



W.A.(MD) Nos.596 and 597 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On 24.04.2024	Judgment Pronounced On .07.2024
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CORAM

JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI

W.A.(MD) Nos.596 and 597 of 2017

and

C.M.P.(MD) Nos.4970 and 4971 of 2017

W.A.(MD) No.596 of 2017:

S.Balasubramanian

... Appellant/Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Chennai.

2.The Joint Commissioner/Executive Officer,
Hindu Religious and Charitable Endowment Department,
Arulmighu Sri Subramaniaswamy Temple,
Thiruchendur, Thoothukudi District.

3.M.Ganapathiya Pillai alias Ganapathi (Died)

4.K.Manorama Kumarasubramaniam

5.M.L.Vasanthakumari Vijayasankaran

6.K.Periyanayagi Kallapiran



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7.P.Sakthipriya

8.P.Poorvajj Subramanian

9.P.Ayshwarya

... Respondents 1 to 9/
Respondents

10.Baghayaklakshmi

11.Somasundari

... Respondents 10 & 11

[RR10 & 11 – impleaded as LR's of the deceased R3 vide Court order dated 24.01.2018 made in C.M.P.(MD) Nos.6432 and 6433 of 2017 in W.A.(MD) Nos.596 and 597 of 2017]

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 03.03.2017 made in W.P.(MD) No.8352 of 2012.

For Appellant	:	Mr.M.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R1	:	Mr.P.Subbaraj Special Government Pleader
For R2	:	Mr.S.Madhavan
Respondent-3	:	Died
For R4	:	Mr.K.Esakki
For RR5 to 9	:	Mr.V.Meenakshi Sundaram Senior Counsel for Mr.N.Ga.Natraj
For R10	:	Mr.V.Ramakrishnan
Respondent-11	:	Batta due



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W.A.(MD) No.597 of 2017:

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3.M.Ganapathiya Pillai alias Ganapathi (Died) ... Respondents 1 to 3/
Respondents

4.Baghayaklakshmi

5.Somasundari ... Respondents 4 & 5

[RR4 & 5 – impleaded as LR's of the deceased R3 vide Court order dated 24.01.2018 made in C.M.P.(MD) Nos.6432 and 6433 of 2017 in W.A.(MD) Nos.596 and 597 of 2017]

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 03.03.2017 made in W.P.(MD) No.8352 of 2012.

For Appellant : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For R1 : Mr.P.Subbaraj
Special Government Pleader



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For R2 : Mr.S.Madhavan
For R4 : Mr.V.Ramakrishnan
Respondent-5 : Batta due

COMMON JUDGMENT

(Judgment was delivered by N.SESHASAYEE. J.)

1.1. These twin appeals are preferred against a common order passed by a learned Single Judge of this Court in W.P.(MD) Nos.8352 and 8353 of 2012, dated 03.03.2017.

1.2. The issue involved herein is about the legality of the order passed by the 1st respondent/Commissioner, Hindu Religious and Charitable Endowment (HR & CE) Department, which in essence grants authority to certain women to be joint trustees of Patchai Saathi Kattalai, Tiruchendur.

2. The facts are as below:

(a) On 24.03.1947, certain Manakavalam Pillai executed a settlement deed under which he had constituted a Kattalai/Endowment for Patchai



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Saathi festival in the Tamil month of *Maasi* at Tiruchendur. It stipulates the performance of certain rituals on the 6th and 8th day of the *Maasi* festival. It also provided as to how the Kattalai must be performed after the demise of the settlor. It states that it must be done by the heirs of the settlor (referred to in the document as “வாரிசுகள்”).

(b) Subsequently, on 22.06.1953, the settlor had executed a rectification deed by which he chose to qualify those who should be understood as his heirs. He would now make it specific, and has stated that wherever the expression 'heirs' is used in the settlement deed dated 24.03.1947, they must be read as referring to his three sons viz., Sundaram Pillai, Ganapathiya Pillai and Lakshmanan Pillai.

(c) In both these documents, the settlor had reserved to himself to be the trustee during his life time. While so, on 27.09.1957, Manakavalam Pillai executed a document styled as “Transfer of Trust Deed”. *Vide* this document, he transferred his right to be the trustee of the Endowment that he had created to his three sons.

The narration on the Trust may have to be paused briefly. It now requires to be introduced the family tree of Manakavalam Pillai.



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(a) Manakavalam Pillai was first married to one Packiyathammal. It is informed that she had died in 1931. Through Packiyathammal, Manakavalam Pillai had six children of whom four are his sons and two are his daughters named Ponnammal and Janaki. Of the four sons mentioned, one had predeceased Manakavalam Pillai and the other three has already been introduced (Sundaram Pillai, Ganapathiyapillai and Lakshmanan Pillai). It is stated that some time in 1932, Manakavalam Pillai had married one Kanagammal and through her, he did not have any children. Now, after the demise of Manakavalam Pillai, Kanagammal had adopted one Thiyagarajan.

(b) Now Kanagammal and Thiyagarajan would institute at least three suits against the children of Manakavalam Pillai born to him through Packiyathammal. They include suits wherein Kanagammal had claimed right over the properties of Manakavalam Pillai and also right to administer '*Patchai Saathi Kattalai*'.

(c) The suit that relate to Kanagammal's claim of *Patchai Saathi Kattalai* was O.S.No.20 of 1963. This came to be dismissed by the trial Court against whose decree they preferred an appeal to this Court in A.S.No.



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641 of 1963 and it met with the same fate as this Court chose to confirm the decree of the trial Court with its own decree dated 18.01.1972. This decree along with decrees passed in the connected suits came to be challenged before the Hon'ble Supreme Court. Before the Supreme Court, the parties chose to compromise the matter and accordingly, a compromise decree came to be passed by the Hon'ble Supreme Court on 15.09.1975.

- (d) The compromise decree recognised the right of the adopted son of Kanagammal viz., Thiyagarajan, to part take in the administration of the Endowment. Paragraph 7 of the compromise, which is relevant here, is as below:

“7. The properties settled by Manakavalam Pillai for performance of Kattalai at Sri Subramanyaswami Temple, Tiruchendur and subject matter of the suit O.S.No.20 of 1963; will always continue to be owned held and possessed by Sundaram Pillai and his brothers Ganapathi Pillai and Lakshmanan as hitherto and their successors. The said Kattalai will be performed from the year 1976 onwards in turns....”



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It also provides that each of the three biological sons of Manakavalam Pillai as well as the adopted son Thiagarajan would be entitled to perform the Kattalai for a year in rotation. It starts with Thiagarajan performing his duty in 1976 followed by Sundaram Pillai (1977), Ganapathiyapillai (1978) and Lakshmanan Pillai (1979). It then proceeds to state what is to be done thenceforth, which reads as below:

“... charity will thereafter be performed in this cyclical turn once in four years by yearly turns as stated above continuously and after demise of one of the other by the heirs of the respective parties.”

(e) While so, on 27.12.1993, Sundaram Pillai had assigned his right to be the trustee of his turn to his son Balasubramanian, who is the appellant in both these appeals. Subsequently, on 12.01.2009, Ganapathiya Pillai had executed a document styled as “deed of performance of Kattalai” by which he also transferred his right to his two daughters viz., Bhagyalakshmi and Somasundari.

(f) On execution of this document, Ganapathiya Pillai would approach the Executive Officer (Joint Commissioner, HR & CE) of the temple with his petition dated 21.01.2009 to recognise his daughters as his



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successors. *Vide* order dated 19.02.2009, the Joint Commissioner rejected the same. This came to be challenged by Ganapathiya Pillai under Section 21 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as “the HR & CE Act”) before the Commissioner, HR & CE.

(g) In the meantime, Lakshmanan Pillai had passed away and his three daughters moved the Executive Officer with their application for recognising them as the heirs of Lakshmanan Pillai to enable them to perform Lakshmana Pillai's turn to perform the Kattalai. This also came to be rejected. And this order was also came to be challenged by them before the Commissioner, HR & CE Act.

(h) *Vide* common order dated 20.04.2012, the Commissioner, HR & CE chose to set aside the orders of the Executive Officer. His line of reasoning is that inasmuch as the daughters are heirs of a male Hindu under Section 8 of the Hindu Succession Act, 1956, they are entitled to succeed to the right of trusteeship, which both Ganapathiya Pillai and Lakshmanan Pillai had in them.

(i) Aggrieved by the aforesaid two orders, the only male member in the



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family, namely Balasubramanian had approached this Court with two separate petitions in W.P.(MD) Nos.8352 and 8353 of 2012.

3.1 Before the learned Single Judge, it was argued on behalf of the petitioner that the compromise decree passed in O.S.No.20 of 1963 should not be read in isolation, but in conjunction with the settlement deed dated 24.03.1947 under which the very Endowment was founded, followed by the rectification deed, dated 22.06.1953 as well as the transfer of trust deed, dated 21.08.1957, which the founder of the Endowment had later executed. All his contention was that, inasmuch as the founder of the Endowment had conveyed his intent to limit the succession to his male heirs, the same cannot be ignored, and when a compromise decree was subsequently made in O.S.No.20 of 1963, it is not in replacement of the original intent of the founder of the Endowment, but must be understood only as an effort in aid of resolving an issue before the Court without destroying the original intent of the founder of the Endowment.

3.2 The learned Single Judge however was not impressed with this line of



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contention of the petitioner before him and has held that compromise decree had used two significant expressions and they are “*successor*” and “*heir*”. Giving these expressions their literary meaning, the learned Judge proceeded to hold that the female heirs indeed are entitled to succeed to the interest of their respective father *vis-a-vis* their right to administer the Endowment in terms of the compromise decree. This order is now under challenge in these appeals.

4. Opening the arguments for the appellant, Mr.Ajmal Khan, the learned Senior Counsel took this Court through the entire facts narrated above, and argued:

(a) In the settlement deed dated 24.03.1947, Manakavalam Pillai had consciously used the expression “வாரிசுகள்” when he was dealing with the clauses relating to succession to the office of trusteeship of the Endowment. Then he made a very conscious move to replace the expression “வாரிசு/heir” with his three sons. Indeed, he makes his intent emphatic when he says that the word '*heirs*' wherever he had used in the 1947 document must be construed only as his three sons



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through Packiyathammal and none other. This intent continues to be carried forward to the transfer of trust deed which Manakavalam Pillai had later executed on 21.08.1957. What these three documents underscores is that Manakavalam Pillai had made an unequivocal statement in the most unambiguous terms that he wanted only the heirs in the male line to succeed to the office of trusteeship. It should not be forgotten here, that Manakavalam Pillai had two daughters Ponnammal and Janaki and his preference for his male heirs over the female heirs therefore needs to be understood in the context. To state it differently, the intent of Manakavalam Pillai as declared by him in the document dated 27.09.1957 very evidently excludes his female heirs from succeeding to the office of trusteeship.

(b) The compromise decree passed in O.S.No.20 of 1963 must be read in the context in which it is set. This decree was passed to resolve not only the plaintiff's claim to administer the Endowment along with the other heirs of Manakavalam Pillai, but also it relates to her claim of maintenance and right over properties of Manakavalam Pillai. The compromise decree, after all, is made by the parties and when they



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executed the memo of compromise, there is hardly any intent in them to dissociate it from the documents which Manakavalam Pillai had earlier executed in 1947 and 1953. This implies, the expressions 'successor' and 'heirs as the parties have chosen to employ in Paragraph 7 of the compromise decree need to be understood contextually to mean that they are limited to the male line of succession to the office of trusteeship as was originally intended by Manakavalam Pillai. This also further buttressed by the use of the expression “hitherto”.

(c) In the orders impugned before the learned Single Judge, the Commissioner of HR & CE shows that he has relied on to only Section 8 of the Hindu Succession Act and its implication, but has not opted to refer to any of the documents which Manakavalam Pillai had executed. De hors those documents, it cannot be disputed that the female heirs would be entitled to part take in the administration of the Endowment in question, but when the same is intended in the document executed by its founder, then that intent should not be ignored. And this is the very mistake that gets reflected in the line of reasoning of the learned Single Judge.



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Summing up his argument, learned counsel reiterated that the compromise decree passed in O.S.No.20 of 1963 cannot be read in isolation, but only in combination with documents executed by Manakavalam Pillai to understand with its true import.

5. Per contra, Mr.V.Ramakrishnan, learned counsel appearing for the two daughters of Ganapathiyapillai argued that:

- (a) The parties to the compromise decree included Sundaram Pillai, father of the present appellant. And his role *vis-a-vis* the rectification deed dated 22.06.1953 as well as the transfer of trust deed dated 27.09.1957 hardly requires any mentioning. What is significant here is how Sundaram Pillai had understood the compromise decree passed in O.S.No.20 of 1963. Here a document dated 27.12.1993 executed by Sundaram Pillai styled as “a deed of assignment” under which he assigned his office as a trustee to his son Balasubramanian, the appellant herein. In particular, he had indicated that after the demise of his brothers Ganapathiyapillai and Lakshmanan Pillai, their respective daughters would discharge those responsibilities which their respective



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fathers had been performing. Indeed, the appellant, even though had signed the said document only as an attestor, he had endorsed that he had read the document and had signed it. In other words, the role of the appellant is not limited to a mere attestor, but someone who also knew the contents of the document.

(b) To say that the intent of the founder of the Endowment should be telescoped into the terms of the compromise decree, when the decree came to be passed, it replaced what was hitherto prevailing. If the original intent of Manakavalam Pillai had to be given any importance, then, Thiyagarajan should not have been given any right in managing the Trust. The moment Thiyagarajan, the adopted son of Kanagammal was given a right to administer the trust in rotation itself implies, the three sons of the founder of trustees who the founder himself had named to be his successor had given a go-by to the original intent of Manakavalam Pillai.

(c) It is in this backdrop, the expression “successor” and “heirs” as used in Clause 7 of the compromise decree needs to be understood.



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6. Adopting the arguments of Mr.V.Ramakrishnan, learned counsel Mr.V.Meenakshi Sundaram, learned Senior Counsel appearing for Respondents 5 to 9 in W.A.(MD) No.596 of 2017 added that inasmuch as the challenge is made to an order passed under Section 21 of the HR & CE Act, the remedy open to the appellant herein is only to approach the Government under Section 114 of the HRE & CE Act. The appellant ought not to have by-passed the statutory remedy made available to him under Section 114 of the HR & CE Act. It may have to be noted that the appellant had participated in the revision before the Commissioner. Therefore, technically, he has not chosen to challenge it and thereby, the proceeding under Section 21 of the HR & CE Act has become final. The learned Senior Counsel merely placed reliance on an authority in the case of *N.Krishnammal Vs R.Ekambaram & Others* [(1979) 3 SCC 273 = 1980 (1) MLJ 11].

7. Mr.S.Madhavan, learned counsel appearing for the 2nd respondent submitted that in terms of Endowment, only the 8th day festival Kattalai alone is performed and not the 6th day festival.



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8. Mr.K.Esakki, learned counsel appearing for the 4th respondent in W.A. (MD) No.596 of 2017 adopted the arguments of Mr.V.Meenakshi Sundaram, learned Senior Counsel and Mr.V.Ramakrishnan, learned counsel.

9. Per contra, Mr.M.Ajmal Khan, learned Senior Counsel submitted that whatever that were submitted by the learned counsel for the private respondents essentially seek a finding of fact by this Court and it will travel far beyond the scope of judicial review. He also added that even Sundaram Pillai was wrong in going beyond the intent of his father Manakavalam Pillai when he chose to recognise the daughters of his brother Ganapathiyapillai and Lakshmanan Pillai as successor trustees in their respective branch.

10. After carefully evaluating the submissions of the counsel for the parties, this Court has very little hesitation in holding against the appellants. The reasons are :

- a) When once the original right is litigated and culminates in a decree, the decree will replace the original right. Otherwise the decree will lose all its sanctity in law. This applies to all cases, and



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not just to this particular case. And it applies in equal force even if the decree is a compromise decree. Therefore, the contention of the appellants to revive the original intent of Manakavalam Pillai even after the compromise decree passed in O.S.No.20 of 1963 is far fetched;

- b) The untenability of the contention of the appellant is also borne out by the fact that it had included a certain Thiagarajan, who was not the biological son of the founder, but only the adopted son of his second wife Kanagammal, was also included in the compromise decree has realigned and redefined the rights of those who are required to perform the Kattalai;
- c) If clause 7 of the compromise decree is carefully read, it uses an expression 'successor', and does not limit it to only 'the successors along the male line'. Now unless the original intent of the vendor of Trust, that he wanted only his heirs along the male line to proceed over the affairs of the Trust, could that be permitted to replace the effect of the compromise decree? And, it has already been noted that once a decree is passed by the Court, it replaces all questions



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on title to any right that were there prior to the passing of the decree permanently;

d) And what adds merit to the above inference is the fact that the appellant's father himself had recognised the daughters of his brothers as their respective successors in office. The appellant is estopped from challenging it.

11. If so viewed, this Court does not find any reason to hold that the Commissioner of HR&CE, the first respondent in these appeals was not in error when he relied on Section 8 of the Hindu Succession Act to recognise the right of the daughters of Ganapathiya Pillai and Lakshmanan Pillai.

12. Turning to the contention of the appellant that by entertaining the argument of the respondents, this Court might be engaging in a fact finding is concerned, it has to be made clear that it is the appellant who had actually invited this Court to enter a finding on fact more particularly the construction of a decree. All that this Court has done now is not to excavate a fact, but has only attempted to pronounce on the legal effect of a decree over the rights



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that were agitated in the suit in which the suit decree came to be passed.

13. To conclude, there is no merit in these appeals and the same are dismissed. The order of this Court dated 03.03.2017 made in W.P.(MD) No. 8352 of 2012 & W.P.(MD) No.8353 of 2012 is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.S., J.)

(P.V.M., J.)

.07.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes

ABR/ds

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ABR

Pre-delivery Common Judgment made in
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