R.& C.E. Department. The present case is only in respect of inclusion of the plaintiffs as non-hereditary trustees and to that effect the scheme has to be framed. Therefore, the said document is no way helpful to decide the case and already before the trial Court, both sides adduced oral and documentary evidences and the same are sufficient to decide the case effectively. Therefore, the petition in ***C.M.P.No.3403 of 2023*** is liable to be dismissed and hence, the same is dismissed. Thus, the first point is answered accordingly.



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14. **Point Nos.2 and 3:-** According to the plaintiffs, the suit temple belonged to Vellalar Community people and their forefathers established the temple and they are performing poojas and they have constructed buildings in the temple. Therefore, the temple belonged to Vellalar Community. However, the defendants claiming that they are the hereditary trustees, thereby, they filed a petition for framing a scheme to include them as non-hereditary trustees and the said petition was allowed by the Joint Commissioner of H.R.&C.E Department. The said order was challenged through appeal before the Commissioner of H.R.& C.E. Department and the said appeal was allowed and the order of the Joint Commissioner framing draft scheme was set aside. As against the said order, the present suit is filed. The defendants denied the averments of the plaint that the temple belongs to Vellalar Community and they have constructed some buildings in the temple. According to the defendants, the temple was managed and maintained by the defendants, the same was also recognised by the H.R.& C.E. Department. The temple is grouped with main temple of Venkatesa Perumal and the suit temple is sub temple. The



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Venkatesa Perumal Temple is listed under Section 46 of H.R.& C.E. Act, but, there are no records to show that the suit temple being the sub temple of Venkatesa Perumal temple, which is a listed temple, has been listed along with the main temple. Though the main temple Venkatesa Perumal temple is listed under Section 46, the other temple including the suit temple have not been listed under Section 46(3) of H.R.& C.E. Act. The defendants have also admitted that the main Venkatesa Perumal temple is listed under Section 46 of H.R.& C.E. Act, whereas the suit temple has not been listed and only grouped with the listed temple of Venkatesa Perumal. No contra evidence has been adduced by the defendants to rebut the plaintiffs' case. Therefore, in the absence of any documents, it cannot be said that the plaintiffs' temple was listed under Section 46 of the H.R.& C.E. Act.

14.1. In order to prove the case of the plaintiffs, they have examined P.W.1 to P.W.4 and marked Exs.A1 to A70 and on the side of the defendants, they examined D.W.1 to D.W.4 and marked Exs.B1 to B35. On perusal of the documents filed by the plaintiffs and oral evidence adduced by them, they revealed that they have constructed some building in the



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temple, erected bore well and grill gate and sent salaries to the poojaris to the suit temple. It is admitted by both parties that the suit temple is under the control of H.R.& C.E. Department, but, no any piece of paper was produced by the plaintiffs to show that those constructions were made after due permission from the H.R.& C.E. Department and further no records produced by the plaintiffs to show that they are managing the suit Peramanar Temple. Merely because some constructions were made in the temple, it cannot be said that the plaintiffs are managing temple.

14.2. Per contra, the defendant Nos.3 to 8 have filed the salary register and resolution book in respect of the suit temple that they are managing the suit temple with other temples, Venkatesa Perumal and Kailasanathar Temple. Further, Exs.B4 and B5 are pertaining to the year 1960 and 1961 and they show that the management of the suit temple is with the other temples by the predecessors of defendant Nos.3 to 8 and the same was also admitted by the H.R.&C.E Department. Exs.B5 to B18 show that the property register was managed by the predecessors of defendant Nos.3 to 8 and defendant Nos.6 to 8 were authorised by the Joint Commissioner, H.R.& C.E. Department, and payment of salary to



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Archagars, Poojaris, Night Watchman and other workers of all the temples including suit temple were made by the predecessors of defendant Nos.3 to 8. Exs.B19 and B20 also reveal that auctions for the temples including the suit temple were maintained by the predecessors of defendant Nos.3 to 8. Therefore, the said documents show that the suit Peramanar Temple was grouped with Venkatesa Perumal Temple and all the temples were managed by defendant Nos.3 to 8 and their predecessors. Moreover, already the predecessors of defendant Nos.3 to 8 were declared as hereditary trustees through order of the District Court, Thanjavur, in O.P.Nos.60, 61 and 62 of 1949. O.P.No.61 of 1949 is pertaining to this suit temple. The said orders of the District Court, Tanjore, were challenged through appeals in A.S.Nos.352 of 1961 and 261 and 262 of 1962 and the same were confirmed by the Hon'ble High Court. The appeal in A.S.No.261 of 1962 is pertaining to the suit temple. In the said appeal, the Hon'ble High Court held that only the descendants of five original heads of the Sethis can take the management and affairs of the temple. The H.R.&C.E Department also admitted that in all the statutory records and registers maintained by the appellants i.e. defendant Nos.3 to 8 herein, Peramanar Temple is shown as a group temple of Venkatesa Perumal.



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Therefore, as discussed above, it is clear that defendant Nos.3 to 8 are the hereditary trustees of the suit Peramanar Temple and they are managing the suit temple. Even in the draft scheme in O.P.No.8 of 1994, the hereditary trusteeship of the defendants has been accepted and the plaintiffs have to be included as non-hereditary trustees as they are taking part of the welfare of temple affairs of suit Peramanar Temple. Therefore, the above-said order made by the Joint Commissioner, H.R.&.C.E Department, in the scheme, clearly shows that the plaintiffs themselves admitted the hereditary trusteeship of defendant Nos.3 to 8 and now they are estopped from denying the hereditary trusteeship. Therefore, as discussed above, this Court is of the opinion that defendant Nos.3 to 8 are the hereditary trustees of the suit temple. Thus, the second and third points are answered accordingly.

15. **Point No.4:-** The defendant Nos.3 to 8 have taken a plea of *res judicata*. According to them, already the hereditary trusteeship of the defendant Nos.3 to 8 has been declared by the competent Court. Already they have filed petitions before the District Court, Thanjavur, in O.P.Nos. 60, 61 and 62 of 1949 and the petitions were decreed in favour of



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the defendant Nos.3 to 8 and the forefathers of defendant Nos.3 to 8 were declared as hereditary trustees and the same was challenged through appeal in A.A.O.No.207/1951 and thereafter, this Court remanded the matter to the District Judge, West Tanjore at Tanjore and again, the matter was reheard and the District Judge has upheld the hereditary trusteeship of these defendants for the suit temple and the Hon'ble High Court also confirmed the order passed by the District Court, Thanjavur, in A.S.No. 261 of 1962. Therefore, the verdict of this Court is final since there was no appeal as against that order. The Hon'ble High Court in the judgment held that only descendants of five original heads of the sethis took part in the management of the temples and their affairs and it is clear that the defendant Nos.3 to 8 and their descendants are declared as hereditary trustees of the suit temple. Therefore, the hereditary trustees had already been declared by the competent Court in favour of the defendant Nos.3 to 8 and now the plaintiffs have filed the petition to frame a scheme to include them as non-hereditary trustees. Therefore, they impliedly denied the hereditary trusteeship. Therefore, the matter comes under the provisions of explanation 6 of Section 11 of C.P.C. As per explanation 6 of Section 11 of C.P.C., where persons litigate *bona fide* in respect of a



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public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the “persons litigating”.

16. The learned counsel appearing for the appellants would contend that these plaintiffs are not parties to those proceedings and thereby, the principle of *res judicata* will not be applicable to this case. In reply, the learned counsel appearing for the respondents 3 to 8 argued that the hereditary trusteeship was already declared by this Court and as per Explanation 6 of Section 11 of C.P.C. it is applicable to this case. It is admitted fact that already hereditary trusteeship was declared by the competent Court and the present suit is to include the plaintiffs as non-hereditary trustees. The plaintiffs have filed a petition before the Joint Commissioner, H.R.&C.E Department, under Sections 64(1) and (2) of the Act and the Joint Commissioner has also passed order under Section 64(2) of the Act in respect of addition of non-hereditary trustees. The hereditary trusteeship was already declared by the competent Court; since the inclusion of the plaintiffs as non-hereditary trustees is in respect of administration of suit temple and the same was already decided by the



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competent Court and as rightly contended by the learned counsel appearing for the respondents, it comes under Explanation 6 of Section 11 of C.P.C. Therefore, the suit is barred by principle of *res judicata*. The fourth point is answered accordingly.

17. **Point No.5:-** The plaintiffs have filed a petition before the Joint Commissioner, H.R.& C.E. Department, to frame a scheme and the same was allowed in their favour. In that order, the Joint Commissioner has not recorded any mismanagement of the present hereditary trustees and thereby, the appellate authority has set aside that order and the draft scheme was not approved. As against the order, the present suit is filed and the plaintiffs nowhere stated about the mismanagement of the defendants. The main contention of the plaintiffs is that they are the worshippers of the temple and the deity is their family deity and thereby, they are also to be added as non-hereditary trustees. As per Section 64 of the H.R.& C.E. Act, the non-hereditary trustees can be added as trustees along with the hereditary trustees to manage the temple property. Section 64 of H.R.& C.E. Act is a special provision, which contemplates appointment of non-hereditary trustees in addition to hereditary trustees in the administration of



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the temple. The scheme under Section 64(1) contemplates appointment of non-hereditary trustees as well. Section 64(2)(b) of the H.R.&C.E Act provided that a scheme settled may contain provision for appointing a new trustee or trustees in the place of, or in addition to, any existing trustee or trustees. In the case on hand, the scheme settled is to appoint the plaintiffs as non-hereditary trustees in addition to existing trustees and not for removing any existing trustees. The main contention of the plaintiffs is that they also have to be included as non-hereditary trustees in the administration of temple, thereby, their claim would fall within the purview of Section 64(2)(b) of the H.R.& C.E. Act.

17.1. The learned counsel appearing for the defendant Nos.3 to 8 would submit that Section 47 of the H.R.&C.E Act deals with the trustees and their number and term of office and as per Section 47(2) of the Act, notice to the trustees is mandatory and appointment of non-hereditary trustees despite presence of hereditary trustees is only for reasons to be recorded that the affairs of the institution are not likely to be managed by the hereditary trustees. But, on careful perusal of Section 47 of the H.R.& C.E. Act, it will not be applicable to the present case since the suit temple



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is not listed under Section 46 of the H.R.& C.E. Act, whereas, Section 47 deals with the listed temple under Section 46 of the Act and in respect of which has no hereditary trustee, the Assistant Commissioner has no power to appoint trustee. In the case on hand, the suit temple is not included in the list published under Section 46 of Act and hereditary trustees are available. Therefore, Section 47 of the Act will not be applicable to the present facts of the case.

17.2. Further, as per Section 49 of the H.R.& C.E. Act, the Assistant Commissioner has power to appoint trustees and fit persons in the case of any religious institution, which is not included in the list published under Section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act. Therefore, the present case also not comes within the purview of Section 49 of the Act. Since already hereditary trusteeship was declared by the competent Court, if any vacancy arises, Section 54 of H.R.&C.E Act would apply to fill up the vacancy, but, in the present case is not to fill up the vacancy and only to frame a scheme to appoint the plaintiffs as non-hereditary trustees in addition to the existing trustees under Section 64(2) of the H.R.& C.E. Act.



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17.3. As per Section 64 of H.R.&C.E Act, when the Joint Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of an institution, a scheme should be settled for it, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, order, settle a scheme of administration for the institution. In the case on hand, no any allegation in respect of the administration of temple and the plaintiffs claimed their right to appoint them as non-hereditary trustees as the temple is their family deity. Either in the petition before the Joint Commissioner, H.R.&C.E Department, or in the plait, they nowhere stated about the mismanagement of the present hereditary trustees. This Court already in the earlier proceedings declared that five Sethis of Brahmin alone could control and manage the temple and the same was also recognised by the H.R.& C.E. Department. Therefore, the plaintiffs, without any document to show that



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there are some mismanagements by the present trustees cannot claim to frame a scheme and the Joint Commissioner has to record the satisfaction, but, in the present case, the Joint Commissioner has not recorded the satisfaction, and thereby, the appellate authority had set aside the order passed by the Joint Commissioner, H.R.& C.E. Department. The trial Court also, on this aspect, after elaborate discussion, came to a conclusion that the plaintiffs are not entitled to get a remedy in respect of framing of scheme.

17.4. The learned counsel appearing for the respondents has relied on the following judgments:-

(1) ***R.Valliammal Vs. Area Committee for Madras City*** reported in ***(1962) 1 MLJ 320***.

On a careful perusal of the said judgment, it will not be applicable to the present facts of the case. Because, in the said case, power of the Area Committee to appoint non-hereditary trustee to a non-listed temple has been discussed.

(2) ***R.Venkataramani Vs. The Madras Hindu Religious and Charitable Endowments Board, represented by its Commissioner*** reported in ***[(1967) 1 LW 40]***.



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On a careful perusal of the said judgment, it is held by this Court that hereditary trusteeship is property within the meaning of Article 19(1) (f) of the Constitution and if there is an encroachment of the rights of citizens as hereditary trustees to manage a temple, they can be granted appropriate relief and that where a scheme framed by the Hindu Religious Endowments Board and modified by the District Court reduces the hereditary trustees to the position of dummies, the provisions of such a scheme are void under Article 19(1)(f) of the Constitution.

(3) *Navaneetham Vs. Commissioner HR&CE* reported in **[(1963) 2 MLJ 474]**

On a careful perusal of the said judgment, it is clear that the provisions in a scheme which encroach on the hereditary right of the trustee would be void; but the mere framing of a scheme in regard to the management of the trust property or the association of additional trustees cannot amount to an invasion of any property right. Where the trusteeship devolves under the terms of document in a manner different from that prescribed by the law of succession, it will be a hereditary right under the Act and jurisdiction of the Deputy Commissioner to frame a scheme will



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arise only where that requirement is ratified, but a real requirement on which the authority concerned has to be fairly satisfied.

(4) ***TS Pichu Ayyangar Vs. Sri Perarulalar Ramanujam Jeeyar Swamigal*** reported in ***[AIR 1940 Mad 756]***

On a careful perusal of the said judgment, it is clear that the Court has no power to frame a scheme when the Board has refused to do so.

(5) ***T Govindachetty Vs. Lingusamy Chetty*** reported in ***[(1960) 73 MLJ 205]***

On a careful perusal of the said judgment, it is clear that as per Section 58(1) of the H.R.& C.E. Act, it totally precludes the argument that the Court has any power to direct the Deputy Commissioner to be satisfied that a scheme should be framed or to direct him to proceed to frame a scheme, though he might not have been originally satisfied and equally while the power to institute a suit against the order of the Commissioner may not be in dispute, it seems to be very clear that the Court has no power to frame a scheme where this element of subjective satisfaction of the



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Deputy Commissioner does not exist.

(6) ***Prem Anand Vs. Commissioner HR & CE*** reported in
[1990 1 L.W 144]

On a careful perusal of the said judgment, it is clear that under Section 54 of the H.R.& C.E. Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of the succession shall be entitled to succeed to the office and there is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act.

17.5. Therefore, in view of the above-said judgments, it is clear that this Court cannot direct the Commissioner, H.R.& C.E. Department to frame a scheme when there is no element of subjective satisfaction of the Commissioner, H.R.& C.E. Department and further, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.



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17.6. In the case on hand also, already defendant Nos.3 to 8 and their predecessors have been declared as hereditary trustees of the suit temple. Therefore, the above-mentioned case laws are squarely applicable to the present case on hand.

17.7. The learned counsel appearing for the appellants has argued that the defendant Nos.3 to 8 have not proved that they are the legal heirs of five Sethis as mentioned in the orders of the Hon'ble High Court in A.S.No.261 of 1962. The legal heir certificate issued by the Tahsildar is not conclusive. Therefore, the defendant Nos. 3 to 8 have failed to prove that they are the legal heirs of the original Sethis. To support his contention, he relied on the following judgments:-

(1) ***E.Thirumurthy and another Vs. Collector of Chennai, and others*** reported in ***1998 Writ L.R. 347 : Varghese Daniel Vs. Balakrishnan and another*** reported in ***1999-1-L.W.156***

On a careful perusal of the said judgment, it is clear that legal heir certificate issued by Tahsildar or Revenue Authority, is not a conclusive proof.



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(2) *G.Anbalagan and another Vs. The Commissioner, H.R. & C.E., Chennai, and another in W.P.No.25020 of 2019.*

On a careful perusal of the said order, it will not be applicable to the present facts of the case.

17.8. Therefore, in view of the above-said discussion, this Court is of the opinion that the plaintiffs are not entitled to get a relief to frame a scheme of administration to the suit temple. Hence, there is no perversity or infirmity found in the order of the trial Court. Thus, the fifth point is answered accordingly.

18. **Point No.6:-** The plaintiffs have filed a petition to frame a scheme before the Joint Commissioner, H.R.& C.E. Department and the same was allowed, wherein the Joint Commissioner has not recorded the satisfaction and thereby, the first appellate authority, Commissioner, H.R.& C.E. department has set aside the order by holding that no subjective satisfaction has been arrived and as recorded by the Joint



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Commissioner, the petitioners therein have not filed any documentary evidence to support their claim and in the absence of proved misconduct or incompetence, the existing hereditary trustees power cannot be interfered by appointing additional non-hereditary trustees, thereby, the first appellate authority has set aside the order of the Joint Commissioner, H.R.& C.E. Department. The trial Court also, in its order stated that the plaintiffs have not filed any document for mismanagement and this Court already declared defendant Nos.3 to 8 as the hereditary trustees and the suit is also barred by principle of *res judicata* and thereby, dismissed the suit. Therefore, the plaintiffs are not entitled to get relief of declaration to set aside the order passed by the Commissioner of H.R.& C.E. Department in A.P.No.90/10, dated 10.04.2012. Thus, the sixth point is answered against the plaintiffs and in favour of defendant Nos.3 to 8.

19. **Point No.7:-** The plaintiffs have filed the suit before the trial Court to set aside the order passed by the Commissioner in proceedings A.P.No.90/2010/D2, dated 10.04.2012. The trial Court has framed proper issues and after elaborate discussion, answered all the issues and the trial Court, while answering the issues, correctly applied the law and facts and



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dismissed the suit. The trial Court has held that the suit is barred by principle of *res judicata* since defendant Nos.3 to 8 already filed the petition before the District Court to declare them as hereditary trustees and the same was also allowed and thereafter, the said order was challenged before the High Court through appeal and in the appeal also, the High Court confirmed the order of the District Judge and thereby, this Court upheld the hereditary trustee of the defendants over the temple. The plaintiffs have not produced any document to show that there is a mismanagement by the trustees and their claim is only to include them as non-hereditary trustees and to frame the scheme. It shows that they impliedly claim trusteeship over the temple. Therefore, the suit is barred by principle of *res judicata*. Therefore, the findings of the trial Court shows that the trial Court elaborately, discussed about all the aspects and passed a well reasoned judgment and thereby, there is no perversity or infirmity found in the decree and judgment of the Trial Court and it does not warrant any interference by this Court.

20. As far as the impleadment of parties are concerned, this suit is filed to frame scheme to included the plaintiffs as non-hereditary trustees



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and the suit is filed by five plaintiffs. During pending appeal, one of the plaintiffs died and also some other persons filed petitions to implead them as parties to the appeal. Since already there are sufficient representation, the present parties are not proper and necessary parties and the matter can be decided with available parties. Further, this Court also in the appeal decided that the appellants are not entitled to the relief as sought for by them. Hence, the petitions filed by the petitioners are liable to be closed.

21. In view of the above-said discussions, this Court answers all the points framed and is of the opinion that this appeal has no merits and hence, the same is liable to be dismissed and accordingly, the Appeal Suit is dismissed by confirming the decree and judgment passed by the trial Court. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.06.2024

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Neutral Citation : Yes / No



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To

The Principal Subordinate Judge,
Thanjavur.



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P. DHANABAL, J.

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Pre-delivery judgment in
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