

BAVA C. CHOKKAPPA MUDALIAR & ORS.

v.

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February 14, 1974

[D. G. PALEKAR, V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

The Madras Hindu Religious Endowments Act, 1926 (II of 1926)—S. 84(1)—Scope of.

Section 84(1)(b) of the Madras Hindu Religious Endowments Act, 1926 as amended by Act 10 of 1946 provides that if a dispute arises as to whether a trustee is a hereditary trustee as defined in the Act or not such dispute shall be decided by the Religious Endowment Board constituted under the Act and no court in the exercise of its original jurisdiction shall take cognizance of such dispute.

On the question whether a dispute as to who out of a number of members of a family was entitled to succeed to an office, admittedly hereditary, fell within sub-cl. (b) of s. 84(1),

HELD : that it was not a dispute which could be entertained by the Board.

The view expressed in Sastri Ammal v. Pravalavarna Naicker, I.L.R. [1957] Madras 631 and *A. Krishnaswami Raja v. Krishna Raja*, I.L.R. [1967] 3 Madras, 495, approved. [395 A]

Gopalaswami Mudaliar v. Thyagaraja Mudaliar, [1951] 1 M.L.J. 248 overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1792 & 1793 of 1967.

Appeals by special leave from the Judgment and order dated the 23rd March 1961 of the Madras High Court in Appeal No. 88 of 1958.

M. Natesan, T. V. Krishnamurthi Iyer, K. L. Rathee, Ganesan and S. Balakrishnan, for the appellants (in C.A. 1792) and for respondent no. 6 (in C.A. 1793).

S. T. Desai, V. M. Tarkunde, K. Jayaram and R. Chandrasekhar, for the appellants (in C.A. 1793).

A. R. Somnath Iyer and S. Lakshminarasu, for respondent No. 1 (in both the appeals).

A. V. Rangam and A. Subhashini, for respondent No. 4 (in both the appeals).

K. Jayaram, for respondents nos. 5 & 6 (in C.A. 1992).

The Judgment of the Court was delivered by

PALEKAR, J. These two appeals by special leave arise out of a decision of the Religious Endowment Board (hereinafter called the Board) constituted under Section 10 of the Madras Hindu Religious Endowments Act, 1926 (Madras Act No. II of 1926) hereinafter called the Act. The Board gave the decision in a dispute in O.A. No. 279 of 1946 and the principal contention with which we are concerned in these appeals is whether the Board had jurisdiction to decide that dispute. Other points were dealt with in the course of litigation, but since the appellants are entitled to succeed on the ground that the

- A** Board had no jurisdiction to entertain the dispute, it will not be necessary for us to deal with the other points. We shall, therefore, confine ourselves to the facts which bear upon the point.

- B** The temple of Sri Tyagarajaswami at Tiruvarur in Tanjore District is a well-known, ancient temple of the South. There are 13 kattalais attached to the temple—one of such kattalais being the Ulthurai kattalai. This kattalai looks after the worship and festivals in the temple. The management of this Ulthurai kattalai was vested in two Mudaliar families. One was the Bava family and the other was the Vadapathimangalam family. The two families held the office of the trusteeship by hereditary succession. Prior to 1943, the hereditary trustee representing the Bava family was one Vaithilinga Mudaliar and the other trustee representing the Vadapathimangalam family was Thiagaraja Mudaliar. The latter is one of the principal parties to this litigation but the litigation was really with reference to the succession to the office in the Bava family after Vaithilinga's death.

- C** Vaithilinga died in 1943 leaving behind him surviving (1) his widow Pappu Ammal (2) a daughter, Shivakami Ammal, by another wife (3) a son of this daughter named Brahadeeswaran (4) & (5) two divided brothers Gopalaswami Mudaliar and Panchapakesa Mudaliar.

- D** The office of the trustee of the temple was an office of prestige. After Vaithilinga's death Gopalaswami Mudaliar tried to instal himself as the trustee in the place of his deceased brother. But Thiagaraja Mudaliar the other trustee, did not permit him to work with him as a co-trustee. So Gopalaswami complained to the Board by an application dated April 22, 1944 purporting to be under section 18 of the Act. Thiagaraja contested the application pointing out that Gopalaswami could not succeed, as the hereditary trustee and that only the widow of Vaithilinga, viz. Pappu Ammal, should be regarded as the trustee after Vaithilinga's death. Thereafter on February 5, 1945 Gopalaswami applied u/s 42 of the Act for his appointment as an interim trustee pending the dispute about succession being resolved in a Civil Court. He said he was the senior most male member in the Bava family and was in every way a fit and proper person to be appointed an interim trustee till his succession to the trusteeship is declared by the Court. This application u/s 42 also was contested by Thiagaraja Mudaliar and Pappu Ammal, and on November 13, 1945 the Board dismissed his application u/s 42 pointing out that since the right to succession to Vaithilinga Mudaliar was in dispute the proper course for Gopalaswami was to establish his right in a Civil Court. The Board also held that there was already a trustee functioning assisted by the executive officer of the Devasthan and hence, it was not necessary to appoint Gopalaswami as a fit person u/s 42.

- E** Thereafter Gopalaswami commenced two proceedings. On April 3, 1946 he filed O.S. No. 117/1946 in the Court of the District Munsif, Tiruvarur for a declaration that after the death of Vaithilinga his brother, he was entitled to the office of the hereditary trustee to the exclusion of Vaithilinga's widow Pappu Ammal. To this suit he joined Pappu Ammal, his younger brother Panchapakesa and Thiagaraja Mudaliar, the other trustee as co-defendants. The other proceeding

was before the Board purporting to be one u/s 84 of the Act. This application before the Board was filed on April 11, 1946. His contention before the Board may be set out in his own words : "The last hereditary trustee was Bava C. Vaithilinga Mudaliar the elder brother of the petitioner and he died on April 6, 1943. On his death the petitioner (Gopalaswami) has succeeded to the office and is the next hereditary trustee. According to the custom prevailing in the petitioner's family and in the Ulthurai kattalai all along the hereditary trusteeship is only with male members and with the senior male member thereunder." To this application Pappu Ammal and his younger brother Panchapakesa were made respondents. The prayer in the application was that the Honourable Board should enquire into the matter and declare that the petitioner Gopalaswami was the hereditary trustee of Ulthurai kattalai in succession to late Bava Vaithilinga Mudaliar.

Out of these two proceedings the suit in the District Munsif's Court was not proceeded with. It was permitted to be withdrawn on April 17, 1947 on the ground that all necessary parties had not been impleaded. Liberty to file a fresh suit was reserved.

The proceeding u/s 84 before the Board was contested by the other trustee Thiagaraja and the widow Pappu Ammal. It was specifically contended before the Board that the Board had no jurisdiction u/s 84 to entertain the dispute raised by Gopalaswami. The dispute was with regard to the succession to the vacant office of trusteeship in the Bava family, and such a dispute was not one falling within section 84(1)(b) of the Act which had been recently amended by Act 10 of 1946. The contention was that this was a pure dispute about succession to the office between members of the Bava family and the only remedy open to Gopalaswami was to file a suit and obtain the necessary declaration. That contention was rejected by the Board which proceeded to decide, on such evidence as was produced before it, that Gopalaswami being the eldest male member in the family was entitled to succeed to the hereditary trusteeship to the exclusion of Pappu Ammal. This decision was u/s 84(1). Section 84(2) gave a remedy to a person affected by the decision to apply within six months to the Court of the District Judge to modify or set aside the decision. Accordingly Thiagaraja Mudaliar filed O.P. 27/1948 in the court of the District Judge, East Tanjore u/s 84(2) of the Act, contending, inter alia, that the order of the Board was without jurisdiction since u/s 84(1)(b) the Board had jurisdiction only to determine the nature of the office—whether it was hereditary or not—but had no jurisdiction to decide the individual claims to hereditary trusteeship. Pappu Ammal was made one of the co-respondents. The point raised was treated by the learned Judge as a preliminary question. He formulated that question in the following way :

"A preliminary question that arises for determination is whether the Hindu Religious Endowment Board has jurisdiction u/s 84(1)(b) to declare that the first respondent (Gopalaswami) is the hereditary trustee of the Ulthurai kettalai after the death of Bava C. Vaithilinga Mudaliar." It appears that Thiagaraja was not willing to concede that the office of trusteeship was vested in the Bava family hereditarily, but for the purpose of the present dispute, he conceded that the Bava family

- A had the right to hereditary trusteeship and the last holder of the office was Vaithilinga Mudaliar who died in 1943. So there was no dispute either before the Board or in the District Court as to the nature of office being hereditary, but the only question was as to who out of the members of the Bava family was entitled to succeed to this office after the death of Vaithilinga. After dealing with the point at some length the learned District Judge by his judgment and order dated September 4, 1948 gave his finding as follows :

- C “For the above reasons I agree with the contentions of the petitioner (Thiagaraja Mudaliar) and hold that the Religious Endowments Board had no right to decide a dispute regarding succession to a hereditary trusteeship. I, therefore, set aside O.A. No. 279/1946 (of the Board) dated September 24, 1947 and allow the petition with costs.”

- D As we shall show in due course this decision was correct. After this decision, Gopalaswami should have gone to the regular Civil Court by way of a civil suit for a declaration of his right to succeed to the office. He did not do so. He went in appeal to the High Court and, in our opinion, fought a futile litigation which has culminated in the present appeals. We will only briefly refer to that litigation.

- E From the order passed by the District Judge, two appeals were filed in the High Court—one filed by Gopalaswami was A.A.O. No. 118/1949. The other was filed by the Board, rather curiously, and was A.A.O. 223/1949. The High Court had to consider only the preliminary question decided by the District Judge as to whether the Board had the necessary jurisdiction. The Bench consisting of Govinda Menon and Basheer Ahmed Sayeed, JJ was of the view that u/s 84 (1)(b) of the Act, the Board was entitled to decide the dispute; and since the District Judge had not dealt with the case on merits the High Court remanded the matter to the District Judge with the following directions :

- F “The District Judge will, in the enquiry that would ensue, decide between the competing claims of the heirs of Vaithilinga Mudaliar as to who should be the hereditary trustee. The parties are at liberty to adduce such evidence as they desired.”

- G After the above remand Vaithilinga's daughter Shivakami Ammal and her son Brahadeeswaran, who had not been added so far as parties to the litigation, were made parties in the District Court. Thereafter Pappu Ammal filed a statement in the District Court relinquishing her rights to the office. So the District Judge had to decide whether Gopalaswami had a preferential claim to the office as against Vaithilinga's daughter and daughter's son. When the matter came up for hearing before the learned District Judge, the learned Judge, rather unaccountably came to the conclusion that the daughter and the daughter's son had been impleaded by oversight. Their names were, therefore, dropped from the proceedings. This order was passed on 9-2-1952. Thiagaraja and the daughter and her son filed two appeals A.O. No. 239/1952 and A.O. 579/52 in the High Court against the

High Court against the order of the District Judge. By a common judgment dt. 23-11-1955 the High Court against remanded the case to the District Judge pointing out that the learned Judge was wrong in not having heard the contentions of the daughter and daughter's son and that the claim of Gopalaswami must be adjudicated in the presence of the daughter and daughter's son who were most vitally interested in the dispute.

Atter the above remand the learned District Judge by his order dt. 24-12-1956 held that Gopalaswami Mudaliar was not entitled to the trusteeship and since Pappu Ammal had relinquished her claim the persons properly entitled to the office were the daughter Shivakami Ammal and her son Brahadeeswaran. Thus the order of the Board in O.A. No. 279/46 declaring Gopalaswami as the hereditary trustee in succession to Vaithilinga Mudaliar was set aside by the District Judge.

It was against this judgment of the District Judge that Gopalaswami filed appeal no. 88/1958 in the High Court. Pending that appeal he died and his son Kalyansundram and G. Chakkappa were brought on record as his legal representatives. The deceased brother Panchapakesa, who was a respondent in that appeal, also got himself transposed as a co-appellant claiming the right to trusteeship in himself after the death of Gopalaswami. Panchapakesa also died. Thereupon his son P. Chakkappa was brought on record as the legal representative. Son Kalyansundram died and his widow Kamal Ammal was brought on record. On a detailed consideration of the questions involved the High Court (Rajagopalan and Rajagopalan Iyyengar, JJ) reversed the finding of the District Judge and confirmed the finding of the Board that Gopalaswami was entitled to succeed as the hereditary trustee. The court observed "In this appeal we are concerned only with the question whether the order of the Hindu Religious Endowment Board declaring the right of Bava Gopalaswami with regard to the Ulthurai kattalai was well-founded or not. We are of the opinion that the said order of the Endowment Board in O.A. No. 279/1946 dt. September 24, 1947 is correct and that no grounds have been made out for setting it aside." The judgment of the High Court is dt. March 23, 1961. The appeals with which we are now dealing are appeals from that judgment. The first namely C.A. 1792/67 is filed by Thigaraja Mudaliar and the second i.e. C.A. 1793/67 is filed by the daughter's son Brahadeswaran and Shivakami Ammal.

As stated at an earlier stage of the judgment we are of the view that the Board was not entitled u/s 84 to entertain the dispute and, therefore, the District Judge was right in his view taken by him on 4-9-1948 that the Board had no jurisdiction to decide the individual claims to hereditary trusteeship. That finding was reversed by the High Court on 28-11-1950 and since the appeal had not been finally decided, there was no question of an appeal to this court. As the question was one of jurisdiction which went to the root of the matter, perhaps, special leave to appeal might have been granted if one were filed. But it does not appear that this course was taken. Therefore, we have now to consider the question of jurisdiction and we regret very much that all this litigation for so many years has been merely a waste.

A Section 84 of the Act, amended by Act 10 of 1946 reads as follows :

“84(1) If any dispute arises as to—

(a) whether an institution is a math or temple as defined in this Act,

B (b) whether a trustee is a hereditary trustee as defined in this Act or not, or

(c) whether any property or moazey endowed is a specific endowment as defined in this Act or not such dispute shall be decided by the Board and no Court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

C (2) Any person affected by a decision under sub-section (1) may, within six months, apply to the Court to modify or set aside such decision;

D (3) From every order of a District Judge, on an application under sub-section (2) an appeal shall lie to the High Court within three months from the date of the order;

(4) Subject to the result of an application under sub-section (2) or of an appeal under sub-section (3), the decision of the Board shall be final.

E Sub-Section (1) refers to 3 kinds of disputes which only the Board has jurisdiction to decide. The Board is the Board constituted by the State Government u/s 10 of the Act. The jurisdiction of the Civil Court to entertain the three disputes is excluded. Section (2) gives a person affected by the decision of the Board to apply to the court to modify or set aside such a decision. The court referred to is the court of the District Judge within whose local limits the temple is situated. (see section 9(3) of the Act.) Sub-section (3) provides for an appeal to the High Court from every order of the District Judge on an application under sub-section (2). Sub-section (4) provides that the decision of the Board is final subject to the result of the application under sub-sections (2) and (3).

F In the present case as already pointed out Gopalaswami went before the Board with a claim that he was the hereditary trustee of the temple after the death of his elder brother Vaithilinga to the exclusion of every other member of the Bava family. He had a younger brother Panchapakesa. But Gopalaswami claimed that being the eldest male member of the family he alone was entitled. Vaithilinga had left behind him a widow, a daughter and daughter's son. But they too had to be excluded because the succession descended by custom or usage to the eldest male member of the family. In other words, Gopalaswami's claim was a claim to succeed to the office of hereditary trusteeship to the exclusion of every other member of the Bava family. No body disputed that the office held by Vaithilinga Mudaliar was that of a hereditary trustee. It appears that Thiagaraja Mudaliar had disputed this at an early stage but for the purpose of the present dispute he had

willingly conceded that the office held by Vaithilinga Mudaliar was that of a hereditary trustee. So there was unanimity amongst all the parties that the office was one of a hereditary trustee and the only dispute was who, out of the Bava family, was entitled to succeed to that office after Vaithilinga's death. In the normal course any-body making such a claim for the exclusion of others would have had to file a suit in the Civil court for a declaration that he was entitled to succeed to the office. In fact, Gopalaswami had done this by filing a suit in the court of the District Munsif. But later he withdrew the suit with liberty to file a fresh suit. No fresh suit was filed by him, apparently, because the Board before whom he went with this complaint agreed to decide the dispute inspite of the opposition of the widow Pappu Ammal and the other trustee Thiagaraja Mudaliar. The question, therefore, is whether the dispute thus raised before the Board was one which can be truly described as a dispute falling under sub-clauses (a)(b) & (c) of section 84(1) of the Act. Sub-clauses (a) & (c) had no application. The contention on behalf of Gopalaswami and his heirs was that it was a dispute falling under sub-clause (b). That was contested and we have to see whether that contest was justified.

Both the words "trustee" and "hereditary trustee" are defined under the Act. Trustee is defined in section 9(13) as follows :

"Trustee means a person by whatever designation known in whom the administration of religious endowment is vested and includes any person who is liable as if he were a trustee."

When the Act came to be amended by Act 10 of 1946 the original definition of "hereditary trustee" given in section 9(6) was recast as follows :

"Hereditary trustee" means the trustee of a math, temple or specific endowment succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder so long as such scheme of succession is in force."

These two definitions were advisedly introduced in the Act, because the Act wanted to make a clear distinction between a hereditary trustee and a non-hereditary trustee so far as the Hindu Religious endowments were concerned. Non-hereditary trustees were subject to greater control by the Board under the Act, whereas the hereditary trustees enjoyed larger privileges and the control over them was also much less. It was, therefore, expected that when the Act came into force a trustee was likely to claim that he was a hereditary trustee and if such a dispute was raised that dispute was to be exclusively decided by the Board. In other words, if a trustee, as defined in the Act, wanted to claim that he is a hereditary trustee also as defined in the Act, it was necessary for him to approach the Board for a decision of the question and obtain a declaration that the office he held was not just of an ordinary trustee but a hereditary trustee. Such a dispute can never arise when it is conceded on all hands that the office is of a hereditary trustee. In the present case the whole question was as to who, out of a number of members of the Bava family, was entitled to succeed to the office of the hereditary trustee. Gopalaswami was not claiming a

A higher status than what he was holding. Either he was a hereditary trustee or nothing. In our opinion, the dispute raised by Gopalaswami before the Board was one which did not fall under sub-clause (b) of section 84(1) and, therefore, it was not a dispute which could be entertained by the Board.

B A similar question had arisen in the Madras High Court in *Sastri Ammal v. Prayalavarna Naicker*⁽¹⁾. That was under the Madras Hindu Religious and Charitable Endowments Act 19 of 1951 which replaced Act II of 1927 with which we are dealing. Section 57(b) of that Act contained provisions which are similar to section 84 of the Act. Section 57(b) read as follows :

C “Subject to the rights of suit or appeal hereinafter provided the Deputy Commissioner shall have power to enquire into and decide the following disputes and, matters :

(b) Whether a trustee holds or held office as a hereditary trustee.”

D It was held that a dispute between the claimants to succeed to an office which, it is admitted on all hands, is hereditary is not within the scope of section 57(b). The learned Judge observed at page 636 as follows :

E “It is not enough to show that the last holder held the office as hereditary trustee. There can be no dispute about that; and there can be no need to determine that, because the dispute is only who is entitled to succeed to the hereditary office. Obviously a claim to succeed to the office under such circumstances would fall outside the scope of section 57(b).” It is rather interesting to see that the High Court’s decision in the present case which was reported in *Gopalaswami Mudaliar v. Thayagaraja Mudaliar*⁽²⁾ was cited before the court. But the learned Judge declined to follow it on the ground that it was unhelpful in deciding the question at issue. Certain elements of distinction between the provisions of section 84 of the Act and Section 57(b) of the 1951 Act were suggested. But, with respect, we must say there is really no difference. The dispute about succession to an admittedly hereditary office is as much outside the scope of section 84(1) of the Act as of section 57(b) of the 1951 Act. Then again in *A. Krishnaswami Raja v. Krishna Raja*⁽³⁾ the same point again cropped up u/s 57(b) of Act 19 of 1951 and the court held that the jurisdiction of the Deputy Commissioner u/s 57(b) of the Act was confined to a decision whether a trustee held office as a hereditary trustee. The Deputy Commissioner was not competent to go into the other question as to which one of the competing claimants was the hereditary trustee or whether the competing claimants were joint hereditary trustees. That had to be worked out in a separate suit. In our opinion, the view expressed in both these cases is correct and though they are not directly on the provisions of section 84(1)(b) of the Act we have no doubt whatsoever that the same principle applies here.

(1) I. L. R. 1957 Madras 631.

(2) 1951 (1) M. L. J. 248.

(3) I. L. R. 1967(3) Madras, 495.

While it may well be that the Board before exercising its jurisdiction to determine the character of the trusteeship—hereditary of other—may have to decide tentatively whether the petitioner is a stranger without any *locus standi* or the heir to the last trustee, in this case even that provisional finding on a collateral fact is uncalled for since the issue it had to decide—hereditary trusteeship—was admitted by both sides. We make it clear that after having got the entire proceedings dismissed as without jurisdiction on the ground that no dispute regarding the hereditary nature of the trusteeship at all arose it is not open to the contestant Thiagaraja Mudaliar to resile from that stand in other proceedings. It is also obvious that our judgment is based on the Act as it was and cannot preclude action, if available, under any new or other enactment.

It follows, therefore, that the Board had no jurisdiction to decide the dispute of succession. The jurisdiction was with the ordinary Civil Courts of the land. Consequently, the decision of the High Court in A.S. No. 88/1958 dt. March 23, 1961 has to be set aside, and the order passed by the District Judge of East Tanjore in O.P. No. 27/1948 dt. September 4, 1948 restored. Having regard to the course this litigation has taken, the proper order as to costs, in our opinion, would be to direct that the parties shall bear their own costs throughout.

P.B.R.

Appeal allowed.