

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

A.S.No.27 of 2003

1.Thiruvengadam  
2.S.Narayanan (Deceased)  
3.Mrs.Amutha  
4.Ms.Vijayalakshmi  
Appellants 3 and 4 brought on record  
as Lrs of the deceased 2<sup>nd</sup> appellant  
vide order of Court dt.26.10.2016  
made in CMP.Naos.1608 to 1610/2009  
in A.S.No.27/2003.

... Appellants

Vs

1.The Commissioner  
H.R. & C.E. Department  
Nungambakkam,  
Chennai-34.  
2.The Joint Commissioner,  
Hindu Religious & Charitable  
Endowment Department,  
Mayiladuthurai.  
3.Kannadasan  
R3 brought on record as Lrs of the  
deceased 2<sup>nd</sup> appellant vide order  
of Court dt. 26.10.2016 made in  
CMP.No.1608 to 1610 of 2009  
in A.S.No.27/2003.

... Respondents

This appeal is filed under Section 70 (2) of the Tamil Nadu Hindu Religious & Charitable Endowments Act 1959 against the judgement and decree made in O.S.No.227 of 2000 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai.

For Appellants	: Mr.A.Muthukumar
For Respondent	: Mr.Pratap Singh Government Advocate ( HR & CE)

### **J U D G E M E N T**

The unsuccessful plaintiffs in O.S.No.227 of 2000 on the file of the Court of Principal Subordinate Judge, Mayiladuthurai are the appellants. The said suit is a statutory suit, filed under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959.

2. According to the plaintiff the claim of late P.Sundararamanujam as hereditary trustee under Section 63(b) of the HR & CE Act 1959 was accepted by the Deputy Commissioner HR & CE Mayiladuthurai by his order dated 18.11.1989. Thereafter, the 1<sup>st</sup> defendant namely, the Commissioner, Hindu Religious and Charitable Endowment Department, took a suo motu proceedings in SMR No.2/1995 and by order dated 08.07.2000 reversed the order of the Deputy Commissioner in O.A.No.2/1989.

3. Aggrieved by the said order of the 1st defendant, the plaintiffs had filed the above statutory suit under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959. The plaintiffs had contended that the temple administration was looked after by their forefathers for more than three generations. One Vaduganambi Ramanuja Dasar was in the management of the temple and its affair till the 1969 and he was succeeded by the plaintiff's father. The said Vaduganambi Ramanuja Dasar had renovated the temple and had improved the properties of the temple by converting a large extent of Punja land into Nanja land. He also ensured the performance of regular poojas to the temple apart from raising coconut and Palmyra trees in the lands belonging to the temple.

4. The plaintiffs have also given the details of the lands owned by the temple, the income there from and the service rendered by the plaintiffs' family for the up keep of the lands as well as the temple. On the strength of the orders passed by the Deputy Commissioner of HR & CE Myiladuthurai, the documents produced at the time of hearing in O.A.No.2/1989 as well as the documents filed in the suit, the plaintiffs claimed that the administration of the temple has been carried on hereditarily by the plaintiffs' family and as such they are entitled to a declaration under Section 63 (b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959.

5. The 1<sup>st</sup> defendant filed a written statement claiming that the plaintiffs had not established that the father of the plaintiff had succeeded late Vaduganambi Ramanuja Dasar, who was in management of the temple till 1969. The 1st defendant also relied upon the description of the plaintiffs' father as the managing trustee in the stone inscription installed during Kumbabisekam. It is also contended that during Kumbabisekam in the year 1971, the temple was managed by non hereditary trustees appointed by the department and the father of the plaintiffs namely P.Sundararamanujam was only the managing trustee. The first defendant would further contend that the basic requirement for declaring a person as a hereditary trustee namely, the devolution of the trusteeship by succession having not been established, the plaintiffs are not entitled to the declaration as prayed for.

6. Though various proceedings and correspondence have been referred to by the first defendant in his written statement, no documents have been produced by the first defendant during the trial of the suit. The learned Principal Subordinate Judge, Mayiladuthurai, who tried the suit, on the basis of pleadings had framed the following issues:

1. Whether the plaintiffs are hereditary trustees of the suit temple?

2. Whether the plaintiffs are entitled to declaratory relief sought for? And

3.To what relief are the plaintiffs entitled to?

7. The 2nd plaintiff was examined as PW1 and one Uthirapathi was examined as PW2. On the side of the defendants one Mr.Muralidaran was examined as DW1. The plaintiffs have marked 14 documents as Ex.A1 and A14 to support to their case. No documentary evidence has been produced by the defendants.

8. The learned Principal Subordinate Judge, Mayiladuthurai on a consideration of the evidence had held that the plaintiffs have not established the essential requirements for being declared as hereditary trustees and upon such a finding, the learned Principal Subordinate Judge, Mayiladuthurai dismissed the suit up-holding the order of the first defendant namely, the Commissioner, HR & CE Department, Nungambakkam, Chennai-600 034 made in SMR No.2/1995 dated 08.07.2000.

9. Aggrieved by the dismissal of the suit, the plaintiffs have filed the above appeal.

10. Pending the appeal, the second plaintiff/second appellant had died and his legal representatives namely, his daughters were brought on record as appellants 3 and 4. His son was impleaded as respondent No.3. He did not joint with the other legal representatives as he was working at Neyveli.

11. I have heard Mr.A.Muthukumar, learned counsel appearing for the appellants and Mr.Pratap Singh, learned Government Advocate HR & CE for the respondents.

12. Mr.A.Muthukumar learned counsel appearing for the appellants, relying upon the documents particularly Exs.A2, A3, A4 which are the demands made by the department addressed to the father of the plaintiffs P.Sundararamanujam as well as the audit report Ex.A5, would contend that the fact that the father of the plaintiffs namely, P.Sundararamanujam was the manager of the temple has been proved beyond doubt. He would also rely upon the documents that were produced before the Deputy Commissioner, HR & CE, Mayiladuthurai at the time of enquiry in O.A.No.2 of 1989.

13. To buttress the claim of the plaintiff for being declared as a hereditary trustees, Mr.A.Muthukumar learned counsel for the appellants would also rely upon the observations of the Deputy Commissioner HR & CE, made in his order dated 18.11.1989 in O.A.No.2/1989 wherein, the entire material records have been considered and the Deputy Commissioner HR & CE has declared that the father of the plaintiff was a hereditary trustee. However, it is seen that the 1st respondent had initiated suo motu proceedings and cancelled the order of the Deputy Commissioner HR & CE, Mayiladuthurai dated 18.11.1989.

14. The primary contention of Mr.A.Muthukumar, the learned counsel appearing for the appellants is that in cases of claims relating to hereditary trusteeship, particularly for a village temple, it is very difficult to produce direct evidence in respect of the management for three generations, and the learned Subordinate Judge erred in not considering cumulative effect of the documents produced by the plaintiffs and the inability on the part of the department to produce the records to show that the department had exercised the right of appointing non-hereditary trustees atleast once. The learned subordinate Judge had also not considered the effect of oral evidence.

15. Countering the argument of the appellant, Mr.Pratap Singh, learned counsel appearing for the respondents would seek to rely upon the observation of the learned Principal Subordinate Judge, Mayiladuthurai to the effect that the plaintiffs have not discharged the burden of proof to show the continuous management for three generations.

16. Mr.A.Muthlukumar, learned counsel appearing for the appellants has produced before me a copy of proceedings of the Joint Commissioner, HR & CE, Mayildurhurai dated 07.07.2011, wherein, the 1st appellant has been recognised as the hereditary trustee of the suit temple. An affidavit has also been filed by the 1st appellant. Proceedings of the Commissioner HR & CE, have also been produced, wherein the 1st appellant has been recognized as hereditary trustee during the pendency of the appeal.

17. On the above pleadings and the arguments advanced, the following points arise for determination in this appeal:

1) Whether the appellants are entitled to declaration under Section 63 (b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959 as hereditary trustees of the suit temple?

2. To what other reliefs, are the appellants entitled to?

18. It is seen from the written statement of the 1st defendant, the management of the temple by Vaduganambi Ramanuja Dasar is admitted. It is further claimed that the plaintiffs have not proved the unbroken line of succession for more than three generations. Admittedly the origin of the temple is not known. The 2<sup>nd</sup> plaintiff was examined as PW1. He has deposed that his father had succeeded the said Vaduganambi Ramanuja Dasar and has been managing the temple as hereditary trustees. He has also produced documents to show that plaintiff's father has been in the management of temple since 1959. Ex.A1, letter dated 17.04.1959 from the office of the 1<sup>st</sup> respondent would show that a sum of Rs.3,000/- was sanctioned for renovation of the said temple and the said letter was addressed to the father of the 1<sup>st</sup> plaintiff describing him as a Secretary and Treasure of the Renovation Committee of the suit temple.



19. Series of the demands made by the Department have been produced as Exs.A2 to A4. Ex.A5 is the report of the Renovation Committee. It is dated 22.05.1971 and it covers the period from 22.03.1971 to 04.04.1971. The accounts maintained by the Renovation Committee has also been produced along with Ex.A5. Ex.A6 is a report for Thirupani Works of the temple. Ex.A7 contains the list of documents produced in O.A.No.2 of 1989. The above said documentary evidence clinchingly establishes the fact that the management of the temple has been with the father of the plaintiff from 1959 onwards.

20. A perusal of the cross-examination of PW1 would show that his evidence in chief examination had not been discredited in any manner. PW2-Uthirapathi had spoken about the management of the temple. His evidence has also not been effectively controverted in the cross-examination. PW2 would specifically depose that the management of the temple has been with the family of the plaintiff for more than three generations. The Court Clerk attached to the office of the Hindu Religious and Charitable Endowment Department, Mayiladuthurai has been examined as DW2. He has not chosen to produce any document in support of his evidence. Though he would claim that Hindu Religious and Charitable Endowment Department had appointed non-hereditary trustees to the temple, in his cross-examination he has deposed that he has not visited the suit temple and he does not know where the temple is situated.

21. He would specifically admit that the plaintiff and his father have been in the management of the suit temple. He would also state that there are other trustees. But he is unable to give the names of the trustees as claimed by him. He would also admit that the Archagar of the suit temple being paid by the plaintiffs. A perusal of his cross-examination shows that he is not aware of the vital facts relating to the management of the temple and his answers are mostly in the negative for various suggestions regarding the management of the suit temple. Though the learned counsel for the respondents would contend that it is for the plaintiffs to prove that they are hereditary trustees, upon going through the evidence and the records produced, I find that the plaintiffs have established that their father and their ancestors have been in the management of the temple. Though there was no direct evidence to show uninterrupted management for three generations, a perusal of the entire evidence and the circumstances of the case would undoubtedly lead to the inference that the plaintiffs and their ancestors have been in management of the suit temple.

22. The absence of the evidence to show the management by the appointed trustees (non hereditary trustees) is also the factor to be taken into account while deciding the rights of the plaintiffs as hereditary trustees. The subsequent events that had taken place during the pendency of the appeal are also to be taken note of. It is not disputed by the learned Government Advocate appearing for the respondent that by order dated 07.07.2011, the Joint

Commissioner, HR & CE, Myiladuthurai had recognized the 1<sup>st</sup> appellant Thiruvengadam as hereditary trustee of the suit temple. The said order appear to have been passed on a report filed by the Inspector of HR & CE, Sembanarkoil. It is also seen from the subsequent orders passed by the 1<sup>st</sup> defendant/1<sup>st</sup> respondent, that he had also recognized the 1<sup>st</sup> appellant as the hereditary trustee.

23. Taking note of the above circumstances as well as subsequent development, I am of the considered view that the plaintiffs are entitled to a declaration as prayed for by them in the suit. I am unable to concur with the view of the learned Principal Subordinate Judge, Mayiladuthurai, since he had not taken note the cumulative effect of the evidence. The learned Principal Subordinate Judge had non-suited the plaintiff on the ground that continuous management for the three generations has not been established. It should be pointed out that in case of claims to hereditary trusteeship, particularly of village temples, direct evidence will not be available. In such circumstances, Court will have to take judicial notice of the surrounding circumstances of preponderance of probabilities to arrive at a just conclusion.

24. In the light of the evidence that has been produced and in the absence of contrary evidence to show that the HR & CE Department had

exercised its power to appoint non-hereditary trustees to the suit temple atleast once from 1959 till filing of the suit in the year 2000 for nearly about 41 years, I am unable to accept the findings of the learned Principal Subordinate Judge, Mayiladuthurai.

25. In the result, the appeal is allowed and the judgement and decree of the learned Principal Subordinate Judge, Myladuthurai dated 09.08.2002 in O.S.No.227 of 2000 are set aside. The suit O.S.No.227 of 2000 will stand decreed as prayed for. However, in the circumstances of the case, there will be no order as to costs.

04.11.2016

Index : Yes/No  
Internet: Yes/No  
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To  
The Principal Subordinate Judge, Myladuthurai.

Note to the Registry: Decree should be drafted as follows:

1. The appeal is allowed and the suit O.S.No.227 of 2000 on the file of the Principal Subordinate Judge, would stand decreed as prayed for.
2. The plaintiffs are declared as Hereditary Trustees of the suit temple.
3. The order of the 1<sup>st</sup> respondent dated 08.11.2000 made in SMR.No.2 of 1995 is set aside.

**R.SUBRAMANIAN,J**

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