

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

Tuesday the 12th day of July, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P. 1/2016 D2

Between

**Cintham Rajalakshmi @ Siththeswari Ammal (died)
and 5 others**

...Appellants

And

1. The Joint Commissioner
HR&CE Department, Chennai.

2. The Executive Officer,
Arulmigu Prasanna Kothandaramasamy Bajanai
Koshti Madam, Periamet, Chennai 3.

.... Respondents.

In the matter of Arulmigu Prasanna Kothandaramasamy
Bajanai Koshti Madam, Periamet, Chennai 3.

The 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 3.3.2014 of the Joint Commissioner, Chennai in dismissing
O.A.5/2010 filed under Section 63(b) of the Act.

Annexeure to Order in R.Dis.A.P.1/2016 D2 dated: 12.07.2016

The above Appeal petition came up for final hearing before
me on 5.7.2016 in the presence of Thiru.M.Rukmangathan Counsel for
the appellants, M/s.Premavathi Sugumaran, Counsel for the 2nd
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 3.3.2014 of the Joint Commissioner, Chennai in
dismissing O.A.5/2010 filed under Section 63(b) of the Act.

2. The appellant contended that there is no temple known as
Arulmigu Prasanna Kothandaramaswamy temple, situated at Old No.19,
New No.5/3, Karpoora Mudali street, Periamet, Chennai 3, but it is only

a Koshti Bajanai Madam, where the family Bajans were conducted every week. The said Bajanai Madam was founded, established, managed, maintained by Cintham Ulakkai chetty and after his death, his descendants were conducted Bajanai in the Madam. There are no idols consecrated inside the Bajanai Madam, only pictures hanging in the walls where the appellants and their relatives are doing Bajanai. Actually it is a private temple but, however, the appellants restricted their claims to declare that the appellants as hereditary trustees of the above temple in question. But one of the ancestors, by mistake handed over the Bajanai Madam to the department, where an Executive Officer has been appointed. Now the Executive Officer is in charge of the Bajanai Madam but there is no poojas and no Bajanai are taking place in the Bajanai Madam. The documents filed in this case, Exhibits A1 to A7 were only marked but there is no legal analysis or discussion on the matter. The issues raised in the Original application before the Lower authority have not been discussed legally.

3. In the Counter affidavit the 2nd respondent/ Executive Officer contended that the appellants herein are not performing any Bajanai as claimed in the petition and they are not in management of the institution at any point of time. The names of the appellants nowhere found in any of the temple records and this respondent never heard of such names as seen in the cause title. The said institution was brought under the control of HR&CE department in the year 1976 and since then the persons appointed by the department has been managing the institution and also the properties. The temple is in a worst condition, the foundation raft, plinth width, intel doors, roof slabs are all in worst condition and most of the side walls and ceiling are dilapidated on account of old age and the said institution is unfit for doing any Bajanai or any Worship. The respondent/Executive Officer had sent a report about the conditions of the institution and explained the need for construction of new temple. Estimates are also sent for approval. There

is no indication in the temple record or any of piece of evidence in the temple that the appellants have ever performed bajanai in front of the picture as alleged in the grounds of appeal. They have not proved the element of hereditary trustee as defined under Section 6(11) of the Act. The case has been filed with a view to knock down the valuable temple property which is situated at Vellala Street, Purasawalkam, Chennai. The allegation that the picture alone are hanging in the walls where the appellants and their relatives are sitting in the Bajanai is denied as there are Urchavamoorthi like Arulmigu Kothandaramar, Arulmigu Seetha, Arulmigu Lakshmanar, Arulmigu Anjaneyar and one Ramar picture kept in the main temple viz., Arulmigu Ellamman Temple. There is no iota of evidence in the temple records to show that the appellants are continuously managing the institution without any break.

4. I heard Thiru.M.Rukmangathan, Counsel for the appellant, M/s.Premavathi Sugumaran, Counsel for the 2nd respondent and perused the relevant records. The counsel for the appellants prayed to remand the matter as the Joint Commissioner failed to analyze the documents filed by the appellants.

5. It is case of the appellants that the suit institution was founded by their ancestor Cintham ulakkai Chetty and there are no idols, but only pictures are hanging in the wall. The 2nd respondent has stoutly denied the same and stated that the idols are safely kept in the main temple.

6. The appellants had filed 7 documents before the Joint Commissioner and they were marked as ExA1 to A7. Except ExA1 and A3 all other documents were related to the property. Ex A1 is photograph of Silasasanam in Telugu and English translated copies. In the said culvert it was written as follows:

“1892 year December month, Nandanama year, House bearing Door No.19, belonging to me has been constructed out of myself earnings, where Sri Prasanna Kothandaramaswamy's Bhajana Mandira

is located. This property is given to Chintham ullakki chetty son of Chintham Kesavalu chetty including my legal heirs to perform the regular poojas.” From the above recitals it is clear that the said Bajanai Madam was not founded by the Chintham Ullakki chetty as claimed by the appellants. But the same was constructed by some other person and given to said Chintham ullakki chetty and legal heirs of the founder to perform the regular poojas. The said silasasanam was authored by the original founder whose name was not known. Ex A3 is photo of the Bajanai Madam. The building is in dilapidated condition. The respondent/ Executive Officer is taking steps to renovate the Bajana Madam. If the appellants are interested, they may contribute to renovate the Bajanai Madam. Ex A2, A4 are settlement deed, ExA5 is copy of the Town Survey Register, Ex A6 is sale deed and ExA7 is encumbrance certificate relating to the property. The above exhibits may help the appellants to prove the title of the property alone. The appellants failed to explain how the said documents will prove the uninterrupted management of suit institution by the appellants and their ancestors. Further the Genealogical table filed in the Original Application was not supported with any documentary evidence. Therefore, the documents filed by the appellants are not sufficient to prove their claim.

7. As per definition under Section 6(11) of the Act, “Hereditary trustee” means the trustee of a religious institution, the 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”.

But in this case, founder of the Bajanai Madam was not known. It is not proved by the appellants with documentary evidence how their claim falls under any one of the categories defined under Section 6(11) of the Act. Further in the judgment reported in AIR 1972 Mad 119, the Hon’ble High Court of Madras held that where the office of Trustees has been held by the members of certain family for three generations without

a break, the office must be considered to be hereditary in their family. But in this case, the appellants have failed to produce any documents to prove that the management of the suit institution has been vested with their family for more than 3 generations. It is pertinent to point out that for the last 4 decades the Bajanai Madam and its properties has been managed and maintained by the 2nd respondent. Accordingly the Joint Commissioner rightly negated the claim of the appellant.

Therefore, viewed from any angle, the appellants failed to establish their case with documentary evidences. The order passed by the Joint Commissioner, Chennai does not warrant any interference and it is liable to be confirmed. Accordingly, the order dated 3.3.2014 made in O.A.5/2010 is hereby confirmed and the appeal petition is dismissed as devoid of merit.

/typed to dictation/

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

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

Superintendent