

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

Thursday the 28th day of February, Two Thousand and thirteen.

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

A.P. 8/2013 D2

Between.

R. Varadharajan S/o Late N. Rajagopal Naidu.

.. Appellant

And

The Joint Commissioner,
HR & CE Dept.,
Tiruchy.

... Respondents

In the matter of Arulmighu Muthu Mariamman Temple,
Manapparai Town, Taluk, Tiruchy District.

Appeal Petition filed under Section 54(4) of the Tamil Nadu H.R.& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 24.4.2011 in Pro. Rc.No. 17566/2010-2 B4 of the Joint Commissioner, HR & CE Admn. Department, Tiruchy in dismissing the petition filed under Section 54 (1) of the Act.

Order in D.Dis. A.P. 8/2013 (D2) dated: 28.2.2013.

The above appeal petition having come on for final hearing before me on 1.2.2013 before me in the presence of Thiru E. Ganesh, Counsel for the Appellant. Upon hearing the arguments and after perusing the records the following order is made.

ORDER

The above appeal petition filed under Section 54 (4) of the Act against the order dated 24.4.2011 of the Joint Commissioner, Trichy in

dismissing the petition filed under section 54 (1) of the Act in Rc.No. 17566/2010-2 B4.

2. The case of the petitioner is that the office of the said temple has been declared as Hereditary in and by virtue of a decree passed in O.S.No. 97/63 on the file of Sub Judge, Trichy, through which the father of the petitioner Mr. Rajagopal Naidu got himself declared as hereditary Trustee. The petitioner submits that his father Rajagopal Naidu died leaving the petitioner, (petitioner's elder brother) late R. Veerasamy and two daughters as his legal heirs. At the time of the demise of Rajagopal Naidu in the year 1984, the petitioner was working as a teacher in Madurai and hence he was not in a position to partake in the administration of the temple at Manaparai. As such, the petitioner permitted his elder brother the deceased R. Veerasamy to function as hereditary trustee for and on behalf of all the other claimants to the said office. Thereby, the said deceased R. Veerasamy was permitted to discharge the office of hereditary trustee from 13.11.1984. After his retirement from service in the year 2003, the petitioner desired to serve as a trustee in the temple, and hence filed a petition under Section 54 (1) of the Act before the 1st Respondent to recognize him as a co-hereditary trustee. However, the 1st respondent had dismissed the petition, holding that the petitioner consented for the appointment of the said deceased R. Veerasamy as hereditary trustee as early as in the year 1984 and also on the ground that the claim of the petitioner is belated. The petitioner humbly submits that being aggrieved by the order of the 1st respondent, the petitioner preferred Revision Petition in R.P.no. 205 of 2004 before this Hon'ble forum. This Hon'ble forum by its order dated 9.9.2005 has dismissed the said Revision petition filed by the petitioner. However this Hon'ble forum has held that the right of the petitioner has not been extinguished, in view of the consent given by him in favour of his elder brother, but the right to hold the office can only be in accordance with the law of succession, unless it is a joint right. And also further held

that as the person who is entitled to the office in next line alone could be recognized as hereditary trustee. In the meanwhile, the petitioner's elder brother R. Veerasamy died on 27.11.2010. However, to satisfy the technical requirements, the petitioner being the person in the next in line of succession to succeed to the office of the Hereditary Trustee, filed an application under Section 54 (1) of the HR & CE Act in Na.Ka.No. 17566/2010 2 A4 before the 1st respondent to record his succession to the office of the Hereditary Trustee which got opened on the death of his elder brother R. Veerasamy on 27.11.2010. The respondents 2 to 7 have also filed a similar application in Se.Mu Pa.Mu No. 17566/2010 -1 A4 before the 1st respondent claiming hereditary trusteeship. The petitioner submits that, at the same time, he came to understand that the son of the petitioner's elder brother viz. R.V.S. Veeramani (4th respondent herein) has been recognized as hereditary trustee by the 1st respondent through his order dated 24.4.2011 in Se.Mu Pa.Mu No. 17566/2010 -1 A4 which is impugned in this proceedings. The Joint Commissioner failed to take note of the fact that the respondents 2 to 7 had not filed any proper genealogy table to prove their succession. The Joint Commissioner further failed to consider the fact that the law requires that when any proceedings through which the vested rights of the parties are to be affected, opportunity should be given to the persons concerned to put forth their contention before any order is passed.

3. I heard Thiru E. Ganesh, Counsel for the petitioner and perused the relevant records. The appellant's elder brother R. Veerasamy was recognized as Hereditary Trustee of the temples with the consent of the appellant and other legal heirs of Rajagopal Naidu. However, the right of the petitioner has not been extinguished in view of the consent given him in favour of his elder brother but the succession to the office shall be decided in accordance with Hindu Succession Act. The Joint Commissioner without consider the claim of the appellant as per the Hindu Succession Act rejected the claim of the appellant.

For the foregoing reasons, the order dated 24.4.2011 of the Joint Commissioner, Trichy is hereby set aside and the matter is remitted back to the Joint Commissioner for fresh disposal. The Joint Commissioner should decide the Appellant's claim in accordance with the Hindu Succession Act within a period of 30 days from the date of receipt of this order. With the above direction, the appeal petition is allowed.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Petitioner through Thiru V. Srikanth and E. Ganesh, Advocate, 61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai 85.

Copy to:

2. The Joint Commissioner, HR&CE Admn.Dept., Tiruchy.
3. The Inspector, HR&CE Admn.Department, Manapparai.1.
4. The Assistant Commissioner, HR&CE Admn.Department, Tiruchi-2.
5. Extra.