

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

Monday the 28th day of October, Two thousand and thirteen.

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

A.P. 59/2012 D2

Between.

1. K. Pitchai, S/o Kandasamy.
2. A. Amulraj, S/o Arunachalam.
3. M. Muthusamy, S/o Muthian,
4. C. Ravi S/o Chinnathambi.
5. M. Subramanian S/o Muthukumarasamy.
6. M. Narayanasamy, S/o Muthaian.
7. S. Anbalagan S/o Settu.
8. V. Baskar, S/o Vaithilingam.
9. M. Neelamegam S/oMuthian.

Appellants.

And

1. The Joint Commissioner, HR & CE
Admn.Dept. Tiruchy.
2. The Executive Officer, Arulmighu
Jambugeswarar Akilandeswarari Temple,
Thiruvanaikaval.
3. T. Marimuthu, S/o Thangarasu.
4. The Executive Officer, Arulmighu
Ambaravaneswarar Temple, Mandhurai,
Lalgudi Taluk, Tiruchy District.

... **Respondents.**

5. Maruthai S/o Ammasi.
6. Settu S/o Thangaiyan.

..**Impleading
Respondents.**

In the matter of Arulmighu Thiruvaiamman, Mavadi Karuppu,
Panaiyadi Karuppasamy Temple, Esanaikorai village, Lalgudi Taluk,
Tiruchy District.

Appeal petition filed under Section 69(1) of the Tamil Nadu H.R.&
C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the Order dated

4.5.2012 of the Joint Commissioner, HR & CE Admn.Dept., Tiruchy in dismissing the O.A.3/2010 filed under Section 63 (e) of the Act.

Annexure to Order in R.Dis. A.P. 59/2012 (D2) dated : 28.10.2013.

The above appeal petition filed under Section 69(1) of the Act against the order dated 4.5.2012 of the Joint Commissioner, H.R. & C.E. Act in dismissing the O.A. 3/2010 filed under Section 63 (e) of the Act. The above O.A. was filed to declare that the festivals to be conducted 12 days in the said temple and appellants are entitle for 2nd, 5th, 8th and 10th day Mandagapadi. The Joint Commissioner, Trichy rejected the claim of the appellants on the ground that no festival had been conducted for the last 40 years and festivals are being conducted only for 4 days from the year 2007.

2. The appellants contended that the temples dedicated to Arulmighu Thiruvaiamman and Mavadikaruppu, Panaiyadi Karuppasamy Temples situated at Esanaikorai village, Lalgudi Taluk, Tiruchy District. The appellants herein are persons belonging to Muthiraiyan community and as such they are entitled to perform festival of Mandagapadi in the aforesaid temple on the 2nd, 5th, 8th and 10th day of the annual festival of the above said temple from and out of their personal funds. The appellants had filed an application under Section 63 (e) of the Act and made their claim of right to perform the 2nd and 5th and 8th and 10th day of the annual festival of the above said temple from and out of their personal funds in the total 12 days of festival annually conducted in the aforesaid temple. The appellants to establish their right have filed Exhibits A1 to A7 and also examined independent witness. The Inspector was also examined, who spoke about the festival in favour of the appellants. The third respondent has also filed documents B1 to B11 which are all related to recent origin and manufactured Pathirikai of their own to destroy the case of the appellants. The Joint Commissioner simply enumerated the documents filed by both the party and did not make legal analysis of the documents. The claim of the appellants was

rejected by the lower authority on the ground that for the last 40 years, no such festival had been conducted in the temple. As a matter of fact, the right can be agitated at any point of time and that too the right relating to the performance of festival. It is not the hereditary trusteeship, which has been claimed after a gap of 40 years. It is a right to perform service in the temple, that too by way of performance of Yali vahanam, Simma Vahanam, Rishabha Vahanam. All these Vahanams are manufactured by appellant's community and as such they are seeking their right to perform the festival at their own cost without interference of the 3rd respondent herein.

3. I heard Thiru W.C. Thiruvengadam, Counsel for the appellants, Thiru V. Rengarajan, Counsel for the 2nd Respondent/Executive Officer, Thiru K. Jeyaraman, Counsel for the 3rd Respondent and Thiru N. Sathyamoorthy, Counsel for the Respondents 5 and 6 and perused the relevant records. The Respondents 5 and 6 filed counter affidavit in support of the claim of the appellants. In the counter affidavit of the 2nd Respondent/Executive Officer has stated that there was no festival conducted for 45 years between 1962 and 2007 and the festival was conducted only for 4 days and not 12 days as alleged by appellants.

4. The appellants mainly contended that the documents filed by the appellants were not legally analysed by the Joint Commissioner. In exhibit A1, nothing mentioned about the festivals were conducted for 12 days . In the 'A' Schedule of the said deed it was mentioned that “(2) எசனகோரை கிராமத்தில் மேலே கண்ட திருவாயமர்ந்த அம்மனுக்கு நம்முடைய பங்காளிகளும் சேர்ந்து பிரதி தமிழ் வருஷம் தோறும் ஆடிமாதத்தில் பூசைப் போட்டு வருகிற தர்மம் (3) மேற்படி அம்மன் சன்னதியில் பிரதி தமிழ் வருஷம்தோறும் மார்கழி மாசத்தில் தனுர் மாசப்பூசையில் ஒரு தினத்தில் பொங்கல் பிரசாதம் மகா நைவேத்தியத்துடன் தீபம் போட்டு tU» w j ®k«” Hence this document does not support the claim of the appellants. Ex.A2 to A7 are festival account books without authentication and not signed by anybody. Hence, they are not

acceptable as evidence. In the absence of any cogent evidence to prove the claim of the appellants it was rightly rejected by the Joint Commissioner.

In a decision reported in 83 LW 746, it was held that “A party who set up a custom should invariably allege it in the pleadings and prove by cogent evidence as to the instances or facts over a reasonably long period, which in effect make out the custom pleaded short of this, a custom cannot be the result of a process of appreciation or analyse or deduction from other customs prevalent among communities or sections of the peoples other than that to which the parties in dispute belong. A custom cannot be extended by analogy. It should be established inductively and not by opinion methods”

In a decision reported in 83 LW 407, it is observed that “the usage need not necessarily be immemorial; it may even be recent. But, the essentials of a custom are that it should be ancient or of remote antiquity or long established, certain, invariable, uniform and continuous and reasonable and not open to objection on the ground of public policy or otherwise and not opposed to statute. The custom to be valid must also obligatory or compulsory in the sense that it must not be in the option of any person whether he would conform to it or not. The burden of proof of usage and custom are heavy on the persons setting them.”

The above two decisions squarely apply to the case of the appellants. No festival was conducted for 45 years from 1962. It was not proved by the appellant that 2nd, 5th, 8th and 10th day festivals are conducted by the appellants’ ancestors. Further, due to the dispute between the two factions of the said community in conducting festival, normality of the village was disturbed. Since now the administration of the suit temple has been vested with the 4th respondent, the Assistant Commissioner should took necessary steps to bring about consensus among the villagers regarding conduct of festivals in future. The Assistant Commissioner, Trichy should convene a meeting of villagers in the

presence of the Revenue and Police Department officials and decide festival program. The 4th Respondent/Executive Officer should conduct the festival as per the program decided in the said meeting with the co-operation of the villagers. Both the appellants and respondents should co-operate with the 4th respondent to conduct the festival peacefully. With the above direction, the appeal petition is disposed of.

/typed to dictation/

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

/ true copy/by order/

Superintendent.