

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

Tuesday the 18<sup>th</sup> day of December, Two thousand and Twelve.

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

A.P.71/2011/ D2

**Between.**

T.N. Sivasubramanian.

..Appellant.

**And**

T.N. Sivadevan

.. Respondent.

In the matter of Arulmigu Malaiyamman Temple, Thottakurichi village, Karur Taluk and District.

Appeal Petition filed under Section 54(4) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated: 11.05.2011 issued in Pro. Rc.No.14477/2010-1 B4 of the Joint Commissioner, HR&CE Admn Department, Tiruchirappalli under Section 54 (1) of the Act regarding succession.

**Order in R.Dis. A.P.71/2011(D2) dated: 18.12.2012**

The above appeal petition having come on for final hearing before me on 06.11.2012 in the presence of Thiru K.Jayaraman, counsel for the appellant and Thiru M.Subramanya Rao, counsel for the respondent, and after hearing their arguments and upon perusing the connected records and the matter having stood over for consideration till this day, the following order is made:-

**ORDER**

The above appeal petition has been filed invoking Section 54(4) of the Act, challenging the order dated 11.05.2011 of the Joint Commissioner, H.R.&.C.E. Admn Department, Tiruchirappalli dismissing the application under section 54(1) of the Act filed by the appellant to record him as co-hereditary trustee of the above said temple.

2) The case of the appellant is that the appellant's father T.M.Nallaswamy was declared to hold the office of trusteeship of the above said temple as Hereditary Trustee by the Commissioner in order A.P.No.9/1966 dated 11.07.1966, under section 69(1) of the Act, filed against the order of the Deputy Commissioner, H.R.&.C.E. Admn. Department, Thanjavur in O.A.No.25/1964 dated 30.09.1965 under Section 63(b) of the Act. Due to his old age, the said T.M.Nallaswamy filed a petition before the Joint Commissioner, H.R.&.C.E. Admn Department Tiruchirappalli seeking to permit the assistance of T.N.Sivadevan the respondent herein as his next in the line of succession. The appellant herein and the other heirs gave their consent in the presence of Notary Public for such an agreement without giving up their right to succession. Based on that the Joint Commissioner also passed orders in Rc.No.6948/2001 B.4 dated 26.06.2002 under section 54(1) of the Act recording the name of T.M.Sivadevan as the next in the line of succession to hold office. The said T.M.Nallaswamy died on 30.09.2005. While so, alleging that the respondent is mismanaging the affairs of the temple and its properties, hence the appellant filed an application in terms of section 54(1) of the Act before the Joint Commissioner, H.R.&.C.E. Admn Department Tiruchirappalli seeking to record his name and recognize him as co-

trustee along with the Respondent. But, the Joint Commissioner, by the impugned order dismissed the said application of the appellant holding that there is no permanent vacancy occurred in the office of the trusteeship of the temple.

3) The learned counsel for the Appellant vehemently argued that the Joint Commissioner has failed to note that neither the appellant nor the other legal heirs of T.M.Nallaswamy relinquished their right to office of hereditary trusteeship in the temple while giving consent for the respondent to act as trustee in the place of aged father and the Joint Commissioner has erred to note that on the death of T.M.Nallaswamy, a new cause of action has arisen and hence all the legal heirs are entitled to stake claim of hereditary trusteeship in the temple and hence, the order of the Joint Commissioner is liable to set aside.

4) But, the learned counsel for the Respondent rebutted the argument and would oppose that the appeal itself is not maintainable as Section 54(4) provides for only against an order passed in terms of Section 54(3) of the Act, appointing a Fit Person and not against section 54(1) of the Act. He would submit that in dismissing the application, the Joint Commissioner had held that the office of trusteeship in the temple is 'Hereditary' as finally held by the Commissioner by his order dated 11.07.1966 in A.P.No.9/1966 and that even during the life time of T.M.Nallaswamy, father of the appellant and the respondent, this respondent was recognized as the next in the line of succession as desired by T.M.Nallaswamy, due to his old age and on the basis of the consent given by the appellant, his younger son and all other heirs at law. Even before the death of T.M.Nallaswamy on 30.09.2005, the respondent has been in management of the temple as hereditary trustee in his own right. That

in the circumstance, it cannot be said any vacancy had arisen in the office of trustee, either permanent or temporary, so as to attract the provisions contained in terms of section 54 of the Act. The application of the appellant seeking appointment as a co-hereditary trustee along with the respondent herein is liable to be rejected, since the claim is beyond the pale and ambit of Section 54(1) of the Act, and prayed to dismiss the appeal as totally devoid of merits. The learned counsel for the Respondent placed reliance upon a decision of the Division Bench of the Hon'ble Madras High Court reported in 2010-I.Law weekly page 32.

5) I have heard the Learned Counsels for the Appellant and the Respondent and carefully perused the impugned order as well as other connected records available on file. It is seen from records that the Joint Commissioner has rejected the claim of the appellant on the following grounds:-

(i) Even during the life time of T.M.Nallaswamy, the respondent herein was recognized as the next in the line of succession to hold the office of hereditary trusteeship of the temple under section 54(1) of the Act in Rc.No.6948/2001 B.4 dated 26.06.2002 on the basis of the consent affidavit executed before the Notary Public by the appellant and other heirs which remains unchallenged and the respondent is functioning as such.

(ii) Even at the time of death of the said T.M.Nallaswamy, the respondent herein was in office functioning as the Hereditary Trustee of the temple which was not disputed by the appellant. So, there arose no vacancy even on the death of the said T.M.Nallaswamy, Originally declared to hold the office of trusteeship of the temple as Hereditary Trustee, since one of his son the respondent herein was in office.

(iii) No action has been taken against the respondent to remove or suspend him from office of trusteeship for any alleged mismanagement. As such there is no permanent or temporary vacancy occurred in the office of Hereditary Trusteeship, so as to attract or invoke the provisions under section 54 of the Act.

(iv) There is no provision in the Act to recognize co-trustees.

Based on the above grounds and justifiable reasons, the Joint Commissioner has rightly rejected the claim of the appellant herein. The reliance placed by the learned counsel for the Respondent also supports his case. For all the above reasons, I see no valid, justifiable reasons to interfere with the impugned order dated 11.05.2011 made in Proc.Rc.No.14477/2010 B.4 of the Joint Commissioner, H.R.&C.E. Admn. Department, Tiruchirappalli and the same is confirmed. The appeal fails as it is not maintainable under law, and accordingly the appeal is dismissed as not maintainable.

/Typed to Dictation/

Sd. P. Dhanapal,  
Commissioner.

/true copy/by order/

Superintendent.

**To**

- 1) The Appellant through Thiru K. Jayaraman, Advocate,  
35, Law Chambers, High Court Buildings, Chennai- 600 104.
2. The Respondent through Thiru M.Subramanya Rao, Advocate,  
Y-137, New No.24, 3<sup>rd</sup> Street, 6<sup>th</sup> Main Road, Annanagar,  
Chennai- 600 040

**Copy to:**

3. The Joint Commissioner, HR & CE Admn. Dept., Tiruchirappalli-6
4. The Inspector, HR&CE Admn. Department, Karur..
5. The Assistant Commissioner, HR&CE Admn.Department, Karur
6. Extra.