

BEFORE THE COMMISSIONER, HR&CE ADMN DEPARTMENT,
CHENNAI-34.

Tuesday the 21st day of May, Two thousand and Thirteen.

Present : Thiru P. Dhanapal, M.A.,B.L.,
Commissioner.

A.P.41/2007 D2

Between

1. S. Murthy,
S/o Subramanian.
2. S. Kalaikovan,
S/o Sivaramakrishnan.
3. R. Sridhar,
S/o Rajagopalan.
4. R. Ravichandran,
S/o Ramamurthy.
5. S. Selvam,
S/o Shanmugam.
6. R. Ramamurthy,
S/o Ramachandran.
7. G. Shanmugam,
S/o Govindasamy.
8. M. Balu,
S/o Mohanraj.
9. S.Sivakumar,
S/o Sundaramurthy.
10. M. Srinivasan,
S/o Mariyappan.

... Appellants

And

1. K. Dhanapal,(since died)
S/o Kuppusamy.
2. K. Kailasam (since died)
S/o Kuppuswamy.
3. M. Rajagopalan,
S/o Mariappan.
4. D.Kamaraj,
S/o.Late K.Dhanapal,
(Legal representative of the
Deceased 1st Respondent)
5. K.K. Ramesh,
S/o Late K. Kailasam
(Legal representative of the
deceased Respondent)

...Respondents.

In the matter of Arulmigu Mariamman, Ayyanar, Velmuneeswarar Temples, Palpannaichery, Nagapattinam Taluk & District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the common order dated 25.05.2007 passed in O.A.No.2/2007 by the Joint Commissioner, HR&CE Admn Department, Thanjavur dismissing the Original Application filed under Section 64(1) of the Act.

A.P.42/2007 D2

Between

M. Rajagopalan
S/o Mariyappa Vanniyar.

... Appellant

And

1. K. Dhanapal,(since died)
S/o Kuppusamy.
2. K. Kailasam (since died)
S/o Kuppuswamy.
3. S. Murthy,
S/o Subramanian
4. S. Kalaikovan,
S/o Sivaramakrishnan.
5. R. Sridhar,
S/o Rajagopalan.
6. R. Ravichandran,
S/o Ramamurthy
7. S. Selvam,
S/o Shanmugam.
8. R. Ramamurthy,
S/o Ramachandran,
9. G. Shanmugam,
S/o Govindasamy.
10. M. Balu,
S/o Mohanraj.

11. S. Sivakumar,
S/o Sundaramoorthy.
12. M.Srinivasan,
S/o Mariyappan.
13. D.Kamaraj,
S/o.Late K.Dhanapal,
(Legal representative of the
Deceased 1st Respondent)

14. K.K. Ramesh,
S/o Late K. Kailasam
(Legal representative of the
deceased Respondent)

...Respondents.

In the matter of Arulmigu Ayyanar, Muneeswarar, Mariamman Temples, Palpannaichery, Nagapattinam Taluk & District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the common order dated 25.05.2007 made in O.A.No.5/2006 by the Joint Commissioner, HR&CE Admn Department, Thanjavur dismissing the Original Application filed under Section 63(b) of the Act.

A.P. 43/2007

Between
M. Rajagopalan,
S/o Mariyappa Vanniyar.

... Appellant

And

1. K. Dhanapal,(since died)
S/o Kuppusamy.

K. Kailasam, (Since died)
S/o Kuppuswamy.
2. S. Murthy,
S/o Subramanian
3. S. Kalaikovan,
S/o Sivaramakrishnan.
4. R. Sridhar,
S/o Rajagopalan.

5. R. Ravichandran,
S/o Ramamurthy.
6. S. Selvam,
S/o Shanmugam.
7. R. Ramamurthy,
S/o Ramachandran,
8. G. Shanmugam,
S/o Govindasamy.
10. M. Balu,
S/o Mohanraj.
11. S. Sivakumar,
S/o Sundaramoorthy.
12. M.Srinivasan,
S/o Mariyappan.
13. D.Kamaraj,
S/o.Late K.Dhanapal,
(Legal representative of the
Deceased 1st Respondent)
14. K.K. Ramesh,
S/o Late K. Kailasam
(Legal representative of the
Deceased 2nd Respondent)

...Respondents.

In the matter of Arulmigu Ayyanar, Muneeswarar, Mariamman Temples, Palpannaichery, Nagapattinam Taluk & District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the common order dated 25.05.2007 made in O.A.No.6/2006 by the Joint Commissioner, HR&CE Admn Department, Thanjavur allowing the Original Application filed under Section 63(b) of the Act.

A.P. 29/2009

Between

1. S. Murthy,
S/o Subramanian.
2. S. Kalaikovan,
S/o Sivaramakrishnan.
3. R. Sridhar,
S/o Rajagopalan.
4. R. Ravichandran,
S/o Ramamurthy.
5. S. Selvam,
S/o Shanmugam.
6. R. Ramamurthy,
S/o Ramachandran.
7. G. Shanmugam,
S/o Govindasamy.
8. M. Balu,
S/o Mohanraj.
9. S.Sivakumar,
S/o Sundaramurthy.
10. M. Srinivasan,
S/o Mariyappan.

... Appellants

And

1. K. Dhanapal (since died),
S/o Kuppusamy.
2. K. Kailasam, (since died)
S/o Kuppuswamy.
3. M. Rajagopalan
S/o Mariappan.
4. D.Kamaraj,
S/o.Late K.Dhanapal,
(Legal representative of the
Deceased 1st Respondent)
5. K.K. Ramesh,
S/o Late K. Kailasam
(Legal representative of the
deceased 2nd Respondent)

...Respondents.

In the matter of Arulmighu Mariamman etc.Temples, Palpannaicheri, Nagapattinam taluk and District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 25.05.2007 made in O.A.No.6/2006 by the Joint Commissioner, HR&CE Admn Department, Thanjavur allowing the Original Application filed under Section 63(b) of the Act.

Common Annexure to Order in R.Dis.A.P.No.41, 42 & 43/2007 and A.P.29/2009 (D2) dated 21.5.2013.

The above appeal petitions have been filed under Section 69(1) of the Act against the Common order dated 25.05.2007 made in O.A.Nos.5, 6/2006 and 2/2007 by the Joint Commissioner, HR&CE Admn Department, Thanjavur dismissing O.A.No.5/2006 & 2/2007 and allowing O.A.No.6/2006.

The Joint Commissioner has dismissed O.A.5/2006 filed under Section 63(b) of the Act by Thiru Rajagopalan to declare him as hereditary trustee of the above temples and allowed the O.A.No.6/2006 filed under Section 63 (b) of the Act by Thiru. Kailasam and Dhanapal to declare them as Hereditary Trustees of the above temple and dismissed the O.A. No. 2/2007 filed under Section 64 (1) of the Act by S. Moorthy and 9 others seeking to frame a scheme of administration to the above temple.

2. The appellants in A.P.Nos.41/2007 and A.P.29/2009 contended that the Joint Commissioner ought to have dismissed O.A.No.5 and 6/2006 as he has no jurisdiction under section 63(b) of the Act, but the Civil Court in the case of competing claims as laid down in 1969 (1) MLJ 119. The Joint Commissioner erred in arrogating himself the power of the Civil Court in deciding the competing claims of the respondents herein and also failed to note that the Judgment in O.A.37/1948, O.S.No.236/1994, O.A. 535/1997, A.S. 14/2007 and S.A.No.613/1998 and order of the Commissioner in R.P. 171/2003 will not operate on res-judicata against the appellants as they were not parties to the said lis.

3. I heard Thiru K. Jayaraman, Counsel for the appellants in all Appeal petitions and Thiru.W.C.Thiruvengadam, Counsel for the respondents and perused the relevant records. As admitted by both the parties, there is no dispute about the fact that the said temples have been said to be constructed by one Karuppanna Gounder and succeeded by his son Ramakrishna Vanniar, and by his sons Vennalinga Vanniar and Kandaswamy Vanniar, and succeeded by Kuppusamy Vanniar, and by Radhakrishna vanniar, ancestors of the appellants and respondents herein. The appellant in A.P.42 and 43/2007 is said to be legal descendant of Kandasamy Vanniar and the respondents are legal descendants of Vennalinga Vanniar.

4. On perusal of the judgment dated 16-03-1949 made in O.S.No.37/1948 on the file of the District Munsif Court, Nagapattinam it is found under paragraph 5 that "Ex.A.2 is a certified extract from the suit register regarding O.S.No.407 of 1879 on the file of this Court. That was a suit filed by Ramakrishna for establishing his right of trusteeship of Ayyanar, Valmuniswara and Mariamman temples. The suit was decreed in favour of plaintiff on 29.06.1880. The District Court of Tanjore reversed the judgment of this court and dismissed the suit on 8.7.1881. Ramakrishna preferred a second appeal to the High Court. The High Court accepted the appeal, reversed the decree of the lower Appellate Court and held that the plaintiff (Ramakrishna) was the rightful Dharmakartha of the Ayyanar, Valmuniswarar and Mariamman Pagodas in Palpanacheri. Thus, Ramakrishna's rights were recognized by High Court as early as 1879".

5. While concluding with paragraph 5 of the Judgment, the Hon'ble Court held that "The result of the entire evidence oral and documentary is that during the last three quarters of a century the grandfather of the plaintiffs, the father of the plaintiffs, and the 1st plaintiff have been acting trustees of the suit temples. The documents filed in the case show that they have been exercising right of ownership over the temple properties and dealing with them as trustees".

6. Similarly, the availability of the sons of Kandasamy was not ignored by the Hon'ble Court and at the end of paragraph 6 of the Judgment, the Hon'ble Court discussed that "It is in evidence that the father of the plaintiffs, Vennalinga, had a brother by name Kandasami and that 2 of his sons are now alive...The plea of non-joinder of Kandasami's children either as Plaintiffs or as Defendants was not taken in the written statement. If he had taken this objection, the plaintiffs might have immediately answered the objection or added those persons as defendants. In 1938 II MLJ 663, the objection was taken at the earliest opportunity and the plaintiffs were found to be adamant in their opposition to the objection. Permission to add the remaining trustees was asked for only at the time of the arguments in the High Court and was naturally refused. It is very clear that Kandasami's branch has never interested itself in these temples. It is also in evidence that the 1st plaintiff is the senior most member of the entire family including Kandasami's branch".

7. Therefore, it is evident that the plea raised in O.A.No.5/2006, by the appellant in A.P.No.42/2007 was already discussed and decided by a competent Civil Court and there is nothing wrong in dismissing the Original Application No.5/2006 by the Joint Commissioner in the impugned common order. It is seen from the records, that the Joint Commissioner came to conclusion that the office of trusteeship of the above said temples as hereditary on the basis of the civil court judgment in O.S.No.10/1998 dated 20.01.2004 on the file of the Additional Sub Court, Nagapattinam. Even in the Original Application No.5/2006, the petitioner has stated that "Kuppusamy's son Dhanapal has taken charge of the temple administration every year Dhanapal has conveying the meeting of the family members of both families and performs the festival of the temple."

8. It was held in 1981-I M.L.J 392 that "The question as to who as between the rival claimants in the hereditary trustee cannot be decided by the Deputy Commissioner and the decision should be in relation to the status of the office of the trusteeship, namely whether it is hereditary or not.

It is not competent for the Deputy Commissioner to go into the further question as to who among the competing claimants is the hereditary trustee as the matter is not covered by the above provision. If such a decision is rendered by the Deputy Commissioner, the same cannot bind the civil court which has to decide independently on the evidence adduced by the parties.”

9. Therefore, there is no gain saying that only a civil court has got jurisdiction to adjudicate upon the case of competing claim. It is also made clear that nothing prevented the appellant in A.P.42/2007 to approach the competent civil court to establish his case of rival claim to office if any based on independent evidence.

10. As the regards the appeals in A.P.Nos.43/2007 and 29/2009 challenging the order made in O.A.6/2006, the respective appellants have not produced any clinching evidence to discard the said decision of the Joint Commissioner as incorrect.

11. So far as the appeal in A.P.No.41/2007 challenging the dismissal of original application in O.A.No.2/2007 declining to frame any scheme is concerned, it is seen from the records that the petitioners have made allegations against the deceased 1st respondent that he has not under taken any repair and maintenance in the temple properly and allowed to ruin in a dilaplanted condition and failed to maintain the accounts and to get the concurrence of Vennalingam and Kandasamy Branches. They have filed the above Original Application with assumption and presumption and not based on any concrete material evidence with an intention for the better and proper administration of the temples and its properties. But, the contention raised was disproved by the respondent by producing the photograph of the temple. Therefore, the Joint Commissioner came to a conclusion that he has got no valid reasons to believe that a scheme of administration is necessary for the proper administration of the said temples and passed the order impugned.

12. Hence, based on the documentary evidence adduced, the Joint Commissioner passed the impugned common orders in O.A. 5 and 6/2006 and 2/2007 filed under Section 63 (b) and 64(1) of the Act respectively.

Therefore, I find neither infirmity nor illegality and justifiable reasons to interfere with the orders passed by the Joint Commissioner in the Common order dated 25.05.2007 made in O.A.Nos.5 and 6/2006 and 2/2007 and the same is hereby upheld and confirmed. In fine, all the appeals fail and deserve to be dismissed, and accordingly the same is dismissed as bereft of any merits.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.