

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

Tuesday the 18th day of November, Two thousand and Fourteen.

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

A.P. 30/2014 D2

Between.

1. P. Periyasamy
2. P. Muthiah Gounder.

..Appellants.

And

1. The Joint Commissioner,
H.R. & C.E. Admn.Department,Trichy.
2. P.V.N. Vellaisamy Gounder.
3. Fit Person, Arulmighu Munnodi
Karuppannasamy Nayanmar Kannimarsamy
Vakaiyara Temple,
Poigaipatti, Manaparai Taluk, Trichy District. ... Respondents.

In the matter of Arulmighu Munnodi Karuppannasamy Nayanmar,
Kannimarsamy Vakaiyara Temple, Poigaipatti, Manaparai Taluk, Trichy
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
17.4.2014 of the Joint Commissioner, HR & CE Admn.Dept., Trichy in
O.A. 14/2013 B4 filed under Section 63 (b) of the Act.

Annexure to Order in R.Dis. A.P. 30/2014 D2 dated : 18.11.2014.

The above appeal petition filed under Section 69(1) of the Act
against the order dated 17.4.2014 of the Joint Commissioner, Trichy in
allowing the O.A. 14/2013 filed under Section 63 (b) of the Act.

2. The appellant contended that there is a temple dedicated to the
worship of Kaval Deivams viz., Karuppannasamy Nainmar
Kannimarsamy Vakaiyara Temple situate at Poigaipatti, Manaparai

Taluk, Trichy District. The origin of the temple is lost in antiquity. The management and administration of the temple has been exclusively vested on the Appellant's family for more than three generations and relates back to more than 150 years. One Ponnandan, the ancestor of the appellants put up structure and installed idols of the deities and was worshipping his beloved deities by lighting Thiruvilakku and performing poojas on every Friday. Subsequent to the demise of the said Ponnandan, his only son Muthiah Gounder inherited the right of management of the temple as hereditary trustee and he was in management of the temple till his demise as poojari cum hereditary trustee. After the demise of the said Muthiah Gounder, his sons Palaniyandi Gounder and Chinniah Gounder inherited the right of management of the temple as hereditary trustees and they were in management of the temple till their demise as poojaries- cum- hereditary trustees. After the demise of Chinnaiah Gounder, his son Ponna Gounder was looking after the management of the temple along with Palaniyandi Gounder. The said Ponna Gounder died and thereafter his son, P. Periyasamy Gounder, 1st Appellant herein is looking after the management of the temple and performing the poojas. Subsequent to the demise of Palaniyandi Gounder, his son P. Muthiah, the 2nd Appellant herein has inherited the right of management of the temple. Since, at the time of demise of the father of the 2nd Appellant, the 2nd appellant was minor, as such his mother acted as hereditary trustee of the temple on his behalf along with the 1st appellant. Thereafter, on attaining majority, the 2nd appellant is in management of the temple. The father of the 1st Appellant Ponna Gounder along with the father of the 2nd Appellant filed an application in O.A.No. 108 of 1973 before the Deputy Commissioner, H.R. & C.E., Coimbatore under section 63 (b) for declaration as they were the hereditary trustees of the temple and the same was disposed and appeal was preferred in A.P.32/1975 before this Hon'ble Forum and the matter was remanded to the Trial Court viz.

Deputy Commissioner, HR & CE, Coimbatore. After the remand, the matter was enquired in O.A.No. 132/1975 and the petition got dismissed. But however, liberty was given to agitate the issue once again. Again an application under Section 63 (b) of the Act has been filed before the Deputy Commissioner, HR & CE, Trichy vide O.A.No.11/1978 and the same was dismissed. Against the order, an appeal had been preferred before this Hon'ble Forum in A.P.59/1980 and the am was also dismissed. Against which, the 1st appellant and mother of the 2nd appellant representing the 2nd appellant interest (since he was minor at the time) preferred an appal in the form of statutory suit in O.S.No. 659/94 under Section 79 of the Act before Sub-Court, Karur. When the matter stood thus, the villagers have negotiated with the 1st Appellant and requested him to settle the issue among themselves. Accordingly the 1st appellant and father of the 2nd respondent had jointly agreed to solve the issue amicably and resolved that they will not claim any exclusive right over the temple and the 1st Appellant too agreed to withdraw the above Section 70 appeal in O.S.No. 659/84 on the file of Sub-Court, Karur. The above compromise has been made in the presence of majority of villagers and they all had signed as witnesses to the said compromise arrived between the 1st appellant and the father of the 2nd appellant. The revenue records reflect the name of the members of the Appellants family alone. Similarly, the Kist and other payments were made by the Appellants alone vis-à-vis the temple. The correspondences from the H.R. & C.E. Department have been communicated to the 2nd Respondent and during his age of minority to his mother alone. Besides that, the mere fact that the charge taken proceedings dated 11.3.2013 it is clearly stated that the articles of the temple has been taken from the 1st Appellant alone which also safely transpires that the Appellants all along in the management of the affairs of the temple as poojari cum Trustee. Since the order in Original Application in O.A. No. 11/1978 on the file of Deputy Commissioner,

Trichy and consequential appeal in A.P.No. 59/1980 on the file of this Hon'ble Forum and subsequent order in O.S.No. 659/1984 before the Sub-Court, Karur will not bind 2nd appellant, since the same is filed by his mother representing him since he was minor at that time. Further it is a well laid dictum that unless any act done on behalf of the minor is beneficial to him, same can be repudiated by the minor after attaining majority or after having about the knowledge of the same. The appellant has filed an Original Application in OA 6/2008 before the Joint Commissioner, Trichy to declare the 2nd appellant as hereditary trustee of the temple and the same is pending before the Joint Commissioner, Trichy. Earlier orders will not be an impediment to the 2nd appellant to claim the right of hereditary for the reasons stated supra. In the said O.A. 6/2008, the 2nd respondent too has impleaded himself as the party respondent. The 2nd respondent herein has surreptitiously seem to have filed an application under Section 63 (b) of the Act vide O.A.No. 14/2013 before the Joint Commissioner, HR & CE to declare him as hereditary trustee of the temple inter alia placing false facts before the Joint Commissioner. In the said O.A, no one was stated as Respondent to the application. From the above facts, it is well known fact that there are numerous objectors and rival claims in relation to the management of the Temple and there was no proper publication of notice about the enquiry by affixture etc. as per the H.R & CE Rules. The actual care takers, donors, worshippers of the temple were not made aware of the proceedings. In the said Original application, no independent witnesses were examined except one C. Periyasamy who claimed to be the village of the temple deposed evidence. Apart from him, the 2nd Respondent alone deposed evidence and he relied upon the documents marked by him as Ex.A1 to A17.

3. In the counter affidavit, the 2nd Respondent contended that the appellants never placed any material before the Lower Court nor he had pleaded that Ponnandan is the ancestor. The appellants have

nothing to do with Ponnu Sanga Gounder. Ponnandan is not an ancestor of the appellant. The appellants are not a party before the Joint Commissioner, Trichy and therefore they have no locus standi to file the appeal. They are not even aggrieved party as the earlier round of litigation before the H.R. & C.E. Act as well as before Civil Court, the appellant have miserably failed. They cannot file an appeal more so when the orders of earlier round of litigation are binding on the appellants. The decision in O.A.No.11/1978 and A.P.No.59/1980 and subsequently the dismissal of the suit in O.S.No. 659/1984 before the Sub-Court, Trichy were not challenged at any point of time and it can never be challenged now due to lapse of time. The allegation that the 2nd respondent has concealed a compromise Decree dated 19.06.1988 between the father of the 2nd respondent and 1st appellant is denied as false. No such compromise was entered into much less on 19.06.1988. The alleged compromise deed dated 19.06.1988 is fabricated, concocted and has been brought out by the appellant to bolster up their case.

4. I heard Thiru E. Ganesh, Counsel for the appellants, R. Vijayakrishna, Counsel for the 2nd respondent and 3rd respondent/ Fit Person, who appeared in person and perused the relevant records. Previously, the appellants' fathers were filed an O.A.108/1973 under Section 63 (b) of the Act to declare the office of the trusteeship as Hereditary. Their claim was negated by the then Deputy Commissioner. Again O.A. 11/1978 was filed under Section 63 (b) of the Act and the same was dismissed by the then Deputy Commissioner. Appeal filed under Section 69(1) of the Act before the Commissioner in A.P. 59/1980 was also dismissed. The said order was challenged in O.S.No. 659/84 under Section 70 of the Act. The same was dismissed for default. So, it was already decided by the Deputy Commissioner that the office of the trusteeship of the suit temple is not hereditary one and confirmed by the Commissioner in the appeal.

Again 2nd appellant herein filed O.A. 6/2008 before the Joint Commissioner, Trichy under Section 63 (b) of the Act to declare him as Hereditary Trustee and the same is pending on the file of the Joint Commissioner. The 2nd respondent also filed O.A. 14/2013 under Section 63 (b) of the Act to declare him as Hereditary Trustee of the suit temple. Since there is rival claim, the Joint Commissioner ought to have conducted joint trial on both the applications. But he failed to conduct the joint trial but disposed the O.A. 14/2013 in hurried manner when O.A. filed by the appellant is pending from the year 2008.

In the appeal, the appellants have produced various documents to prove their claim. In the written statement filed in O.S. 210/1982 by the 2nd respondent father, he had stated that "2nd plaintiff's family is only representing the North Pogaipatti and South Poigaipatti is represented by this defendant's family and they have been in management in turn system for generations together. The further averment that the trusteeship is a hereditary right is not admitted. It is denied. The order passed by the Commissioner after due enquiry is not liable to be set aside". The Joint Commissioner while allowing the claim of the 2nd Respondent herein failed to consider that the office of the trusteeship of the suit temple has been declared as non-hereditary by the then Deputy Commissioner in O.A. 108/1973 and O.A. 11/1978 and also 2nd respondent's father had admitted that trusteeship is not hereditary.

Further, in the impugned order, the Joint Commissioner has held the office of the Trusteeship of the suit temple is hereditary and declares the 2nd respondent as Hereditary Trustee. But the jurisdiction of the Joint Commissioner under Section 63 (b) is to decide the nature of the office of the Trusteeship i.e. whether the office of the trusteeship of suit temple is hereditary or not and he is not competent to decide who among the competent claimants is a hereditary trustee, but only the civil court has jurisdiction to decide. In this case both the appellants and 2nd respondent have filed Original Applications under Section 63 (b) of the

Act claiming Hereditary Trusteeship. But the Joint Commissioner instead of directing the 2nd respondent herein to approach the competent civil Court, declare him as hereditary trustee of the suit temple. Therefore, the impugned order also lacks jurisdiction.

For the reasons stated supra, the impugned order suffers from infirmity as stated above and liable to be set aside. Accordingly the order dated 17.4.2014 of the Joint Commissioner, Trichy made in O.A.14/2013 is hereby set aside. The matter is remitted back to the Joint Commissioner for fresh enquiry. The Joint Commissioner is directed to conduct joint trial on both the O.As 6/2008 and 14/2013 and pass orders in accordance with law after affording an opportunity of hearing to both parties and persons having interest. Further while disposing the Original Applications, the Joint Commissioner should also consider whether the order passed by the then Deputy Commissioners in O.A. 108/1973 and O.A. 11/1978 would act as resjudicata and when present Original Applications barred by resjudicata. With the above directions the appeal petition is disposed of.

/typed to dictation/

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

/true copy/by order/

Superintendent.