

Devaki Vs. Hindu Religious and Charitable Endowments Department and ors.

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Court : Chennai

Decided On : Nov-22-1991

Reported in : (1992)2MLJ397

Appellant : Devaki

Respondent : Hindu Religious and Charitable Endowments Department and ors.

Judgement :

Srinivasan, J.

1. This appeal has been taken up with the consent of parties. The suit out of which this appeal arises is one filed under Section 70 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the 'Act'), for setting aside the order of the Commissioner of Endowments, dated 21.11.1983 in A.P.No.10 of 1983.

2. The case of the plaintiff who is the appellant is that Arulmigu Angalamman of S. Palayapalayam, is the family deity of the plaintiff and that the trusteeship of the temple has always been with the family of the plaintiff. According to the plaintiff, one Marutha Pillai also known as Muthu Pillai and his brother Kuppa Pillai were the trustees and after them, Veerabadra Pillai, son of Marutha Pillai and Kandasamy and Karuppa Pillai, son of Kuppa Pillai became trustees. A reference

is made to a settlement deed dated 9.4.1981 under which Kandasamy and Karuppa Pillai gifted certain property to the temple for its daily pooja. But, in the plaint is stated that the property was put in the possession of the then trustee Veerabadra Pillai. According to the plaintiff, Veerabadra Pillai's son was Ramalingam and after him, his sons Manickam and Rathinam Pillai became the trustees. Rathinam Pillai died without any issue and Manickam Pillai's daughter is the plaintiff.

3. It is the case of the plaintiff that for over 100 years, the trusteeship had been with the plaintiffs family and in 1981 there was some interference by the Hindu Religious and Charitable Endowments Department which led to the filing by the plaintiff of an application under Section 63(b) of the Act before the Deputy Commissioner of Endowments, Coimbatore, for a declaration that the plaintiff and her husband are the hereditary trustees of the temple. The Deputy Commissioner dismissed the application holding that the evidence was not sufficient to prove the claim of the plaintiff and her husband. The order of the Deputy Commissioner is dated 10.2.1982. On appeal, it was affirmed by the Commissioner by order dated 21.11.1983. The present suit was filed on 3.4.1984. The suit was dismissed by the trial court on 26.4.1985. The trial court held that there was no necessity for a notice under Section 80 of the C.P.C. as contended by the defendant, but the plaintiff failed to establish that she was the hereditary trustee of the temple. Aggrieved thereby, the plaintiff has preferred this appeal.

4. When the appeal was taken up, learned Counsel for the plaintiff referred to the judgment of a Division Bench of this Court in Arulmigu Ranganathaswamy Devasthanam v. Srinivasachariar : (1989)2MLJ54 holding that notice under Section 80, C.P.C. is necessary even for statutory suits under Section 70 of the Act. But the said judgment has been set aside by the Supreme Court in C.A. No. 3670 of 1991 by the order dated 12.9.1991. Hence, the judgment of the Division Bench of this Court cannot be treated as a binding precedent though the Supreme Court has not laid down the law in general in that case but confined itself to the facts of that case and declared that no notice was necessary in that particular case.

5. I have heard the appeal on merits. As I find that there is no merit in the appeal, I think it unnecessary to decide whether a notice under Section 80, C.P.C. is necessary in this case. The Court below has taken the view that it is not necessary and I express no opinion thereon.

6. The plaintiff has examined her husband as P.W.1 and a poojari of the temple as P.W.2. P.W.1 was aged only 42 years at the time of his giving evidence. He claims that his wife is the daughter of his aunt. In the chief-examination he states that before his wife, his father-in-law was the trustee and before him, his wife's grandfather Ramalingam Pillai was the trustee. He also states that before that, Veerabadra Pillai was the trustee. He has spoken to Ex.A-3, a settlement deed dated 9.4.1981, executed by Kandasamy Pillai and another in favour of the temple. He has deposed that the attestors to Ex.A-3 are not alive. He has deposed that the father of Veerabadra Pillai mentioned in Ex.A-3 is Muthu Pillai alias Marutha Pillai. He claims that receipts have been obtained from poojaries for having given padithanam. In the cross-examination, he admits that the temple is on a poramboke land. He claims that his ancestors had constructed the temple. He does not know the year in which the temple was constructed. He admits that for the first time he was stating that the name of the father of Veerabadra Pillai was Muthu Pillai alias Marutha Pillai. He admits that he did not say so before the Deputy Commissioner. He admits that the temple has got inam lands which are being enjoyed by the poojaries.

7. It is to be noted that the witness was examined before the Deputy Commissioner on behalf of the plaintiff who was the first petitioner before the Deputy Commissioner. The witness was the second petitioner in the said application. There is no explanation in the present proceedings as to how P.W.1, the husband of the plaintiff claimed to be a hereditary trustee along with the plaintiff before the Deputy Commissioner. When P.W.1 gave evidence before the Deputy Commissioner, he did not say that Veerabadra Pillai's father's name was Muthu Pillai alias Marutha Pillai. The specific case put forward before the Deputy Commissioner was that Veerabadra Pillai's father's name was Marutha Pillai. But Ex.A-3 belies the same. That document clearly described Veerabadra Pillai as the son of Muthu Pillai. It does not refer to any other name being alias of Muthu Pillai.

That itself disproves the version of the plaintiff that Veerabadra Pillai was one of her ancestors. There is absolutely no evidence on record to prove the geneology set out by the plaintiff. P.W.1 cannot claim any personal knowledge of the names of the father of the plaintiffs father and his father in turn.

8. P.W.2 is one of the poojaries in the temple. He claims to be a hereditary poojari and states in the chief-examination that there is no salary for the poojaries but they are given padithanan, by P.W.1 for performing poojas. According to him, the lands of the temple are being enjoyed by ten poojaries. He asserts in the chief-examination that the members of the plaintiffs family have been hereditary trustees. In the cross-examination he claims that he has been performing pooja for about 50years. His age is given as 60 years. Even on his version that he has been performing pooja for 50 years, it is surprising that he does not know as to who was giving padithanam before the plaintiff. The plaintiff was aged about 31 at the lime of the suit and she could have been in management, if at all, only for about 15 years. Before that, her father should have been in management if her version is true. But, P.W.2, is not prepared to say so. Further, P.W.2says in the cross-examination that the income from the temple lands is used for doing poojas. If that is so, there is no question of P.W.1 giving padithanam to the poojaries. Thus, the oral evidence adduced by the plaintiff is absolutely worthless to make out that the plaintiff is the hereditary trustee.

9. Turning to the documentary evidence, Exs.A-1 and A-2 are the orders passed by the Commissioner and the Deputy Commissioner respectively-Ex.A-3 is the only documents filed by the plaintiff which is worthy of consideration. It is a settlement deed executed by Kandasamy Pillai and Karuppa Pillai sons of Kuppa Pillai. A piece of land is given under that document as gift to the temple for the purpose of performing daily poojas. The value of the land is stated to be Rs. 100. It is stated in that document that the deity is the family deity of the settlors. It refers to Veerabadra Pillai son of Muthu Pillai of Kattuputhur as the Dharmakartha of the temple. It does not say that the settlors are the cousins of the said Dharmakartha. There is no indication whatever in the document to show that the settlors were the sons of the brother of Veerabadra Pillai's father. Nor does it indicate that the settlors had half share in the land. It was the case before the Deputy

Commissioner that the settlors had half share in the land and the other half share belonged to Veerabadra Pillai. Reliance is placed on the words

The learned Counsel for the appellant wants me to read those words as.

The document does not contain those words and the court cannot read what is not found in the document. There is absolutely nothing in the document to show that the settlors were entitled to one half share in the land and the other half share belonged to the trustee of the temple.

10. Thus, the totality of evidence, both documentary and oral evidence, does not make out that the plaintiff is a hereditary trustee and that the trusteeship had been with the family of the plaintiff for several generations as claimed in the plaint.

11. The appellant has filed C.M.P. No. 15374 of 1991 for filing a document as additional evidence. The document now produced is a Register under Section 29 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, relating to the temple maintained by the plaintiff. That register has been temporarily approved as correct by the Deputy Commissioner on 20.1.1989. Obviously, the register was sent to the Department only in 1988 and the temporary acceptance was given in January, 1989. The register is intended only to disclose the properties owned by the temple. The entries in that register cannot be used for any other purpose. As rightly pointed out by learned Counsel for respondents 2 to 5, it is self-serving document to some extent though it can be used as an admission if it is against the person in management of the temple.

12. Learned Counsel for the appellant places reliance on the entries in page 1 of the Register which set out the names of the past trustees. The names of Muthu Pillai, Veerabadra Pillai, Ramalingam Pillai, Manickam Pillai and the plaintiff are set out therein in that order. Significantly, Muthu Pillai is not shown to have had an alias name Marutha Pillai. Learned Counsel also invites my attention to page 16 in which it is stated that the daily expenses are being met by the heirs of the hereditary trustees of the temple. The Village Administrative officer (in-charge) has certified at the bottom of the entry that the contents of the entry are true. Learned Counsel for the appellant places strong reliance on this document and contends

that it proves the case of the plaintiff beyond doubt. The document is not evidence at all in law. It is register maintained only for the purpose of showing the properties of the temple as admitted by the persons in management. Secondly, the appeal has been pending when the register was submitted by the plaintiff to the Department. The trial court had held against the plaintiff. After filing the appeal, the plaintiff had obtained an order of injunction restraining the first respondent herein from interfering with her management of the temple. It is only because of the order of injunction, the Deputy Commissioner had no option but to accept temporarily the register as correct. The register cannot take the plaintiff anywhere in so far as the appeal is concerned. It cannot be treated as evidence in law.

13. Learned Counsel for the appellant argues that the approval of the register under Section 29 of the Act is a statutory act and the Deputy Commissioner having performed the same, is bound thereby. There is no substance in this contention. It is only Section 63 of the Act which provides for determination of the question as to whether the office of trusteeship is hereditary. A decision has been rendered by the appropriate authorities, namely, the Deputy Commissioner and the Commissioner of the Department and it has been affirmed by the civil court in the suit. When the appeal is pending, the plaintiff cannot submit a register to the Department reiterating her case that she is a hereditary trustee and just because the register has been temporarily approved because of the injunction order issued by this Court it cannot be contended that the register would constitute evidence to prove her claim in the suit. Consequently, nor reliance can be placed on the said document. I reject the said document and dismiss the civil miscellaneous petition.

14. Learned Counsel for the appellant relies on the judgment of Mohan, J., as he then was, in Ranganatha Pillai v. Commissioner for H.R & C.E. : (1979)2MLJ23 . On the facts of that case, the learned Judge found that there was overwhelming evidence to prove that the plaintiff and his family had been exercising the rights of trusteeship for over three generations and there was nothing on record to show that anybody else had functioned as a trustee. On that footing the learned Judge held that the claim of the plaintiffs therein should be upheld. The following passage in the judgment is referred to by learned Counsel.

The various documents which have been filed on the side of the plaintiff are all ante litem motem and from that point of view they are all of high evidentiary value. The argument of the learned Counsel for the respondent that there is no link between Ex.A-1 and Ex.A-14 and that it is for the plaintiffs to produce series of documents for every year to prove their case cannot be accepted. So long as these document evidence transactions long before the suit, there can be no legal or valid objection for placing reliance upon the same. The judgments cited on the side of the plaintiffs do support the contention that when a member of a particular family alone was exercising rights of trusteeship, it will fall under the category of hereditary trustee. Vide, the unreported decision in O.S.A. No. 79 of 1951 by a Division Bench of this Court (1951) M.W.N. pages exp. P. IX) and in all the three decisions in Babu Gurukkal v. Commissioner for Hindu Religious and Charitable Endowments Board : (1964)1MLJ384 , Assistant Commissioner Hindu Religious and Charitable Endowments Department v. D. Rajagopal : AIR1972 Mad105 and Venkataraman v. L.A. Thangappa : AIR1972 Mad119 this Court has taken the view that when in respect of a temple for the past three generations the members of the family of a person had managed the affairs of the temple, it must be held that the trusteeship was hereditary in the family of that person. The above ratio clearly applies to this case.

15. Even a mere reading of the above passage shows that the ruling will not help the appellant in the present case as there is absolutely no evidence worthy of acceptance in this case. The only conclusion that will follow is the dismissal of the appeal. The judgment and decree of the Subordinate Judge, Namakkal, in O.S. No. 47 of 1984 are confirmed and the appeal is dismissed with costs.