

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

Friday the 15th day of April, Two thousand and Sixteen.

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

A.P.23/2015 D2

Between

S.Gunasekaran

..Appellant

And

S.Krishnamoorthy

.. Respondent

In the matter of Arulmighu Pidari Kalamman Temple, Ashok Nagar, Chennai 600 083.

Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 22.10.2013 of the Joint Commissioner, HR & CE Admn.Dept., Chennai in dismissing the O.A.10/2004 filed under Section 63(b) of the Act.

Annexure to Order in R.Dis. A.P.23/2015 D2 dated: 15.04.2016

The above Revision petition came up for final hearing before me on 29.3.2016 in the presence of Thiru.M.Agni Counsel for the appellant and Thiru.E.Ganesh Counsel for the 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 filed under Section 69(1) of the Act against the order dated 22.10.2013 of the Joint Commissioner, Chennai in dismissing the O.A.10/2004 filed under Section 63(b) of the Act.

2. The appellant contended that the family of the appellant and the family of the respondent are hailing from different family origin. The ancestor Thiru.Chellappa Archakar is not one and the same person but are different persons. The Joint Commissioner failed to consider that both the appellant and the respondent not admitted the character of the temple as non Hereditary. The Joint Commissioner having concurred

with the view that preliminary issue would apply to only civil suits and not to summary proceedings, had given detailed findings regarding preliminary issue. It is not the rival claims of the appellant and the respondent so as to attract Civil Court Jurisdiction but the enquiry pertaining to the status of the office of the Trusteeship. The doctrine of resjudicata and estoppel applied only for the case of respondent and not to the case of the appellant. The finality in legal proceedings regarding hereditary trusteeship reached only against the respondent. The Original Application filed by the appellant was fresh one. The civil suits between the appellant and the respondent were ended in favour of the appellant declaring that he has been in the management as poojari cum defacto trustee duly recognized by the Department. The Joint Commissioner has failed to take account the dismissal of O.S.4766/2003 filed by the respondent against the order passed in SMR, hence her finding that any decision in the Original Application would hamper the suit is incorrect and unsustainable.

3. In the written submissions filed by the respondent, he has stated that the appellant vehemently resisted the claim of the respondent in the previous proceedings but he has not claimed nor pleaded anything pertains to his hereditary right over the temple. The appellant claiming the Trusteeship from the common ancestor Thiru.Chellappa Archakar. The appellant is sister's son of the respondent. But he fictitiously created a genealogy to suit his case. There is no basis for the theory put forward by the appellant as if he is coming from a different family, because he is grandson of Sowbagyavathi Ammal and the respondent is son of Sowbagyavathi Ammal. This Hon'ble forum already held that the office of the Trusteeship in the temple is non hereditary which become final and as such the Joint Commissioner has no jurisdiction to again to decide the issue, has rightly dismissed the Original Application.

4. I heard Thiru.M.Agni, Counsel for the appellant, Thiru.E.Ganesh, Counsel for the respondent and perused the relevant records.

5. The Senior Counsel appeared on behalf of Thiru.M.Agni has prayed to remand the case on the following grounds:

(i) The ancestor Thiru.Chellappa Archakar from whom the genealogy was traced by the appellant and the respondent, is not one and the same person but are different persons.

(ii) The previous litigations were not initiated by the appellant and he was not a party to the said proceedings. Hence the order passed in the previous proceedings will not act as resjudicata in the case of the appellant. Further the proceedings before the Joint Commissioner is summary in nature, hence doctrine of resjudicata will not apply to the said proceedings.

(iii) In the impugned order the Joint Commissioner has stated that if she make decision in the Original Application on merits, it would hamper the course of the trail in O.S.4766/2003 pending before the City Civil Court but the said suit was dismissed on 19.4.2010, even before passing of the impugned order.

6. The above grounds were already raised before the Joint Commissioner. After elaborate discussion the same were rejected by the Joint Commissioner by adducing valid reasons. The appellant is sister's son of the respondent herein. This fact was not disputed by the appellant. Though the appellant has contended that Thiru.Chellapa Archakar was not one and the same, he failed to prove the above contention with documentary evidence.

7. Regarding the second ground, the contention of the appellant that the principle of resjudicata will not apply to his case, is not sustainable because the Joint Commissioner has only jurisdiction to decide the nature of the office of the Trusteeship. Accordingly it was

already decided by the Joint Commissioner that the office of the Trusteeship of the suit temple is not Hereditary and the same has been upheld by the Hon'ble Supreme Court. In fact the appellant was impleaded as Respondent and he contested his side in the proceedings before this forum in S.M.R.No.11/96 in which the claim of the Respondent relating to Hereditary Trusteeship of the temple was rejected. In any case, the decision made in both the earlier proceedings under Section 63(b) of the HR&CE Act 22/1959 was that the office of the Trusteeship was not Hereditary. In the first occasion it was found so from the beginning upto the Supreme Court and in the second occasion it was allowed in the original state on improper analysis and later it was corrected and reversed by my predecessor in SMR 11/1996. The suit filed by the respondent challenging the order passed in SMR 11/1996 was also dismissed. In either occasions no individual right of the claimants to hold the office of the said temple as Hereditary Trustee was examined since the Authority under Section 63(b) of the HR&CE Act 22/1959 is not empowered to make it as held in various decisions of the High Court and the Supreme Court.

7. Further the proceedings under Section 63(b) of the HR&CE Act is not a summary in nature. As per Section 110 of the HR&CE Act, the enquiry shall be made as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trials of suits. The decision reported in 1970(1) SCC 673 the Hon'ble Supreme Court held as follows: *"It is not correct to say that the power conferred on the Board under Section 57 is a summary power. A decision rendered by the Board under that Section is final subject to the result of the suit contemplated in the said section. Section 57 provides for an exhaustive enquiry in the matter of framing scheme, firstly by the Board and then by the Court. The trial before the Court has to be held in the same manner as any*

other suit that may be instituted under the provisions of the Civil Procedure Code”.

The above decision squarely applies to this case. Therefore, earlier decisions rendered by the various courts regarding the nature of office of Trusteeship will act as res judicata because issue in all the proceedings were one and the same.

8. Regarding Ground No.3, the dismissal of O.S.4766/2003 was not brought to the knowledge of the Joint Commissioner either by the appellant or by the respondent. Further the said suit was dismissed by the City Civil Court by upholding the order passed by my predecessor in SMR 11/1996. Hence it cannot be a valid ground to remand the case.

9. The appellant has filed following reported judgments in support of his case

(1) 1970(1) SCC 673

(2) 1975(1) MLJ 152

(3) 2004(2) MLJ 668.

10. In the Judgment reported in 1975(1) MLJ 152, it was held that *“There is absolutely no provision in the Tamil Nadu Hindu Religious and Charitable Endowments Act 1951 or in the Act of 1959 providing that the order of the Deputy Commissioner is final. Both under the Tamil Hindu Religious and Charitable Endowments Act, 1951 and 1959 there is provision for the Commissioner suo motu revision the order of the Deputy Commissioner at any time he likes and therefore an order of the Deputy Commissioner that the suit temple did not fall within the scope of the 1951 Act cannot be said to be final. The principle of res judicata could not be invoked so as to bar the present petition under Section 63(a) and (b) of the 1959 Act for a declaration that the suit temple was a public temple in as much as in the earlier petitioner the petitioner therein had nor impleaded anybody as a party and there was no scope or occasion for anybody else contesting the case of the petitioner at*

that stage. The above judgment relates to the character of the temple, whether it is Public Religious Institution or not, but the case of the appellant relates to nature of the Trusteeship which was already decided as non hereditary by the lower forum and also confirmed by the Hon'ble Supreme Court. In such cases the matter may be again adjudicated at anytime in the case of changed circumstances. Hence earlier decisions will not act as resjudicata in those matters. Therefore the above decision does not support the case of the appellant.

10. In another judgment reported in 2004(2) MLJ 668, relates to office of poojariship and trusteeship carried on by the same person in small temples, such person false within the definition of "Hereditary Trustee". But in this case the office of the Trusteeship was already decided as non hereditary. Hence the above decision does not support the case of the appellant.

11. As observed by the Learned Joint Commissioner, in view of the limited scope of statutory provisions provided under Section 63(b) of the HR&CE Act 22/1959, just the character of the office of the trusteeship of temple has been mandated to be decided by the Authority empowered to make it under the said section irrespective of the fact on whose gesture it was caused to be decided. Hence once the character is, as such, decided under the said Section of the TNHR&CE Act 1959, it is binding on all the members of the family of the claimant who caused it to be decided. Therefore, it is not open for every member of a family of a same ancestor, spreading in multiple future lines, to try for their own chance by various individual and independent attempts to attain a particular right pertaining to the character of a temple. Hence the Joint Commissioner rightly decided the issue and dismissed the Original Application as not maintainable.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Chennai and it does not

warrant any interference. Accordingly the order dated 22.10.2013 of the Joint Commissioner, Chennai is hereby confirmed and the Appeal Petition is dismissed as devoid of merits.

/typed to dictation/

**Sd./- M.Veera Shanmugha Moni
Commissioner**

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

Superintendent