

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

Friday the 2nd day of December, Two thousand and Sixteen.

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

A.P.12/2016 D2

Between

1. D.Govinda Reddy

...Appellant

And

The Joint Commissioner,
HR&CE Admn.Department, Vellore.

2. R.Moorthy

3. D.Sarkarai Reddy

4. D.Thulukkanam Reddy

...Respondents

In the matter of Arulmigu Ekavalli Amman Temple, Old Gummudipoondi, Thiruvallur District.

The Appeal Petition filed under Section 54(4) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 29.2.2016 of the Joint Commissioner, HR&CE Admn Department, Vellore in Pro.K.Dis.M.P.No.2/2015/A1 passed under Section 54(1) of the Act.

Order in D.Dis.A.P.12/2016 D2 dated: 02.12.2016

The above Appeal petition came up for final hearing before me on 11.11.2016 in the presence of Thiru. K.Sakthivel counsel for the appellant and Thiru.K.Jeyaraman counsel for the 2nd respondent and Thiru.E.Ganesh Counsel for the 3rd and 4th 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 54(4) of the Act Challenging the order dated 29.02.2016 of the Joint Commissioner, Vellore passed u/s. 54(1) of the Act.

2. The appellant contended that the temple was established , constructed and continuously managed by his forefathers. The office of the

temple was declared as a hereditary one by the Deputy Commissioner, (Judicial) Madras by order dated 09.03.1974 in OA No 64 of 1972(MDS) filed by his father Mr.Duraisamy Reddiar and demised on 15.09.1986. Due to the permanent vacancy caused by the death of his father, his brothers namely T.D.Rukku Reddiar, Sarkarai Reddy, Thulukkanam Reddy and himself managed the temple administration as legal hereditary trustees of the temple without any fault and flaw. His brother Mr.T.D. Rukku Reddiar shouldered the issues of the temple and rescued whenever it crosses the road of crisis and later he died on 06.01.2014. After his demise, the brothers continuously managed the temple administration in a peaceful manner. The Joint Commissioner, Vellore has recorded Mr.R.Moorthy S/o.Mr. T.D.Rukku Reddiar (Late) as the hereditary trustee of the temple under Section 54(1) of the Act vide his SE.Mu.Mu.Misc.Petition No.2/2015 B1 dated 29.02.2016 without giving proper opportunities to the appellant and other brothers who have been impleaded as respondents in this appeal petition. The appellant being one of the legal heirs of Hereditary trustee Mr.Duraisamy Reddiar(late), the hereditary right devolves around him and so, he is also entitled for hereditary right. Therefore the appellant has filed a petition on 28.03.2016, before the first respondent seeking to record him as the hereditary trustee of the temple. The hereditary right is equivalent to property right, and so the rights conferred on the deceased hereditary trustee also devolves on the appellant and other respondent brothers and the same cannot be erased by means of the impugned order. The recording of the second respondent as hereditary trustee does not disentitle the appellant from recording as a hereditary trustee of the temple. The appellant is also the one of the persons next in line of succession under the Hindu law of succession Act at the time of recording the second respondent as hereditary trustee.

3. In the counter affidavit the 2nd respondent has stated that from the date of death of Duraiswamy Reddiar till the date of death of the father of the respondent i.e.,06.01.2014, his father was alone in management and the other brothers of T.D.Rukku Reddiar were never in management of the temple. The brothers of his father the appellant, the

respondents 3 & 4 have not objected his father to be appointed as hereditary trustee as the person next in line of succession. When this being so the appellant cannot claim the office of hereditary trusteeship of the temple after the death of his father . When he had given up his right of succession to the office, when the grandfather Duraiswamy Reddiar died and the office fell vacant. The respondent's father died on 06.01.2014 and being the legal heir and as the person in line of succession he was recorded as hereditary trustee. There is no need for the respondent to array the other legal heirs of Duraiswamy Reddiar as parties in the petition filed before the Joint Commissioner, since the office of hereditary had already been filled up by his father. when the appellant had allowed the father of the respondent to administer the temple from the date of death of Duraiswamy Reddiar and after the proceedings the Assistant Commissioner dated 17.03.1989 had completely lost his right and therefore any claim now being projected by the appellant is only rival claim to him. Therefore the appellant has to approach only the Civil Court and cannot maintain any appeal before this Hon'ble Court.

4. In the counter affidavit 3rd and 4th respondent has stated that as contended by the Appellant, his application dated 23.03.2016 for recording of succession is still pending before the Joint Commissioner and as such, the above appeal is premature and preconceived one. The 2nd Respondent has recorded the succession in the place of demised hereditary Trustee and father of the 2nd Respondent Mr.T.D.Rukku Reddiar. As such, the 2nd Respondent has filled into the shoes of his father alone as per the Hindu Law of Succession & Inheritance. Undoubtedly, the 2nd respondent comes under Entry 1 of the class 1 Legal Heir and as such the Appellant cannot be construed as aggrieved party in recording of succession. It is disputed that the said Mr. T.D. Rukku Reddiar has filed the Revision petition on behalf of the all Trustees. On the other hand, the said T.D. Rukku Reddiar alone has fought the above Revision Petition and safeguarded the interest of the management, subsequent to the demise of said Mr.T.D.Rukku Reddiar, his son , the 2nd Respondent herein is in the management of the Temple. The application dated 23.03.2016 of Appellant

is not maintainable since his rights have been extinguished already by efflux of time and as per the provisions of Limitation Act. The Appellant has submitted, acquiesced and witnessed to the validity of the management of said T.D.Rukku Reddiar. Further, on the death of Mr. T.D.Rukku Reddiar, succession opens for the recording the succession of his legal heirs alone and accordingly his eldest son viz., the 2nd Respondent herein has already recorded his succession and as such, there is no vacancy to be filled in law by the Appellant. When such right is stated to be extinguished by efflux of time, the claim of the Appellant has to be treated as rival in nature to that of the 2nd respondent and time and again, the courts including this Hon'ble Forum has treated such claim as rival and advised the aggrieved party to approach the Civil Court.

5. I heard Thiru.K.Sakthivel Counsel for the appellant, Thiru.K.Jeyaraman Counsel for the 2nd respondent, Thiru.E.Ganesh Counsel for the 3rd and 4th respondent and perused the relevant records.

6. In this appeal petition, appellant has prayed to set aside the order of the Joint Commissioner, Vellore in recording the 2nd respondent herein as Hereditary Trustee and to recognize him as Hereditary Trustee of the temple u/s.54(1) of the Act. It was strongly opposed by the respondents on the grounds that his claim was barred by limitation and as the claim is rival in nature, he has to approach the competent civil court.

7. Admittedly the office of the trusteeship of the suit temple was declared as Hereditary and father of the appellant Thiru.Duraisamy Reddiar was declared as Hereditary Trustee. After the demise of his father, his elder brother Thiru.T.D.Rukku Reddiar was recorded as Hereditary Trustee in the permanent vacancy in the year 1986. The said T.D.Rukku Reddiar died in the year 2014. Hence in the said vacancy, the 2nd respondent herein being the next person in the line of succession has been recorded as Hereditary Trustee as per the law of succession. Hence, the recording of the 2nd respondent as Hereditary Trustee in the permanent vacancy which arose due to the death of his father, will not deprive the right of the appellant to

succeed to the office of the Trustee. Hence he cannot be construed as an aggrieved person on that ground.

8. Further the application filed by the appellant for recording his succession is pending before the Joint Commissioner, Vellore. Whether the claim of the appellant is extinguished by limitation or whether it is only rival claim is an issue which has to be decided by the Joint Commissioner. The said issues could not be decided in this appeal petition. Therefore, the appellant is directed to establish his claim before the Joint Commissioner in the pending application. The Joint Commissioner, Vellore is also directed to dispose the application filed by the appellant in accordance with the law within a period of 3 months from the date of receipt of this order.

Therefore for the forgoing reason stated Supra, I find no reason to interfere with the order passed by the Joint Commissioner, Vellore and it is liable to be confirmed. Accordingly the order dated 29.02.2016 of the Joint Commissioner, Vellore 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

To

1. The Petitioner through Thiru.K.Sakthivel, Advocate, 396, 3rd floor, New Additonal Law Chambers, High Court Buildings, Chennai-64.
2. The 2nd Respondent through Thiru.K.Jeyaraman, Advocate, No.35, Law chambers, High Court Buildings, Chennai 104.
3. The 3rd and 4th Respondent through Thiru.E.Ganesh, Advocate, No.61/23 Sakthi Avenue, South Lock Street, Kottur, Chennai.

Copy to

4. The Joint Commissioner, HR & CE Admn.Dept., Vellore. (By RPAD) (along with file in M.P.2/2015)
5. The Assistant Commissioner, HR & CE Admn.Dept., Tiruvallure.
6. Inspector, HR & CE Admn.Dept., Gummidipundi.
7. Extra.