

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

**Tuesday the 24<sup>th</sup> day of September, Two thousand and thirteen.**

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

**A.P.No.10/2013 D2**

**Between.**

**K.N. Kuppuswamy  
S/o Nagappa Naicker.**

**... Appellant.**

**And**

**1. K. Seshan Naicker.**

**2. The Joint Commissioner,  
HR & CE Admn. Dept., Vellore.**

**..Respondents**

**In the matter of Arulmighu Chinnamman Temple, Kadambadi village,  
Thirukkalukundram Taluk, Kanchepuram 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 23.04.1991 of the  
Deputy Commissioner, HR&CE Admn. Dept., Chennai in M.P. 6/1990 filed  
under section 54(1) of the Act recording line of succession.**

**Order in D.Dis. A.P.No.10/2013 (D2) dated: 24.09.2013**

**The above Appeal Petition having come for final hearing before me  
on 12.7.2013 in the presence of M/s. A.S. Kailasam & Associates, Counsel for  
the Appellant and Thiru C. Kumar, Counsel for the 1<sup>st</sup> Respondent, upon  
hearing their arguments and perusing the relevant records and the matter  
having stood over for consideration till this day the following order is made:-**

**ORDER.**

The above petition filed under Section 54(4) of the Act against the order dated 23.4.1991 of the then Deputy Commissioner, Chennai in M.P. 6/1990 filed under Section 54(1) of the Act regarding line of succession.

2. The appellant contended that 1) Kuppaswami Naicker, 2) Rathina Naicker and 3) Nagappa Naicker were in possession and management of the temple till their death. Thereafter only the male descendants of the above three hereditary trustees had become eligible to claim Hereditary Trusteeship as the successors in holding the Hereditary Trusteeship. The said Kuppaswami Naicker died leaving only female heirs. Mr. Rathina Naicker died leaving two sons 1) Munusamy and another (name not known to the appellant). The sons of Mr. Rathina Naicker had never involved in the administration of the said temple at any point of time. The appellant is the only son of the Nagappa Naicker and after the demise of his father Nagappa Naicker, he became the sole managing Hereditary Trustee to the said temple. The appellant further contended that his father Nagappa Naicker died on 6.8.2001 and the appellant herein succeeded to the office of Trusteeship caused by his father's in terms of Section 54 (1) of the H.R. & C.E. Act, he was in management of the temple from 06.08.2001 onwards. Subsequently the Joint Commissioner, H.R. & C.E. namely the 3<sup>rd</sup> respondent herein also recorded the name of the appellant in his register under Section 54 (1) of the Tamil Nadu H.R. & C.E. Act 22 of 1959 through his proceedings in Ne.Mu. 3318/2005 A1 dated 18.3.2005. One P. Kandaswamy (now deceased) started to interfere in the temple administration claiming trusteeship under the guise of heir to the Late Kuppaswami Naicker. In the interest of the temple administration and to safeguard the reputation of the temple the appellant filed the Original Suit in O.S. No.50/06, before the District Munsif Court, Thirukazhukundram to pass a Judgment and Decree in favour of him declaring him as the Sole Hereditary Trustee of Arulmighu Mari Chinnamman Temple situated in Kadampadi Village. The above suit was

dismissed on 3.3.2010. Aggrieved by the order of the District Munsif Court, Thirukkazhukundram in O.S. 50/2006, the appellant preferred Appeal before the Sub-Judge, Chingleput which is now pending before the Court. The appellant further contended that he understand that in the said order passed on 23.4.1991, the Deputy Commissioner, Madras erroneously held that 1) Kuppuswamy Naicker, 2) Rathina Naicker and 3) Nagappa Naicker come under the Branches of Vedagiri Naicker, Velu Naicker and Vadivelu Naicker respectively and further erroneously concluded that the petitioner therein and late P. Kandaswami would come under Velu Naicker's family and passed an order in favour of P. Kandaswami declaring him as the Hereditary Trustee under Velu Naicker's family. But the order itself is ambiguous, as it failed to establish how the said P. Kandaswami comes under Velu Naicker's family. The impugned order is obtained clandestinely without impleading other Hereditary Trustees. Further even after obtaining the order, the 1<sup>st</sup> respondent never disclosed about such order and he kept the order in abeyance. He never acted as Hereditary Trustee at any point of time and even after obtaining the continued to stay away from the affairs of the temple. The Deputy Commissioner erroneously relied solely on the Village Administrative Officer's report and failed to take note of the fact that P. Kandaswami had not produced any documents clinchingly to prove his administration to the said temple. The Deputy Commissioner had failed to take note of the fact that the Velu Naicker had no role to play in the Hereditary Trusteeship to the above temple. The Deputy Commissioner failed to consider the fact that P. Kandaswami did not produce any vital documents such as Legal Heir Certificate or Death certificate of the Late Kuppuswamy Naicker to prove his succession. The Deputy Commissioner failed to take note of the fact that Thiru P. Kandaswami had not filed any Genealogy table to prove his succession. The Deputy Commissioner ought to have become vigilant of the fact that P. Kandasami had deliberately omitted to include the other Hereditary Trustees of the said temple and the Deputy Commissioner ought to have dismissed the above petition for the non joinder of the necessary parties. The Deputy Commissioner failed to take note

of the fact that the late Kuppusamy Naicker had no male issues and P. Kandaswami is not the son or the legal heir of the Kuppusamy Naicker. Therefore the Deputy Commissioner should be rejected the claim.

3. In the counter affidavit the 1<sup>st</sup> Respondent contended that one Manicka Mudaliar son of Kumarasamy had gifted a property to the above temple to grow flowers in view to offering eternal sacrifices, under a registered settlement deed dated 28.09.1938 executed to and in favour of Tvl.1) Muthu Parasappa Naicker son of Vedagiri Naicker, 2) Parthasarathy Naicker son of Velu Naicker 3) Kandasamy Naicker son of Vadivelu Naicker. The recitals of the said deed referred the three above named were presently hereditary trustees of the above temple. After the death of Parthasarathi Naicker, his youngest brother one Kuppuswamy Naicker was succeeded to the management of the temple in the line of Velu Naicker. The petitioner/K.N. Kuppusamy father S. Nagappa Naicker was succeeded to the management of the above temple in the branch of Vadivel Naicker. As such after death of Muthu Parasappa Naicker, his brother son one Rathina Naicker was succeeded to the management of the above temple in the line of Vedagiri Naicker. After the death of Kuppusamy Naicker, who is the son of Velu Naicker, the respondent father P. Kandasamy Naicker who is the son of Parthasarathy Naicker assumed charge as one of the hereditary trustee and he was elected as Managing Trustee by a meeting which held on 20.07.1981. The petitioner father Nagappa Naicker also presents in the meeting and consented for the election of the said P. Kandasamy Naicker. To avoid legal impediment, the respondent father have applied for record him as hereditary trustee to the above temple before the H.R. & C.E. Assistant Commissioner, Kancheepuram and after careful examination of his request, he was appointed as one of the hereditary trustee to the above temple under order dated 23.04.1991 in M.P.6/1990 on the proceeding of Deputy Commissioner, HR & CE Department, Madras. This respondent father P. Kandasamy had been exercising all manner of rights as one of the trustee along with the petitioner father/Nagappan till his life time and the same was

not challenged by the Petitioner father. A civil suit in O.S. 50/2006 on the file of District Munsif Court, Thirukkalukundram in seeking relief of declaration that the petitioner is the sole trustee to the above temple and consequential injunction to restraining the defendant from in any way interfering with the plaintiff peaceful management of the temple. After examination of oral and documentary evidence produced by both the side in the O.S. 50/2006, the Learned District Munsiff was pleased to dismiss the suit by ordering the cost to be paid by the respondent by made Decree and Judgment dated 3.3.2010. Aggrieved the decree and Judgment, the petitioner has been preferred Appeal in A.S.No.11 of 2010 on the file of the Hon'ble Principal Subordinate Judge, Chengalpattu. The Learned Principal Subordinate Judge has dismissed the above Appeal on 10.1.2011 by confirming the decree and judgment passed by the Learned District Munsiff, Thirukkalukundram. The petitioner having failed to achieve his remedy before the Court of law, he came with the present applications to leave to file Appeal. This is the second round of litigation. The subject matter of the issue which finally decided by the competent courts.

4. I heard M/s A.S. Kailasam and Associates, Counsel for the appellant and Thiru C. Kumar, Counsel for the Respondent and perused the relevant records. The impugned order was passed in the year 1991. At that time the appellant's father was one of the Hereditary Trustee. But the said order was not challenged by then trustees. The appellant who succeeded to the office in the year 2005, now challenging the impugned order on the ground that the impugned order was obtained without any knowledge to the co-trustee. But, it is pertinent to point out that, the appellant himself got recognized under Section 54 (1) of the Act without impleading other trustees.

Further, it is not disputed by the appellant originally Kuppaswamy Naicker, Rathina Naicker and Nagappa Naicker were declared as Hereditary Trustees of the temple. The appellant has been recorded as Hereditary Trustee representing the branch of Nagappa Naicker. Thiru P. Kandasamy who is

brother's son of Kuppusamy Naicker was recorded as Hereditary Trustee representing the brother of Kuppuswamy Naicker, because the said Kuppusamy Naicker has no male issues.

The appellant filed O.S. 50/2006 to declare him the sole trustee of the above temple though he know very well that legal heirs of three branches are entitle for hereditary trusteeship. The suit was dismissed. Appeal filed in A.S. No.11/2010 was also dismissed confirming the Judgment in O.S.

In the A.S. 11/2010, the Hon'ble High Court held that "The plaintiff admitted that the persons belong to three families acted as trustees of the temple. Now the plaintiff claims sole trusteeship which is the question to be decided in this case. On the side of the first defendant (2<sup>nd</sup> Respondent in this Appeal Petition) Ex.B6, Genealogy of the three trustees was marked. The plaintiff simply disputed the genealogy, but he has not filed any genealogy or documents to disprove Ex.B6. Further, the Exhibit B1 is settlement deed dated 28.9.1938 executed by Manicka Mudaliar in favour of 1) Muthu Parasappa Naicker S/o Vedhagiri Naicker 2) Parthasarathy Naickdr S/o Velu Naicker and 3) Kandasamy Naicker S/o Vadivel Naicker Ex.B1 confirms the genealogy filed by the first defendant. Hence this court finds that the legal heirs of 3 branches namely Velu Naicker, Vedagiri Naicker and Vadivel Naicker are entitled to hold trusteeship in the temple and the plaintiff cannot claim sole trusteeship in the temple"

Against which no appeal has been preferred by the appellant herein. Hence, as decided in Original Suit and Appeal Suit, the respondent herein succeeded as hereditary trustee of the temple in the line of succession of Thiru Kuppusamy Naicker. The said Kuppusamy Naicker was sone of Velu Naicker.

Therefore, the subject matter was already decided by the competent civil Courts. This is second round of litigation, cannot be maintainable. Accordingly, the appeal petition fails and dismissed as devoid of any merit.

/typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Appellant through Thiru A.S. Kailasam and Associates,  
86, Law Chambers, High Court Buildings, Chennai 600 104.
2. The 1<sup>st</sup> Respondent through M/s. C.Kumar B.A.B.L., Advocate,  
64/ 1.E.Rajeswari 2<sup>nd</sup> street, Gokulapuram, Chengalpattu.1

Copy to:

3. The Joint Commissioner, HR & CE Admn. Dept.,Vellore.
- 4.The Joint Commissioner, HR & CE Admn. Department, Chennai.34
5. The Inspector, HR & CE Admn. Department, Chingleput.
6. .The Assistant Commissioner, HR&CE Admn.Department, Kanchipuram.
- 7-8. Extras.