

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

Friday the 11th day of October, Two thousand and thirteen.

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

A.P.16/2013 D2

Between.

T. Sudharsan, S/o T. Alwar Chetty.

.. Appellant

And

1. Joint Commissioner,
HR&CE Admn. Dept., Chennai.34.
 2. T. Sampathkumar, S/o T. Alwar Chetty.
 3. T. Jayasekar, S/o T. Rama Gupta
 4. T.Parthasarathy S/o T. Seshasalam
Chetty.
- .. Respondents.

In the matter of Arulmighu T.V.R. Subbi Chetty's families Charities, Mylapore, Chennai.4.

Appeal petition under Section 54(4) of the Tamil Nadu H.R.& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 8.11.2012 of the Joint Commissioner, H.R. & C.E. Admn. Dept. Chennai in dismissing the Petition filed under Section 54 (1) of the Act.

Order in D.Dis. A.P.16/2013 D2 dated : 11.10.2013.

The above appeal petition having come on for final hearing before me on 27.8.2013 in the presence of Thiru L. Leela Raman, Counsel for the appellant and Thiru E. Ganesh, Counsel for the Respondents 2 to 4 . Upon hearing the arguments and after perusing the records, and the matter having stood over for consideration till this day, the following order is made.

ORDER

The above appeal petition filed under Section 54 (4) of the Act, 1959 against the order dated 8.11.2012 of the Joint Commissioner, Chennai in dismissing the petition filed under Section 54 (1) of the Act.

2. The appellant contended that T.V.R. Subbi Chetty's Families Charities has been established by the great-grandfather of the appellant T.V.R. Subbi Chetty. The chief beneficiary is the Adi Kesava Perumal, Peyalwar Devasthanam, Mylapore. The management of the Charities is governed by the Scheme Decree of the Honourable High Court, Madras dated 13.10.1941 in C.S.No.85/1939 as modified by the Decree dated 19.3.1974. The respondents are the present Trustees of the Charities. The scheme decree provides that the Trust shall be managed and administered by a Committee of Management composed of the adult male members of the branches of the four sons of T.V.R. Subbi Chetty, each branch being represented by only one member. The scheme further provides that if there is more than one of the same degree in a branch, such branch shall be represented by turns in order of seniority of age. The appellant submits that T.V.R. Subbi Chetty, the founder had four sons, T.Ramasami Chetty, T. Varadharajulu, T.Nagaiah Chetty and T. Raghavaiah Chetty. The respondents herein are the descendants in the branches of Nagaiah Chetty, Ramasami Chetty and Varadharajulu Chetty respectively. The 1st respondent herein is the elder brother of the appellant. The branch of T. Raghavaiah Chetty has since become extinct. The appellant submits that though the Scheme Decree specifically provides for management in turns by rotation amongst the male members of the same degree in a branch, the 1st respondent has been allowed to represent the Branch of Nagaiah Chetty. As it now transpires that the respondents are acting against the interest of the Charities, the appellant, sincerely interested in the proper performance of Charities as visualized by his great-grandfather, is obliged to seek Judicial intervention in the interest of the charities and the general public. Further, all the sisters of the appellant and the 1st respondent have given their consent for the Appellant being appointed. In the circumstances, the appellant filed R.C.No. 4549 of 2010 before the Joint Commissioner, H.R. & C.E., Chennai praying that be appointed as a

Hereditary Turn Trustee. The Joint Commissioner, HR & CE as per order dated 8.11.2012 dismissed the R.C.No. 4549 of 2010. The reasoning of the Joint Commissioner, H.R. & C.E., Chennai that the petition before cannot be ordered as no permanent vacancy under Section 54 (1) has arisen is incorrect. The Joint Commissioner, H.R. & C.E., Chennai has failed to see that there is automatic filling up of vacancy each year in rotation and in the circumstances when rights of a turn Trustee is denied, he can move under Section 54(1) of the Act. The Joint Commissioner, HR & CE, Chennai ought to have seen that pending enquiry against the respondents cannot in any event affect the rights of the appellant against whom admittedly there are no charges. The Joint Commissioner, Chennai ought to have seen that when other eligible trustees are available for appointment in accordance with the scheme such a course must be restored to and appointment of a fit person cannot be used as a ruse to defeat the rights of other eligible Trustees under the Scheme Decree.

3. In the written submission filed by the Counsel for the Respondents 2 to 4 has stated that the original application filed under Section 54 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959) before the 1st Respondent is not maintainable, since the relief sought by the appellant in the said application does not attract the ingredients of Section 54 (1) of the Act. In the pleadings, the Petitioner has claimed his right to record his succession on the place of his brother viz. 2nd respondent herein since he has been suspended by this Hon'ble Forum. It is well settled proposition that, suspension of a Trustee would not be construed as a permanent vacancy. Hence, the application in R.C.No.4549/2010 is hopelessly liable to be quashed, since it would not attract the ingredients to grant any relief more so under Section 54 (1) of the Act. It is pertinent to point out here that the suspension pending enquiry does not come within the purview of Section 53 (2) of the Act. Section 54(2) would

arise when 53 (2) suspension is imposed. In the present case, the suspension imposed on the Respondent 2 to 4 are being under Section 53 (4) alone and not under Section 53 (2), hence the question of appointing the person in the next in line of succession in the place of suspended Trustee does not arise. It is ample clear that pending enquiry suspension is distinct and different from final order of suspension. The act intends to safeguard the institution by appointing next in line of succession when the final order of suspension has been granted alone. The pending enquiry suspension, the Act intends to appoint Fit person deliberately to keep away the family members away from management so as to safeguard the interest of the institution in the interregnum period of suspension. It is an admitted fact that the Appellant has failed to claim his alleged right of Management as Trustee to the Trust. As on date, more than 33 years has gone by from the date of attaining the age of majority, by which it is amply exemplified that his right if any left over the Administration of the charities has been extinguished by efflux of time.

Section 27 of Limitation Act, 1963 states as follows:

Extinguishment of right of property: “At the determination of the period hereby limited to any person for instituting the suit for possession of any property his right to such a property shall be extinguished.

Article 107 of the Act states as follows: For possession of hereditary office, the period of limitation is 12 years, the time beginning to run from the date, when the Defendant takes possession of the office adversely to the Plaintiff.

Explanation:- a hereditary office is possessed when the properties thereof are usually received or (if there are no properties) when the duties thereof are usually performed.

As per the above provisions of Limitation Act it would elucidate that when the Defendant takes possession of the office adversely to the Plaintiff vis-à-vis hereditary right of the institution for 12 years or more,

the right of Trusteeship of the Plaintiff would be barred by adverse possession and would be extinguished. Similarly the above legal proposition is well supported by the well known legal maxim "Vigilantibus non dorminentibus jura subvenient" – "The laws serve the vigilant, not those who sleep". The exercise of power by the Joint Commissioner under Section 54 of the Act is merely recording of succession alone, he/she is not exercising any power of adjudication or granting any declarative relief. In the present case, for the aforesaid reasons, the appellants, if at all wants to record the succession, he has to establish that his right has not been extinguished under the rule of adverse possession under Section 27 read with 107 of Limitation Act, 1963. It is well established that the Appellant by his conducts and deeds, by merely acting as a witness of the 2nd Respondent Administration to the charities, shall acquiesced recognized and submitted to the validity of the administration done by the 2nd Respondent and as such he is estopped from seeking relief. The petition filed before the 1st Respondent is an off suit of the direction given by the Hon'ble High Court. Hence, in lieu of the writ proceedings being pending before the Hon'ble High Court, the above petition filed by the Appellant before the 1st Respondent itself is premature one, under such the circumstances of the Appellant ought to have awaited for the final disposal of the Writ Petition. The administration of the charities as trustees is not only a right or a privilege but also a bounden duty vested on the heirs of the founder the Trust to duly administer the same so as to fulfill the noble wishes of their forefathers. The present case, the Appellant by neglecting to discharge his duties by non performance of his duty as Trustee, he failed and acted against the interest of the charities and intention of the testator, thereby he lost his right to management as Trustee and not only under Law but also on equity and his claims against the persons (Respondents 2 to 4) who shouldered his burden and managed the charities should not be impeded as disturbed from

management at this juncture for the benefit of a person (Appellant) who willfully neglected to perform his duty for more than 33 years.

4. I heard Thiru L. Leela Raman, Counsel for the appellant and Thiru E. Ganesh, Counsel for the Respondent 2 to 4 and perused the relevant records. T.V.R. Subbi chetty families charities has been governed by the Scheme dated 13.10.1941 framed in C.S.No. 85/1939 and modified by the decree dated 19.3.1974. The trust shall be managed and administered by the Committee of management constituted as per provision in Schedule 'A' of the said Scheme. The relevant provision extracts below for clear understanding.

“ 2. The Properties shall vest in and the trust shall be managed and administered by a committee of management subject to the supervision of Board, as constituted and provided herein.

The Committee of Management.

3. The Committee of Management shall be composed of the adult male members of the branches of the four sons of T.V.R. Subbi Chetty, namely T. Ramaswami Chetty, T. Varadarajulu Chetty, T. Nagiah Chetty and T. Raghaviah Chetty each branch being represented by only one member thereof. If in each branch there be more than one of the same degree, such branch shall be represented by turns in order of seniority of age.

4. The four branches shall manage the charities by turns according to seniority of each branch each representative being in charge for one year and designated as 'Turn Manager' such year commencing from the 1st day of Chitrai of the Tamil New Year if any turn manager happens to be an undischarged insolvent, he shall co-opt with himself another member of the family of T.V.R. Subbi Chetty subject to the approval of the Board of Supervision. Thatha Nagiah Chetty the first plaintiff, will be the turn manager for the current Tamil year ...

5. The respondents herein are the descendants in the branches of Nagaiah chetty, Ramasamy Chetty and Varadharajiah Chetty respectively. The 2nd respondent who is elder brother of the appellant represent the branch of Nagaiah Chetty. Since the properties of the Charities were mismanaged by the respondents they have been placed under suspension under Section 53 (4) of the Act pending enquiry into the grave charges. The appellant prayed to appoint him as a hereditary turn trustee in the administration of the charity. The appellant belongs to Nagaiah Chetty branch as per scheme provisions. Committee of management shall being represented by only one adult male member of each branch. The said T. Nagaiah chetty branch has been represented by 2nd respondent herein. Since there is no permanent vacancy in the branch of Nagaiah Chetty, the claim of the appellant was rightly rejected by the Joint Commissioner.

5. The appellant contended that the scheme specifically provides for management in turns by rotation amongst the male member in a branch and appellant has not relinquished his rights. Hence, the respondent cannot claim adverse possession as the management of the 2nd Respondent on behalf of the branch. But this contention is strongly objected by the respondent on the ground of limitation. Admittedly, the appellant has failed to claim his right of management as Trustee of the Trust. Section 107 of Limitation Act states as follows:

“For possession of hereditary office, the period of limitation is 12 years, the time beginning to run from the date, when the defendant takes possession of the office adversely to the plaintiff.

In this case, the appellant knowingly allowed 2nd respondent to continue in the administration of the charity for more than 12 years and thereby, any right remains on the appellant in virtue of the scheme decree is lost by efflux of time and barred by adverse possession and also in view of legal maxim “Vigilantibus non dorminentibus jura subvenient”.

limitation, then it cannot be revived unless under certain extraordinary circumstances, ..”

The above decisions are squarely applies to the case of the appellant. The claim of the appellant is barred by limitation.

6. Further as contended by the respondents, the appellants by his conducts and deeds by merely remained as a witness of the maladministration of the respondent herein, shall acquiesced, recognized and submitted to validity of the administration done by the respondents is estopped from seeking relief.

The administration of the charity as claimed is not only a right but also bounden duty vested on the heirs of the founder of the Trust to carry out the object of the Trust as per the wish of the founder of the Trust. The appellant by neglecting to discharge his duties as Trustee, lost his right to management as Trustee. His right of management as trustee is barred by limitation.

In view of foregoing discussion, I find no infirmity in the order passed by the Joint Commissioner, Chennai and appeal petition deserves no merits. Accordingly, the order dated 8.11.2012 of the Joint Commissioner, Chennai is hereby confirmed and appeal petition is dismissed as devoid of merits.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Suprintendent.

To

1. The Appellant through Thiru L. Leela Raman, Advocate, No. 7, Somasundaram 5th Street, Ayanavaram, Chennai.23.
2. The Respondents 2 to 4 through Thiru E. Ganesh, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-85.

Copy to:

3. The Joint Commissioner, HR&CE Admn.Dept., Chennai. 34.
4. The Assistant Commissioner, HR & CE Admn.Dept., Chennai.34.
5. The Inspector, HR & CE Admn.Dept.,Circle.5, Chennai.34
6. Extra.