

BEFORE THE COMMISSIONER, HR&CE ADMN. DEPARTMENT, CHENNAI 64.

Friday the 5th day of July, Two Thousand and Thirteen.

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

A.P. 40/2009 D2

Between

1. Rathinasamy,
2. Paramasivam.
3. Thamizharasi.
4. Ramarasu.
5. Pichaikaran.
6. Rukumani.
7. Pichai Pillai.

.... Appellants.

And

Ananthanarayanan.

... Respondent.

In the matter of Arumighu Jagadambigai Amman Kattalai attached to Arulmighu Swornathreeswarar Temple, South Virudhangan, Chidambaram Taluk, Cuddalore 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 21.03.2006 made in O.A.No.3/1999 on the file of the Joint Commissioner, HR&CE Admn. Department, Mayiladuthurai in having partly allowed the Original Application filed under Section 63 (a) (c) and (d) of the Act.

Annexure to Order in Reply. A.P. 40/2009 (D2) dated: 5.7.2013.

This appeal arises out of the order dated 21.03.2006 made in O.A.No.3/1999 on the file of the Joint Commissioner, HR&CE Admn. Department, Mayiladuthurai declining to pass order under section 63(a) of the Act and partly allowed the Original Application filed under Section 63 (c) and (d) of the Act.

In the appeal, the appellants contended that the Joint Commissioner failed to consider that the properties which are the subject

matter of O.A.3/1999 are not trust properties and have not been dedicated to any trust, religious or charitable and as such the Joint Commissioner has no jurisdiction to try the dispute or pass any order. It is held that the Joint Commissioner has not properly considered and appreciated the import of the recitals of the partition deed dated 17.09.1896; that the Joint Commissioner erred to consider that the petitioner failed to correlate the properties covered by the partition deed and the properties described in the petition. Without such correlation proving that both properties are same, the Joint Commissioner ought not to have decided the issue. As per the recitals in the partition deed dated 17.09.1896 the properties have not been dedicated to any temple. There is only a direction to perform certain specified religious obligations at the rate of Rs.58½ for the personal spiritual benefit of the family and not for the idol or public benefit. The properties have not been given to either the temple at the village or Sri Nataraja Temple but burdened with certain trust obligation and the trustees of the temple alone can enforce the charge over the properties and the respondent herein has no right or locus standi to take any proceedings. The Joint Commissioner erred to see that the partition deed does not restrain the alienation of the properties. The Joint Commissioner also failed to consider the fact that the respondent cannot seek recovery of possession without returning the benefits received under the sale deeds and re-conveying the lands received under the exchange deeds. Therefore, the order of the Joint Commissioner is liable to be set aside.

3. The above appeal petition came up for hearing on 23.03.2010, 15.06.2010, 14.12.2010, 22.03.2011, 14.06.2011, 03.08.2011, 21.09.2011, 10.04.2012, 20.11.2012, 19.03.2013 and 05.04.2013. But on all the enquiry dates, neither the appellants, and respondent nor their counsel appeared and they having been called absent and they abstain from the enquiry for the reasons best known to them. There is no proper

representation on their behalf also. In the absence of their appearance, orders are passed on the basis of the available records on merits.

4. In Ground No.3 of the Memorandum of appeal, the appellants stated that the properties in the O.A. are not trust properties and have not been dedicated to any trust, religious or charitable. On the contrary in Ground No.5 they admit “மிகுதியாகும் மகசூலைக்கொண்டு அதற்கு விடாமலாகக் கிராமத்திலிருக்கிற ஈசுவரன் கோவில் அம்மன் சந்நிதியில் திவந்தோறுடைய அம் நடவடிக்கை வரும் பூஜை நேவேத்திய கட்டளை தர்மத்துக்காக வருஷம் ஒன்றுக்கு ரூ. 50/-ம் சிதம்பரம் ஸ்ரீ நடராஜாவுக்கு அர்ச்சனை நேவேத்தியத்திற்காக வருஷம் ஒன்றுக்கு ரூ. 8-0 த்தையும் கொடுத்து தர்மங்களை” the direction to perform certain specified religious obligations from out of the income from the properties. Under Ground No.8 they also admit that the properties have been only burdened with certain trust obligation. The further contention of the appellants that the trustee of the temple alone can enforce the charge over the property seems to admit that the nature and character of the endowment as religious and specific endowment. The Joint Commissioner in the impugned order also decided the nature and character of the properties as religious endowment and specific endowment which is sustainable in law. The further contentions of the appellant that the respondent herein cannot seek recovery of possession without returning the benefits received under the sale deeds and re-conveying the lands received under the exchange deeds reveal their willingness to hand over the properties obtained in exchange. From the above it is learnt that the appellants are not the heirs of the original grantee or founder of the endowments, but sheer purchasers in the interogram. The law is well settled that any persons having an interest may file any such petition to safeguard the properties of the religious institutions and endowments from usurping right of fraudulent setting up of title. From recitals found in the partition deed document, it is proved that the properties have been burdened with performance of religious and specific endowments in the shrines of the

temple as stated in the partition deed. Any persons claiming as trustee or legal representative in the family have no independent authority to exchange or alienate the trust properties burdened with religious obligation, without the prior sanction of the Commissioner and the Government under the mandatory Section 34 of the TP&CE Act. Therefore, I see no valid reasons to interfere with the impugned order passed by the Joint Commissioner in O.A.No.3/1999 dated 21.01.2006, and accordingly it is hereby confirmed. The appeal fails and is liable to be dismissed as devoid of any merits and accordingly it is dismissed.

/ typed to dictation/

A.P. Dhanapal,
Commissioner.

/ true copy/1 order/

Superintendent.

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