Sambudamurthi Mudaliar vs State Of Madras And Anr on 15 September, 1969

Equivalent citations: 1971 AIR 2363, 1970 SCR (2) 424, AIR 1971 SUPREME COURT 2363, 1970 2 SCR 424 1970 2 SCJ 131, 1970 2 SCJ 131

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, A.N. Grover

PETITIONER:
SAMBUDAMURTHI MUDALIAR

Vs.

RESPONDENT:
STATE OF MADRAS AND ANR.

DATE OF JUDGMENT:
15/09/1969

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
GROVER, A.N.

CITATION:
1971 AIR 2363 1970 SCR (2) 424

ACT:
Madras Hindu Religious and Charitable Endowments Act (19 of 1951), s. 6(9)--Trustee of temple elected for fixed period by members of community who established temple--If hereditary trustee.

HEADNOTE:
The appellant was elected as a trustee of a temple for one year. The temple was rounded two hundred years ago by the members of the community and according to the usage of the temple, the trustees were elected for one year, at a meeting of the members of the community.

On the question whether the appellant has a hereditary trustee, because he was, under s. 6(9) of the Madras Hindu Religious and Charitable Endowments Act, 1951, the 'trustee

of a religious institution succession to whose office is regulated by usage',

HELD: The phrase 'succession to whose office is regulated by usage' would only apply when the ordinary rules of succession under the Hindu law are modified by usage, and succession has to be determined in accordance with the modified rules. The office of a hereditary trustee is in the nature of property. Succession in relation to property implies passing of an interest from one person to another. [428 C-D]

In the present case, the election to the office was for a fixed period of one year. In such a case, it is not possible to say there is a succession to the office, because: (a) on the efflux of the period for which one trustee is appointed, there is a vacancy and another is elected to that vacancy, and (b) since there is a possibility of the same trustee being reelected, an impossible legal position arises in which a person could be a successor of himself. [429 F-H]

In re Hindu Women's Right to Property Act, 1941 [1941] F.C.R. 12, Ganesh Chunder Dhur v. Lal Behary, 63 I.A. 448, Bhabatarini v. Ashalata, 70 I.A. 57, Angurbala Mullick v. Debabrata Mullick, [1959] S.C.R. 1125. 1134 and Sital Das v. Sant Ram, A.I.R. 1954 S.C. 606 applied.

Shri Mahant Paramananda Das Goswwami v. Radhakrishna Das. 51 M.L.J. 258, referred to.

State of Madras v. Ramakrishna, I.L.R. [1957] Mad. 1084, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1671 of 1966. Appeal from the judgment and decree dated March 31, 1965 of the Madras High Court in Appeal No. 276 of 1962. M.K. Ramamurthi, Vineet Kumar, L Ramamurthy and Shyamala Pappu, for the appellant.

A.V. Rangam, for the respondents.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought by certificate from the judgment of the Madras High Court dated March 31, 1965 in A.S. No. 276 of 1962.

The appellant 'brought the suit in O.S. No. 3 of 1961 in the Court of Subordinate Judge, Nagapattinam for setting aside the order dated May 10, 1960 of respondent No. 1 the Commissioner of Hindu Religious and Charitable Endowments, Madras who had affirmed earlier the order of the second respondent, the Deputy Commissioner, holding that the trusteeship of the Kumaran Koil in Manjakollai village was not hereditary. The appellant was elected as a trustee by the Sengunatha Mudaliars of Manjakollai village at a meeting held on June 27, 1957. According to the appellant the temple was rounded two hundred years ago by the members of his community and since then the management of the temple and is affairs was always vested in the community of the Sengunatha

Mudaliars and no person other than the elected trustee had at any time the right of management and control of the temple. The appellant said that the temple was declared as an "exempted" temple under the provisions of Madras Act 1 of 1925. The case of the appellant was that the trusteeship of the temple was "hereditary". The respondents, however, took a different view and proceeded on the basis that trusteeship of the Kumaran Koil was not hereditary. The Subordinate Judge held that the appellant was a hereditary trustee and the suit was not barred by limitation. The respondents took the matter in appeal to the Madras High Court which by its judgment dated March 31, 1965 allowed the appeal and set aside the judgment of the Subordinate Judge Nagapattinam.

Section 6, sub-s. (9) of Madras Act 19 of 1951 states:

> "In this Act, unless there is anything repugnant in the subject or context--
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> (9) 'hereditary trustee' means the trustee of a religious institution 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;"

This Act has been substituted by Madras Act 22 of 1959 but the definition of the trustee is identical in both the Acts. The question to be considered in this appeal is whether the appellant is a hereditary trustee Within the meaning of the section. The definition includes three types of cases:

> (1) succession to the office of trusteeship devolving by hereditary right; (2) succession to such office being regulated by usage; and (3) succession being specifically provided for by the founder on condition that the scheme of such succession is still in force. It is not the case of the appellant that the trustees of the temple of the Kumaran Koil are hereditary trustees because their office' devolves by hereditary right or because succession to that office is specifically provided for by the founder. The contention on behalf of the appellant is that the succession is "regulated by usage". It was said that according to the usage of the temple the trustees were elected for a period of one year each at a meeting of the members of the Sangunatha Mudaliar Community and so the appellant must be held to be a trustee within the meaning of s. 6(9) of Act 19 of 1951. In our opinion, there is no warrant for this argument. The phrase "regulated by usage"
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> in s. 6(9) of the Act must be construed along with the phrase "succession to this office" and when so construed that part of the definition would only apply where the ordinary rules of succession under the Hindu law are modified by usage and succession has to be determined in accordance with the modified rules. The word "succession"

in relation to property and rights and interests in property generally implies "passing of an interest from one person to another" (vide in Re: Hindu Women's Right to Property Act, 1941 (1). It is now well-established that the office of a hereditary trustee is in the nature of property. This is so whether the trustee has a beneficial interest of some sort or not (see Ganesh Chunder Dhur v. Lal Behary(2)

and Bhabatarini v. Ashalata(3). Ordinarily a shebaitship or the office of dharmakartha is vested in the heirs of the founder unless the ,founder has laid down a special scheme of succession or except when usage or custom to the contrary is proved to exist. Mukherjea J., in Angurbala Mullick v. Debabrata Mullick(4) delivering the judgment of this Court observed:

> "Unless therefore, the founder has disposed of the shebaitship in any particular manner--and this right of disposition is inherent in the founder--or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder."

In the case of mutts, whose heads are often celibates and sometimes sanyasins, special rules of succession obtain by custom and usage. In Sital Das v. Sant Ram(5) the law was taken as wellsettled that succession to mahantship of a mutt or religious institution is regulated by custom or usage of the particular institution except where the rule of succession is laid down by the founder himself who created the endowment. In that case the custom in (1) [1941] F.C.R. 2.

(2) 63 I. A. 448.

(3) 70 I.A. 57.

(4) [1959] S.C.R. 1r2,5, (5) A.LR. 1954 S.C. 606.

matters of succession to mahantship was that the assembly of bairagis and worshippets of the temple appointed the successor; but the appointment had to be made from the disciples of the deceased mahant if he left any, and failing disciples, any one of his spiritual kindred. Such a succession was described as not hereditary in the sense that on the death of an existing mahant, his chela does not succeed to the office as a matter of course, because the successor acquires a right only 'by appointment and the authority to appoint is vested in the assembly of the bairagis and the worshippets. In Sri Mahant Paramanda Das Goswami v. Radhakrishna Das(1) the Madras High Court took the view that where succession to the mahantship is by nomination by the holder in office, it was not a hereditary succession. In that case Venkatasubba Rao, J. said:

> "If the successor owes his title to nomination or appointment, that is, his succession depends on the volition of the last incumbent and does not rest upon independent title, I am inclined to the view that the office cannot be said to be hereditary."

Krishnan J., stated as follows:

> "Where succession is by nomination by the holder in office of his successor it seems to be impossible to contend that it is a hereditary succession. Hereditary succession is succession by the heir to the deceased under the law, the office must be transmitted to the successor according to some definite rules of descent which by their own force designate the person to succeed. There need be no blood relationship between the deceased and his successor but the right of the latter should not depend upon the

> choice of any individual."

It is true that the artificial definition of hereditary trustee in s. 6(9) of the Act would include even such cases. But the election to the office of trustee in the present case is for a fixed period of one year and not for life. It is, therefore, difficult to hold that the office of the appellant is hereditary within the meaning of s. 6(9) of the Act. It is not possible to say that there is a succession of As office to another when on the efflux of the period for which A was appointed, there is a vacancy and B is elected to that vacancy. It is quite possible that for that vacancy A himself might be reelected because a retiring trustee is eligible for reelection. The possibility of A being the successor A himself is not merely an anomaly, it is an impossible legal position. No man can succeed to his own office. In Black's Law Dictionary the word 'succession' is defined as follows:

> "The revolution of title to property under the law of descent and distribution. (1) 51 M.L.J. 258.

The right by which one set of men may, by succeeding another set, acquire a property in all the goods, movables, and other chattels of a corporation.

The fact of the transmission of the rights, estate, obligations, and charges of a deceased person to his heir or heirs."

The view we have taken is borne out by the reasoning of the Madras High Court in State of Madras v. Ramakrishna(1). For these reasons we hold that this appeal fails and must be dismissed with costs.

V.P.S. Appeal dismissed.

(1)I.L.R. [1957] Mad. 1084-.