

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

Wednesday the 3rd day of February, Two thousand and Sixteen.

**Present: Dr.M.Veera Shanmugha Moni, I.A.S.,
Commissioner.**

A.P. 5/2015 D2

Between

**K.C. Rajkumar Shanmugam
S/o Chinna Kulanthai Raja.**

..Appellant.

And

**1. The Joint Commissioner,
HR & CE Admn.Dept., Trichy.**

2. P.K. Rajakumar Palaniappan, S/o P.K. Raja. .. Respondents.

**In the matter of Arulmighu Pyaraneeswarar and Prasanna
Venkatesaperumal Temple, Udayarpalayam, Ariyalur District.**

**The 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
26.7.2014 of the Joint Commissioner, HR & CE Admn.Dept., Trichy in
recording succession under Section 54(1) of the Act.**

Order in D.Dis.A.P.5/2015 D2 dated: 03.02.2016

**The above Appeal petition came up for final hearing before me
on 27.1.2016 in the presence of Thiru. E.Ganesh Counsel for the Petitioner,
Thiru.N.Sathyamoorthy Counsel for the 2nd respondent. Upon hearing their
arguments and having perused the connected records and the matter
having stood over for consideration till this day, the following order is
passed.**

ORDER

**The above Appeal Petition is filed under Section 54(4) of the Act
against the order dated 26.7.2014 of the Joint Commissioner, Trichy in
recording succession under Section 54(1) of the Act.**

**2. The appellant contended that the Arulmigu Pyaraneeswarar
Temple and Prasanna Venkatesa Perumal Temple situated at
Udayarpalayam Town and Taluk, Ariyalur District have been administered**

and managed by the family members of the appellant hereditarily. The factum has been got recognized statutorily and the temple has been declared as excepted temple in B.O.No.249 dated 2.5.57 whereby the office of the trusteeship in the temple has been vested hereditarily in the family of the appellant. On 16.7.1955, the legal heirs of said KCN Udaiyar viz, KC periya Kulanthai Raja and KC Chinna Kulanthai Raja effected Partition among themselves and as per the recitals of the partition deed dated 16.7.1955 registered as Doc.No.2272/1955, till the life time of K.C.Periya Kulanthai Raja, he has to be in the management of the Temple and after his demise, the eldest sons of KC Periya Kulanthai Raja and KC Chinna Kulanthai Raja ought to manage the affairs of the temple and its properties as Joint Hereditary Trustees. The said partition was effected even prior to the order made in B.O.No.249 dated 2.5.1957. KC Periya Kulanthai Raja has filed an application under Section 63(b) of the Act and sought for formal recognition that the office of trusteeship in the temple vested hereditarily in lieu of the earlier orders made in B.O.No.249 dated 2.5.1957. The then Deputy Commissioner, Trichy too recognized the hereditary trusteeship in the temple vide his order dated 27.5.1981 made in 89/1979. The father of the appellant KC Chinna Kulanthai Raja died on 22.4.1983. The maternal uncle of the appellant KC Periya Kulanthai Raja died on 8.1.2012. That in lieu of the Judicial Dictum laid down by the Hon'ble High Court in Premanand Vs. the Commissioner, HR&CE reported in 1990(1) LW 144, wherein it is held that "Whenever permanent vacancy occurring in the office of the Hereditary Trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity whatever for the next Hereditary Trustee to make an application for being appointed under the Act". Therefore, the succession of the appellant is an automatic process and there is no statutory requirement to record the same. However, for the purpose of administrative records and in order to satisfy the technical requirement, if any, the appellant has filed an application in M.P.No.6/2013 before the 1st respondent to record his

succession in terms of Section 54(1) of the Act wherein he also inducted the other legal heirs of KC Periya Kulanthai Raja and Chinna Kulanthai Raja as party respondents to the said application. The above said application is still pending for adjudication before the 1st respondent. The 2nd respondent too filed an application in R.Dis No.10174/2012/B4 before the 1st respondent to record his succession. The 2nd respondent has deliberately suppressed the fact that by virtue of the partition deed and Law of Inheritance, the appellant is also entitled to record his succession as co-hereditary Trustee of the temple along with the 2nd respondent. Hence, during the pendency of the impugned proceedings in R.Dis.No.10174/2012/B4, the appellant has given a detailed objections dated 3.2.2012 to the 1st respondent inter alia bringing the above facts to the knowledge of the 1st respondent and also requested the 1st respondent to issue notice to the appellant while deciding the recording of succession to the office of the Trusteeship of the temple. However, the 1st respondent without providing any opportunity to the appellant or to the other legal heirs has passed an impugned order dated 26.7.2013 made in R.Dis.No.10174/2012/B4 whereby the 1st respondent recorded the succession of the 2nd respondent alone. The impugned order is bad in Law and against the scope and ambit of Section 54(1) of the Act. The Learned Joint Commissioner has erroneously held as if under Section 54(1) of the Act, the eldest male descendant is alone entitled to record the succession which is contrary to Law and against the Judicial Dictum laid down in the subject matter.

3. In the counter affidavit the 2nd respondent contended that his father Sri Periyakulandai Raja was declared as Hereditary Trustee by the then Deputy Commissioner of HR&CE Department, Chennai in O.A.89 of 1979 dated 27.5.1981. The said Periyakulandai Raja died on 8.1.2012. After the demise of the said Sri Periyakulandai Raja, this respondent, in the capacity of his eldest son, has filed petition under Section 54(1) of the HR&CE Act before the Hon'ble Joint Commissioner, HR&CE Department, Trichy for recording his succession as Hereditary trustee of the said

temples. In the said petition he has not made any other person as party respondent. After verifying all the relevant records and after making proper enquiry the Learned Joint Commissioner, HR&CE Department was pleased to allow the petition submitted by this Respondent under Section 54(1) of the Act by the order dated 26.7.2013 made in R.Dis.No.10174/2012 B4. The appellant relies upon the partition deed dated 16.7.1955 and claims the right of Hereditary Trustee in respect of above said temples. The same is also untenable in Law. Under the said partition 1. KC Chinna Raja durai 2. KC.Periyakulandai Raja and KC.Chinna Kulandai Raja have divided their family properties in which they have set apart some lands for the purpose of performing certain religious charities in the above temples and also another temples and ancestors Samadhi. The same is a distinct and separate specific Religious charities for which periyakulandai Raja was appointed as the Trustee and line of succession has also been contemplated therein. The same is applicable only to the said family trusts and the same is nothing to do with the office of the Hereditary Trustee for the above temples, is not originated from the above partition deed as falsely alleged in the Memorandum of appeal. On the other hand, the same is originated from the orders of the then Deputy Commissioner, HR&CE Trichy dated 27.5.1981, in O.A.No.89/1979, under which the deceased Periyakulandai Raja was appointed as the Hereditary Trustee of the above temples under Section 63(b) of the HR&CE Act 22 of 1959. The appellant has suppressed the said vital aspects of the matter so as to confuse the issue involved in the matter. Hence, the appellant's claim under the above partition deed is liable to be negative as misconceived. Moreover, while passing an order under Section 63(b) of the HR&CE Act 22 of 1959 in O.A.89/1979, it was dealt with by the Deputy Commissioner, which has been clearly stated in the said order dated 27.5.1981 as follows: The Report of Inspector in Ex.C1 reveals that the brother of the petitioner also sought to participate in the management. His relief could be available only in the regular judiciary. The father of this appellant viz., Sri Chinna Kulandai Raja has not filed any suit

for declaration of his alleged hereditaryship right before any Court of Law. Nor he had preferred any appeal against the order of the Deputy Commissioner, HR&CE Department dated 27.5.1981 before the appellate forum as contemplated under the HR&CE Act 22 of 1959. The said order had reached its finality, binding the parties therein and their heirs. While his father himself had left the matter in abeyance and has lost his right while he was alive, the appellant cannot claim any right what his father himself had lost. The alleged claim of the appellant is hit by the principles of Resjudicata as well. His father was looking after the administration of the above temple and affairs from 1951 to 2012. Keeping quiet for all these years and nor filled any case in the judiciary in respect of Hereditary ship of the above said temples, against Sri.Periyakulandai Raja, this appellant has no semblance of right to file the present appeal against the order of the Joint Commissioner, HR&CE Department, Trichy passed in his proceedings Rc.No.10174/2012/B4 dated 26.7.2013 before this Hon'ble Court. The appellant has also filed any application under Section 54(1) of the HR&CE Act before the Learned Joint Commissioner, Trichy and the same was dismissed by his order dated 9.1.2014 this fact has also been suppressed by the appellant for the reason best known to him. Significantly the said order was also not appealed against.

4. I heard Thiru.E.Ganesh Counsel for the appellant and Thiru.N.Sathyamoorthy Counsel for the 2nd respondent and perused the relevant records. The appellant filed this petition challenging the recording of the succession of the 2nd respondent as Hereditary Trustee in the permanent vacancy occurred in the office of the Hereditary Trusteeship due to the death of Thiru.KC Periyakulanthai Raja who was father of the 2nd respondent herein. The appellant is challenging the said order on the ground that all the legal heirs of Periyakulanthai Raja and Chinnakulanthai Raja are entitle to succeed to the office of the Hereditary Trusteeship. The appellant is making his claim relying upon the partition deed dated 16.7.1955 executed by the brothers of the Periyakulanthai Raja.

5. The counsel for the appellant vehemently argued that as per the partition deed eldest male descendents of Periyakulanthai Raja and Chinnakulanthai Raja are entitle for Hereditary Trusteeship and as per the dictum laid down by the Hon'ble High Court, the succession is automatic one. Accordingly the appellant has inherited the right of Hereditary Trusteeship to manage the temple at the date of demise of his paternal uncle itself. If it is so, there is no need to file this appeal petition claiming equal rights in parity with the 2nd respondent functioning as Hereditary Trustee of the above temple.

6. As the appeal petition is filed against the succession of the 2nd respondent, the main issue to be decided in this appeal petition is whether the 2nd respondent is entitle to succeed to the permanent vacancy occurred due to demise of his father Thiru.KC.Periyakulanthai Raja. Admittedly the suit temple was declared as "excepted" temple by the erstwhile HRE Board in B.No.249 dated 2.5.57/ Based on the said order, the 2nd respondent's father Thiru.KC.Periyakulanthai5 Raja filed O.A.89/1979 under Section 63(b) of the Act to declare him as Hereditary Trustee and the same was allowed by order dated 27.5.1981. Though appellant's father was alive at that time but the same was not challenged by him. After demise of Thiru.KC.Periyakulanthai Raja, the 2nd respondent being a person next in the line of succession has been recorded as Hereditary Trustee in the permanent vacancy.

7. Further is not the case of the appellant that the 2nd respondent is not entitled or disqualified to hold the post of Hereditary Trustee. But he claims to record him also as Joint Hereditary Trustee. such claim cannot be decided by this forum. As the appellant has stated that the petition filed him under Section 54(1) is pending, he ought to workout his remedy in the said petition itself. The recording of succession of the 2nd respondent is not an impediment to establish the claim of the appellant before the competent forum.

Therefore, for the foregoing reasons stated supra, I find no illegality in the impugned order and is liable to be confirmed. Accordingly, the order dated 26.7.2014 of Joint Commissioner, Trichy is hereby confirmed and the Appeal petition is dismissed as devoid of any merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent

To

1. The Petitioner through Thiru E. Ganesh, Advocate, No. 61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai. 85.
2. The Respondent through Thiru N. Sathyamoothy, Advocate, No. 62, Addl. Law Chambers, High Court Buildings, Chennai.104.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Trichy.
4. The Assistant Commissioner, HR & CE Admn.Dept., Ariyalur.
5. The Inspector, HR & CE Admn.Dept., Udayarpalayam.
6. Extra.