

BEFORE THE COMMISSIONER, H.R. & C.E. ADMN. DEPARTMENT, CHENNAI.34.

Tuesday the 24th day of June, Two thousand and Fourteen.

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

A.P. 53/2008 D2.

Between

1. S.Malla Gounder S/o Samiyannan,
2. Vaithilingam S/o S. Malla Gounder.
3. Muthu S/o Samikannu.
4. Samikannu S/o Mannathan.
5. Pachamuthu S/o Pachamuthu @ Motaiyan.
6. Govindan S/o Mannathan.
7. Kumar S/o Ponnusami.
8. Rajendiran S/o Ponnusami.
9. Semban S/o Masaiyan @ Muthu Gounder.
10. Venkatachalam S/o Kundan @ Pachiannan.
11. Thangaraju S/o Pachamuthu.

...Appellants.

12. P.Deivayanai W/o.Pachaiannan
13. Muthu S/o Malla Gounder
(12 and 13 are Legal Representative of 1st Appellant)
14. Muthu S/o Semban
15. Murthy S/o Semban
(14 and 15 Legal Representative of 9th Appellant)

.Impleading petitioners/
Appellants 12 to 15.

And

1. N.Raman (expired)
2. R.N.G. Vijaykumar.
3. P. Pachamuthu.
4. S. Mani.
5. K. Sigamani.
6. Seetharaman.
7. Sengodan.

.....Respondents.

8. R. Chandra Mohan
9. R. Thillai.
10. R. Socrates.
11. R. Ravi. (Legal Representatives of R1)

.. Impleading petitioners/
Respondents 8-11.

In the matter of Arulmigu Mannarsamy and Pachaiamman Temple, Gugai, Salem-6.

Appeal Petition filed under Section 69(1) of the HR&CE Act 22 of 1959 (Tamil Nadu Act 22 of 1959) against the order dated 23.12.2004 of the Joint Commissioner, H.R.& C.E.Admn.Department, Salem in allowing the O.A.7/01 filed under Section 63(b) of the Act.

Annexure to Order in R.Dis. A.P.No. 53/2008 D2 dated : 24.6.2014.

The above appeal petition filed against the order dated 23.12.2004 of the Joint Commissioner, Salem in allowing the O.A. 7/2001 filed under Section 63 (b) of the Act declaring the respondents as Hereditary Trustees.

2. The appellants contended that the temple stands in Inam lands was founded and built by common Ancestor of the appellants and the respondents herein, viz. one Govindan Poosari from out of his own resources. The patta for the lands in which the temple is situate stands in the name of the Deity. The said Govindan Poosari had four sons viz. (1) Sadayan Poosari (2) Irusan Poosari (3) Koneri Poosari and (4) Masian Poosari. Even during the life time of the founder Govindan Pooslari, all his four sons were jointly managing the affairs of the Temple as its Trustees cum Poojaris. The appellants and the respondents are the lineal descendants of the said Govindan Poosari through his said four sons. The management of the temple has always been with the appellants and the respondents. All the festivals connected to the temple were also conducted jointly by the parties till early 2005. The respondents have indulged in the above proceedings ignoring the

appellants Hereditary right which they inherited from the same common ancestors the said Govindan Poosari, through whom the respondents claim their rights. The respondents obtained the impugned order of declaration behind the back of the appellants. In the said petition O.A.No. 7/2001 the respondents have not impleaded all parties necessary to the proceedings. Thereby, the impugned order has come to be passed without hearing the proper and necessary persons involved in the matter. The respondents have misled the Hon'ble Joint Commissioner, HR & CE, Salem by filing a truncated Genealogy tree tracing their ancestry to the common ancestor Govindan Poosari. The respondents have mentioned only two sons Koneri Poosari and Masanian Poosari have deliberately omitted to mention the other two sons of the Govindan Poosari viz. Sadayan Poosari and Irusan Poosari, who were also in management of the temple as trustees and through whom the appellants are entitled to be trustees in the temple. The 1st appellant Mr. Malla Gounder is the great grandson of Sadayan Poosari, who is the son of the founder Govindan Poosari. The 2nd appellant is the son of the 1st appellant. The 3rd appellant is the son of 4th appellant, who is the great grandson of Irusan Poosari, the other son of the founder Govindan Poosari. Likewise, all the appellants are the descendants of Sadayan Poosari and Irusan Poosari, both sons of the founder Govindan Poosari. The Genealogy tree shall demonstrate the fraud played by the respondents before the lower court, in obtaining the impugned order. The respondents are guilty of *suppressio very suggestio falsi* in deliberately suppressing the other branches of the founders descendants in the petition O.A. 7/2001. All the festivals conducted in the temple were performed by the appellants and the respondents jointly. In all the invitations, brochures, posters and other publications printed and published for the temple festivals did carry all the names of the appellants and the respondents till about January, 2005.

3. In the Written submission, the counsel for the respondents submitted that the appellants are total strangers and have no links or connections with the family of Govindan Poosari. They were never involved in the affairs of the temple and have deliberately filed the above appeal to create confusion in the village. It would be significant to mention that they had not participated in the proceedings before the Joint Commissioner, Salem despite adequate publicity have been given. In the year 2005 one public M. Murugesan, son of Mariappan filed an appeal petition before the Commissioner against the order passed by the Joint Commissioner, Salem in O.A. 7/2001 dated 23.12.2004, the said appeal was dismissed on 23.6.2005. The appellants have admitted that the Respondents are the lineal descendants of the said Govindan Poosari. They have falsely claimed that they are also the lineal descendants of the said Govindan Poosari. Thus, a dispute has arisen regarding the status as the lineal descendants of Govindan Poosari. When such a dispute occurs, it is only the Civil Court which has the jurisdiction to decide whether the persons claiming to be hereditary trustees enjoy the said status or not. The Hon'ble High Court in 1968 I MLJ 119 has held that a dispute regarding a person's status as hereditary trustee can be decided only by a Civil Court.

4. I heard Thiru T.I. Ramanathan, Counsel for the appellants and Thiru M. Vaidyanathan, Counsel for the respondents and perused the relevant records. On perusal of the annexure to order passed by the Joint Commissioner, containing grounds for the above decision, the Joint Commissioner has simply enumerated certain documents filed by the petitioner without discussing its evidentiary value, how far the said documents supports the case of the petitioner by applying his mind judicially before taking such a decision. The Joint Commissioner failed to consider that in the O.A., the petitioner themselves admitted that the suit temples came into existence even during the time of Hindu Rajas,

who had granted lands for its maintenance and the patta stands in the name of the temple. Therefore, it is clear that the suit temples were not founded by the ancestors of both the appellant and the respondents. herein. Ex.A1 to A5 and A13 are land records. In the said documents only the name of the temple has been mentioned. Ex.A6 and A7 are copy of decree and Judgment made in O.S. 349/87. But the said suit was dismissed for default. Ex.A8 is judgments made in O.S. 1645/74, wherein the suit temple was represented by the Assistant Commissioner, Salem. In the said judgment, nothing mentioned about the petitioners. The Joint Commissioner mainly relied upon the Ex.A12, wherein one Narayana Poosari was mentioned as Poojari only. The Inspector, who caused local enquiry has reported that “மனுதாரர்கள் சுமார் 20 ஆண்டுகளாக ஆலய நிர்வாகம் மற்றும் பூஜையை கவனித்து வருவதாக உள்ளூர் விசாரணை மூலம் தெரியவருகிறது மனுதாரர்கள் குடும்பத்தினரால் கோாயில் மற்றும் அதற்குரிய சொத்துக்கள் ஏற்படுத்தப்பட்டதா என்பதற்கான ஆதாரங்களோ, மாற்று ஆதாரங்களோ இல்லை.” But in the impugned order, the Joint Commissioner failed to discuss the report of the Inspector.

5. The Hereditary Trusteeship of the temple is a valuable right that excludes all the public so far as the management of the temple is concerned. The person who claim such right should prove that the claim with unassailable and clinching evidence. The Joint Commissioner who is entrusted with such authority to decide the nature of the Office of Trusteeship, should analyse the evidentiary value of the documents filed before him by applying his mind judicially before taking any decision. But in this case, the Joint Commissioner failed to appreciate the evidentiary value of the documents and failed to explain how those documents support his decision.

Therefore, the order dated 23.12.2004 of the Joint Commissioner, Salem suffers from infirmity as stated above and deserves to be set aside and accordingly it is hereby set aside. The matter is remitted back to the Joint Commissioner for fresh disposal in accordance with law. The appellants are at liberty to get themselves implead as respondents in the Original Application. With the above direction, the appeal petition is disposed of.

/typed to dictation/

**Sd. P. Dhanapal,
Commissioner.**

/ true copy/by order/

Superintendent.