

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Devaki Vs. Hindu Religious and Charitable Endowments Department, Madras and Others

Devaki Vs. Hindu Religious and Charitable Endowments Department, Madras and Others

SooperKanoon Citation : sooperkanoon.com/778448

Court : Chennai

Decided On : Mar-17-1997

Reported in : AIR1997Mad378; (1997)IIMLJ331

Judge : AR. Lakshmanan and ;A. Raman, JJ.

Acts : Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Sections 6,29, 63 and 70; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 80 - Order 1, Rule 10 - Order 41, Rule 27

Appeal No. : L.P.A. No. 72 of 1992

Appellant : Devaki

Respondent : Hindu Religious and Charitable Endowments Department, Madras and Others

Advocate for Def. : K. Elango, Govt. Advocate and ;W.C. Thiruvengadam, Adv.

Advocate for Pet/Ap. : T.L. Ram Mohan, Adv.

Judgement :

ORDER

AR. Lakshmanan, J.

1. This Letters Patent Appeal is directed against the judgment of M. Srinivasan, J., as he then was dated 22-11-1991 in A. S. No. 966 of 1986 dismissing the appeal and confirming the judgment and decree of the Subordinate Judge, Namakkal in O.S. No. 47 of 1984. The plaintiff is the appellant herein.

2. The case of the appellant in short is as follows :-- Arulmighu Angalamman Temple in S. Palayapalayam is her family temple and Arulmighu Angalamman is their family deity. The suit temple has been in the management of herself and her ancestors for over hundred years or three generations and none outside the family had ever managed the affairs of the temple. One Marutha Pillai alias Muthu Pillai and his brother Kuppa Pillai were the trustees. Before them, their ancestors were the trustees. In the line of succession to trusteeship after Mariana Pillai and Kuppa Pillai, Veerabadra Pillai son of Marutha Pillai, and Kandaswami and Kuruppa Pillai, sons of Kuppa Pillai became the trustees, having inherited the said office. On 9-5-1981. Veerabadra Pillai executed a deed of gift endowing valuable item of agricultural lands on his family deity and putting the same in the possession of the then trustee. Thereafter, the trusteeship came to vest in the branch of Marudha Pillai alias Mitthi Pillai. Veerabadra Pillai's son Ramalingam Pillai and after him his sons Manickam Pillai and Rathinam Pillai were trustees. Rathinam Pillai died without any heirs,

3. On the death of the parents of the appellant, she became the trustee of the temple and she inherited the office. She is managing the affair's of the temple with the assistance of her husband. The management of the temple was in the family of the appellant for over a century and no one outside the appellant's family had control over the administration of the temple at any time. There is no bar or impediment for the appellant functioning as the trustee. She is also not barred from managing the temple as trustee by reason of being a woman. The religious duties are being performed by the Poojaries, and they are enjoying the lands of the temple in lieu of their salary. The temple is electrified and the cost of the same was met by the appellant's family. The current consumption charges are being paid by the Poojaries from out of the income derived by them from the temple lands.

4. While so, the Hindu Religious and Charitable Endowment Department called for applications for appointment of non-hereditary trustees. The appellant along with her husband filed O.A. No. 84 of 1981 before the Deputy Commissioner, H.R. and C.E. Department. Coimbatore, under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act. 1959) (hereinafter referred to as the Act) to declare them as hereditary trustees. The Deputy Commissioner dismissed the said petition on 10-2-1982. He rejected the appellant's claim on the flimsy ground that the Inam Fair Register was not produced. The appellant filed an appeal to the 1st respondent in A. P. No. 10 of 1983. The 1st respondent dismissed the appeal on 21-11-1983. Therefore, the appellant filed the suit O.S. No. 47 of 1984 seeking a declaration that she is the hereditary trustee of Arulmighu Angalamman Temple at S. Palayapalayam and for a permanent injunction restraining the 1st respondent from appointing non-hereditary trustee or otherwise interfering with or disturbing the appellant's right as the hereditary trustee of the suit temple.

5. The suit was resisted by the 1st respondent. It is the case of the Department that to claim the right of hereditary trusteeship, the appellant has to establish three factors, viz., succession to such office must be a hereditary one: it must be regulated by usage: and it must be specifically provided for by the founder of the temple. None of these three facts exist to claim the office of hereditary trusteeship by the appellant. It is incorrect to state that the management of the temple was with the members of the appellant's ancestors. The land endowed to the temple had been in the possession of the appellant and her ancestors. The non-appointment of any third person as a trustee cannot take away the jurisdiction of the Department to appoint such trustee hereinafter. The orders passed by the Deputy Commissioner, Coimbatore, and the 1st respondent are in accordance with law. The suit is not maintainable in law.

6. On the above pleadings, the learned Subordinate Judge, Namakkal, framed the following issues :

(i) Whether the plaintiff is the hereditary trustee of the suit temple?

(ii) Whether the order in A. P. No. 10 of 1983 is liable to be set aside?

(iii) Whether the suit is had for want of notice under Section 80, C.P.C.?

(iv) To what relief, if any, is the plaintiff entitled?

7. One Sundararajan and Vccrapadra Poojari were examined on the side of the plaintiff as P.Ws. 1 and 2 and Exs. A-1 to A-4 were marked on her side. One Mahadevan was examined as D.W. 1 on the side of the Department and no document was filed on its side.

8. On Issue No. 1. the learned Subordinate Judge has held that the appellant has failed to prove that the suit temple was founded by her ancestors, that the founder has provided for succession of trusteeship by hereditary and that the practice is also recognised by long usage and custom. However, the trial Court has held that the donor of the said land has appointed himself as the trustee and has been in possession and enjoyment of the land and the income had been utilised only for the temple but that by itself will not confer any right on the appellant to claim hereditary trusteeship. The learned trial Judge, however, directed the Department to consider the claim of the appellant for appointment as a trustee of the temple in view of the services rendered by the appellant and her predecessors and in view of the interest shown by them in the upkeep and maintenance of the temple. He answered Issues Nos. 1 and 2 against the appellant. On Issue No. 3, the trial Court held that the suit under Section 70 of the Act being a statutory suit, no notice under Section 80 of the Code of Civil Procedure is required before instituting the suit against the Department. In the result, he dismissed the suit.

9. Aggrieved by the judgment and decree of the learned Subordinate Judge, Namakkal, the plaintiff preferred A.S. No. 966 of 1986. A learned single Judge, relying on the evidence of a witness examined before the Deputy Commissioner on behalf of the appellant, which was not even marked in the present proceedings, disbelieved the version of the appellant and rejected her case. The learned Judge has also held that the evidence of the appellant is absolutely worthless to make out that the appellant is the hereditary trustee. Ex. A-3 is the document filed by the appellant, which is a settlement deed executed by Kandaswami Pillai and Karuppa Pillai, sons of Kuppa Pillai. Under Ex. A-3, a piece of land was given as gift to the suit temple for the purpose of performing daily pooja. It is stated in Ex. A-3 that the

said deity is their family deity. Ex. A-3 is dated 9-4-1881. It refers to Vccrabadra Pillai, son of Muthu Pillai residing at Kattuputhuras the trustee of the temple. Even this document was rejected by the learned single Judge holding that there is nothing in Kx. A-3 to show that the settlors were entitled to half share in the land and the other half share belonged to Veerabadra Pillai. Thus, the learned Judge has held that the appellant has failed to prove that she is the hereditary trustee of the suit temple and that the trusteeship had been in the family of the appellant for several generations as claimed in the plaint.

10. The appellant filed C.M.P. No. 13374 of 1991 in A. S. No. 966 of 1986 to receive the Register of Properties under Section 29 of the Act in respect of the temple in question, approved by the Deputy Commissioner. H. R. and C. E. Department, Salem, in Re. No. 6377/88/A3 dated 20-1-1989, as additional evidence on behalf of the appellant. The said application was rejected along with the appeal. The order of dismissal, as already stated, is challenged in this Letters Patent Appeal.

11. We have heard Mr. T. I. Ram Mohan for the appellant, Mr. K. Elango for the 1st respondent and Mr. W. C. Thiruvengadam for respondents 2 to 5.

12. In this appeal, the impleading of respondents 2 to 5 and the dismissal of C.M.P. No. 15374 of 1991 are also challenged. We have gone through the pleadings and the judgments which are impugned in this appeal.

13. In our opinion, respondents 2 to 5 are not directly and legally interested in the action, which is demonstrated by the fact of their failure to get themselves impleaded as parties in the trial Court. If respondents 2 to 5 had got themselves impleaded as parties in the trial Court, they would have been able to spell out their case in their written statement and establish their interest in the action, which was conveniently avoided by seeking impleadment at the appellate stage. We are, therefore, of the view, that the present appeal cannot be burdened with unnecessary parties against the wishes of the appellant. The learned single Judge by his order dated 22-11-1991 in C.M.P. Nos. 13202 and 13203 of 1991 has only stated that since they have collected money for the purpose of renovating the temple and the Department is not permitting them to form a Thiruppani Committee

in order to carry out the renovation work, they want 10 come on record in the appeal so that they can get appropriate directions from this Court with reference to the proposed renovation. In paragraphs 2 and 3 of the order, the learned Judge has observed as follows :

'As the petitioners claim to be interested in the welfare of the temple and persons having interested in the affairs of the institution, they are impleaded as parties to the appeal. C.M.P. No. 13202 of 1991 is, therefore, ordered.

But, it is not necessary for me to give the directions prayed for by them as I have dismissed the appeal. It is open to them to approach the appropriate authorities constituted under the Act and seek such relief as they may require for the purpose of carrying out their objects set out in the affidavit. Hence, C.M.P, No. 13203 of 1991 is dismissed.'

14. We are unable to appreciate the reasons given by the learned Judge in paragraphs 2 and 3 of the order extracted above. If respondents 2 to 5 are really interested in the welfare of the temple, they ought to have taken steps to implead themselves in the suit itself. Having rejected their request to give directions prayed for by them in C.M.P. No. 13203 of 1991 to permit them to carry out the renovation work, etc., the learned Judge ought to have dismissed C.M.P. No. 13202 of 1991, which was filed for impleading them as respondents 2 to 5 in the appeal. In our opinion, they are neither proper nor necessary party for a resolution of the dispute now raised by the appellant, who claims hereditary right in the suit temple.

15. This apart, the learned single Judge has not given reasons for impleading respondents 2 to 5 especially when the same was opposed by the appellant. As rightly pointed out by Mr. T. L. Ram Mohan, this Court is obliged to decide the issue raised before the trial Court and render its opinion on that in the appeal before it. In our opinion, the appellant has established her hereditary right to the temple in question and therefore, she is entitled to get a declaration sought for, especially when there is no rival claimants on record. The appellant had established the management of the temple by the members of her family for three generations.

16. Ex. A-3 is the crucial document which come to the aid of the appellant in proving her case. It is an ancient document of gift dated 9-4-1881 executed by Kandaswami Pillai and Karuppa Pillai, sons of Kuppa Pillai. A piece of nanja land has been gifted for daily pooja and Neivelhyan of their family deity Angalaparamcsuari. The trustee of the temple by name Veerabadra Pillai, son of Mithu Pillai, as per Ex. A-3, was cultivating the land, paying kist and performing pooja, etc., regularly. It is stated in Ex. A-3 that the deity is the family deity of the settlors. Ex. A-4 is the Inam Fair Register extract which would show that originally a grant has been made in favour of the temple in respect of 0.78 cents of land comprised in Survey No. 50/2 of S.Palayapalayam village. The relevant entries in Ex. A-4 would show that the suit temple is an ancient temple and grant has also been made, which was recognised by the State and was confirmed in favour of the temple at the time of the settlement of minor inams. Even prior to Fasli 1206, the Poojaris of the temple have been in possession and enjoyment of the temple lands in lieu of the service performed by them to the temple.

17. As already stated, the appellant claims that the executors of Ex, A-3 viz., Kandaswami Pillai and Karuppa Pillai are her ancestors, which is not disputed by the respondents. Subsequent to the settlement in favour of the temple, the predecessors of the appellant had been in effective management of the temple as de facto trustees. The donor of the said land has appointed himself as the trustee and has been in possession and management of the land and the income therefrom has been utilised only for the temple. Subsequent to the lifetime of the donor, the appellant has been in possession and management of the temple uninterruptedly. It is not the case of the 1st respondent that any other person or persons have been in management of the temple or have endowed any property to the temple in question. In our opinion, the available evidence clinchingly proves that the appellant and her ancestors alone are in complete possession and management of the properties endowed and also functioned as the trustees of the temple for generations. It is in evidence that the appellant's family has taken interest in the temple and has been managing the affairs of the temple ably. As rightly pointed out by the learned Subordinate Judge, no allegations have been made against the appellant of any mismanagement or mis-appropriation of temple's funds. P.W. 2, who is one of the temple Poojaris and who is in

possession of the land granted in favour of the temple, has spoken to the effect that Paditharam and oilier expenses are given only by the appellant and her predecessors. The totality of the circumstances and of the evidence, both oral and documentary, does make out that the appellant is a hereditary trustee and that the trusteeship had been with the family of the appellant for several generations as claimed by her.

18. We are also of the view that the reasoning given by the learned Judge in dismissing C.M.P. No. 15374 of 1991 is not correct. Section 29 of the Act casts a duty on the trustee of a religious institution to have the Register of properties duly filled in and approved by the authorities constituted under the Act. In terms thereof and with the assistance of the departmental officers, a register was duly prepared, as contemplated under Section 29 of the Act, in respect of the suit temple, of which the appellant claims to be the hereditary trustee. The same was approved by the Deputy Commissioner, H.R.&C.E.; Department, Salem, in and by his Re. No. 6377/88/A3 dated 20-1-1989. We have perused the document filed along with C.M.P. No. 15374 of 1991 and also the recitals therein. In our opinion, the said document is relevant to be considered to decide the issues arising in the appeal. The said document is binding on the authorities. The Register of Properties was approved by the Department on 20-1-1989. The explanation given by the appellant that the same could not be filed earlier appears to be acceptable. As a subsequent event, and as a record of recognition of the appellant's right, this register, in our opinion is relevant and necessary for deciding the appeal before this Court. Therefore, we set aside the order of the learned judge in rejecting C.M.P. No. 15374 of 1991 and receive the Register of Properties filed along with that application as additional evidence on behalf of the appellant and mark the same as Ex. A-5.

19. No documentary evidence was filed on the side of the respondents, to dislodge the claim of the appellant. The letter dated 20-1-1989, which is annexed to Ex. A-5, is addressed to the trustee of the suit temple. The details of the names of trustees in succession to the office of the trustee of the suit temple have been mentioned at page 1 of Ex. A-5. They are, Muthu Pillai, then Veerapathra Pillai, then V. Ramalingam Pillai, then Maniekam Pillai and Rathinam Pillai and then S.

Dcvaki, daughter of Maniekam Pillai. It is also mentioned that the said S. Devaki/appellant is now looking after the administration and management of the temple along with her husband T. Soundararajan. Page 3 of Ex. A-5 gives the details of 'Thittam' for the various services and festivals in the temple. The appellant has signed in all pages of Ex. A-5 as trustee and the Inspector of H.R. & C.E. Department, Namakkal, has also signed in all pages of Ex. A-5 on the left hand side. Page 7 of Ex. A-5 gives the names of Poojaris. In Column 5 it is mentioned that the Poojaris are enjoying the land in lieu of their salary and are performing pooja twice a day. Pages 9 to 11 of Ex. A-5 furnish the particulars of the jewels belonging to the temple and the value thereof. Page 16 of Ex. A-5 refers to the particulars of specific endowment. It also refers to the gift made by Kandaswami Pillai and Karuppanna Pillai under Ex.A-3 dated 11-4-1881. The Village Administrative Officer has also attested the said statement as true. Page 17 of Ex. A-5 gives the details of the idols.

20. Ex A-5, now admitted as additional evidence would clearly prove that the appellant and her ancestors were functioning and managing the temple as its hereditary trustees. The functioning of the appellant and her ancestors as hereditary trustees was also duly approved by the Deputy Commissioner. H. R. & C.E. Department Salem in and by his proceedings dated 20-1-1989. When the Department itself has recognised the appellant as the trustee of the temple, no further proof is necessary to establish the claim of the appellant. Therefore, we hold, that the order passed by the 1st respondent under Ex.-1 is not valid and correct. As such, we have no other option except to interfere with the same. The reasoning given by the learned Judge in eschewing the additional document now marked as Ex. A-5 is not sound.

21. The learned counsel for the appellant cited the decision reported in Ranganatha Pillai v. Commissioner for H.R. & C.R. : (1979)2MLJ23 wherein S. Mohan. J. as he then was, held as follows :--

'The definition of 'hereditary trustee' in Section 6. Clause (ii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act is very wide in its amplitude. Hereditary trustee is not to be understood as from father to son or son to his son.

Having regard to the comprehensive definition, it is enough if a usage is established for along number of years evidencing exercisc of hereditary trusteeship of a particular temple or temples by members of a family. In the instant case, there was no gainsaying that the plaintiffs family alone exercised such right. There were very valuable documents in which description was found that the predecessors of the plaintiff's were the trustees. No objection was taken to the geneological tree and the trusteeship had been continuously exercised by the members of the plaintiff's family without any objection or hindrance.'

22. The above judgment, in our opinion, is applicable to the facts and circumstances of the case on hand. In this case, it is clearly established that for a long number of years (generations) the appellant and her ancestors have exercised their hereditary trusteeship in this particular temple. In the instant case, there is no other evidence to show that except the plaintiff and her ancestors, anybody else has exercised any such right. Very valuable documents viz., Exs. A-3 to A-5 have been filed by the appellant. Ex. A-3 describes Veerabadra Pillai son of Muthu Pillai as the trustee of the suit temple. It is also stated that the property has been gifted for daily pooja and neivethyam for their family deity Angalamparameswari. There is no reason for us to reject the said ancient document which confers right on the appellant. The trusteeship has been continuously exercised by the members of the appellant's family without any objection or hindrance from any other source. It must, therefore, be held that the trusteeship of the suit temple was hereditary in the family of the appellant. In similar matters, this Court has taken the view that in respect of a temple when the members of the family for three generations are managing the affairs of the temple, it must be held that the trusteeship was hereditary in the family. In our opinion, the above ratio squarely applies to the case on hand.

23. In the decision reported in *The Roman Catholic Mission v. State of Madras* (1967) 1 MLJ 119 : AIR 1967 SC 1457, the Supreme Court has clearly observed that the Inam Fair Register incorporated an official declaration which was the result of detailed inquiries and all evidence collected in respect of each in am was carefully sifted and considered before any conclusion was reached or declared and in the absence of positive and proper evidence to the contrary, such

declaration must possess supreme importance. In the instant case. Ex. A-4, the Inam Fair Register, which could not be filed before the 1st respondent, was filed before the trial court and the entries therein would show that the suit temple is an ancient temple and grant has also been made and conferred on the temple at the time of settlement of minor inams. As already noticed, there is no positive and proper evidence to the contrary. As such, the declaration made under Ex. A-4, as indicated by the Supreme Court, must possess supreme importance.

24. The finding of the learned single Judge that there is absolutely no evidence worthy of acceptance is wholly unacceptable and against the concrete documentary evidence available in this case. We have already pointed out that there is no evidence at all on the side of the Department to disprove the case of the appellant. The evidence of P.Ws. land 2 is cogent and convincing. P. W. 2 is very categorical in his evidence that the members of the family of the appellant alone have been the hereditary trustees of the suit temple. According to him, he has been performing the poojas for the past fifty years. There is no rhyme or reason to reject the evidence of a Poojari, who has been functioning as such for the last fifty years in the very same temple. The evidence of D.W.1 is worthless. We are of the view that if the office of trusteeship of a particular religious institution has been hereditary in a particular family, it would constitute hereditary trusteeship. The trial court having found that the predecessors of the appellant functioned as trustees, had erred in dismissing the same.

25. For the fore-going reasons, we are of the view that the appellant, who is managing the affairs of the suit temple is the hereditary trustee of the temple in question. Therefore, the Letters Patent Appeal is allowed and the judgments and decrees in A.S. No. 966 of 1986 and O.S. No. 47 of 1984 are set aside and the suit O.S. No. 47 of 1984 is decreed as prayed for. However, there will be no order as to costs throughout.

26. Order accordingly.