CASE NO.:
Appeal (civil) 4199 of 1989

PETITIONER:
D. SRINIVASAN

RESPONDENT:
COMMISSIONER AND ORS.

DATE OF JUDGMENT: 17/02/2000

BENCH:
M. JAGANNADHA RAO & A.P. MISRA

JUDGMENT:
JUDGMENT

2000 (1) SCR 1031

The Judgment of the Court was delivered by

This is an appeal preferred against the judgment dated 15.11.88 of the High Court of Madras in LPA No. 4/1983. The appellants in the LPA before the High Court were Sri. Y.R. Natarajan & Sri D. Srinivasan. The 1st respondent in the LPA was the Commissioner, Hindu Religious En-dowments, Madras, the 2nd respondent, one E. Venkatasubbaiah and the 3rd respondent D. Adiseshayya. The 2nd and 3rd respondents were shown in the LPA as persons who died, and no legal representatives were brought on record. It also appears that the 2nd appellant D. Srinivasan was brought on record during the pendency of the first appeal before the learned Single Judge, in C.M.P. No. 4112/1978 on 20.7.1979. The first appeal A.S. No. 379/78 was filed by the Commissioner of Endowments, who was the defendant in the suit, against E. Venkatasubbaiah and D. Adiseshayya and Y.R. Natarajan. Learned Single Judge allowed the appeal of the Commissioner and the respondents in the 1st appeal filed the LPA as mentioned above and the same was dismissed as stated earlier. It is against the above said judgment in the L.P.A. that this appeal has been preferred.

The following facts are necessary to be stated for disposal of this appeal.

One P. Venkata Varada Doss founded Sri Kothandaramaswami temple in question in the year 1891. He executed a Will on 9.7.1915 under which he gave absolute power to his brother-in-law D. Venkatarangaiah in respect of the properties dedicated to the temple and also directed the latter to administer the temple. It appears that the Inspector of Endowments in his report dated 5.3.1934 brought to the notice of the Endowments Board, Madras matters relating to the affairs of this temple, whereupon the Trustees were directed by the Board to produce accounts by way of reply. The then Administrating Trustee, Shri D. Venkatarangaiah, who was the brother-in-law of the original founder, stated before the Board that no accounts were being maintained, as the properties were ''private" proper-ties. Thereafter, an enquiry under Section 84 of the Madras Hindu Religious Endowments Act, 1926 (Act 1 of 1927) (hereinafter called the 1927 Act) was initiated, to decide the nature of the temple. During the hearing of the matter, the Trustee gave up the contention that the temple was a private temple, but contended that the temple was an 'Excepted Temple', as defined in sub-clause (5) of Section 9 of the 1927 Act. The said contention was accepted by the learned Commissioner of Endowments in his order on 4.10.1935, stating that the institution was founded by Hari Doss's family and that the then Trustee, D. Venkatarangaiah, who was the brother-in-law of the founder, had absolute rights to administer the temple and that it was clear that this was a case of succession being specially provided for by the founder of an institution under sub-clause (5) of Section 9 of the 1927 Act. On that ground, it was held that the temple was an 'Excepted Temple'. The relevant portion of the order reads as follows :

"It is clear from these that this is a case of Succession being specially provided for by the founder of an institution under Section 9 clause (5) of Madras Act II of 1927. Thus the temple is a public one falling under the clause of 'Excepted temple' as defined in Section 9 clause (5) of the Act, and we declare accord-ingly".

We have noted that the original founder had nominated Venkatarangaiah to be his successor. But the founder did not specify in his Will as to what was to happen after Venkatarangaiah."

It appears that Venkatarangaiah executed a Will on 9.9.1914. Under that Will, he vested the administration of the temple in a Board of Five Trustees and further provided that the vacancies in future were to be filled in by co-option by the remaining Trustees and the persons to be selected were to be residents of the locality in which the temple was situate. The said Venkatarangaiah died on 19.9.1943. After his death, five Trustees nominated by him came into the Management to administer the temple. They were :

(1) D. Ponnaih, (2) D. Managamma, (3) E. Ventakasubbiah, (4) Y. Ramachandrayya and (5) R. Namperumal Chetti.

After the death of Ponnaiah, one Ramaiah Reddy was co-opted in 1955. After the death of Mangammal, D. Adiseshayya was co-opted. After the death of Y. Ramachandrayya, his son Y.R. Natarajan was co-opted. After the death of Namperumal Chetty, Padmanabha Chetty was co-opted.

An application (O.A. 91/1966) was filed by the then trustees (whose names are given below) before the Deputy Commissioner of Endowments, Madras, under Section 63(b) of the Act 22 of 1959 for a declaration that the petitioners therein were the hereditary Trustees. The said application was dismissed. Against that order an appeal (A.S. No. 46/71) was filed before Commissioner. The said appeal was dismissed, on 14.9.1971. There-after, a statutory suit was filed in 1972 by the said trustees E. Venkatasub-baiah, D. Adiseshayya and Y.R. Natarajan, for a declaration that the order made by the Commissioner was illegal and for a further declaration that the office of Trusteeship of the temple was 'hereditary' and that the plain-tiffs were hereditary trustees. This suit was contested by the Commissioner. The City Civil Court, Madras by its judgment in O.S. 4810/1972 dated 25.8.1975, decreed the suit and held that the office was hereditary and that the plaintiffs were 'hereditary trustees'. Against the said judgment, an appeal, bearing No. A.S. 379/1978 was filed in the High Court, which was allowed by a learned Single Judge of the High Court by Judgment dated 11th January, 1983 and the said judgment of the learned Single Judge was confirmed in LPA No. 4/1983, dated 15.11.1988. The learned Single Judge and the Division Bench came to the conclusion that the office was not 'hereditary' and that plaintiffs were not 'hereditary trustees' within the mean-ing of the definition of "hereditary trustee" contained in Section 6(11) of the 1959 Act. The 1927 Act was repealed by the 1951 Act and the later Act was repealed by the 1959 Act.

In this appeal before us, the learned senior counsel for the appellant, Sri R. Sundaravaran contended that the view taken by the learned Single Judge and Division Bench of the High Court was erroneous, that the order dated 4.10.1935 (in O.A. 165/1935) had already declared this temple to be an 'excepted temple' under the Madras Act 11/1927 inasmuch as Succession to the trusteeship was as provided by the founder, (vide definition in sub-clause (5) of Section 9 of the 1927 Act) and that order was binding in the present proceedings. A further argument was also raised on the basis of the language in the definition of 'hereditary tmstee' contained in sub-clause (6) of Section 9 of 1927 Act. It was pointed out that the definition of 'hereditary trustee' in sub-clause (6) of Section 9 of the 1927 Act was wider than the one contained in sub-clause (11) of Section 6 of the 1959 Act inasmuch as even a person nominated by the trustees for the time being,

came within the definition of 'hereditary trustee' under sub-clause (6) of Section 9 of 1927 Act, though not under the 1951 and 1959 Acts.

On the other hand, learned counsel for the respondents, Sri V. Krishna Moorthi pointed out that, even if the definition of 'hereditary trustee' in sub-clause (6) of Section 9 of 1927 Act was wider and could take in a person who was nominated by the trustees still the appellants could not take any benefit from the said provision inasmuch as the 1951 Act repealed the 1927 Act and the definition in 1951 Act was restrictive and applied to all vacancies to the office after the 1951 Act. Counsel argued that Section 103 of the 1951 Act stated that actions, decisions taken under the provisions of the earlier Act (i.e. 1927 Act) in-so-far as they were inconsistent with the provisions of the 1951 Act, would cease to be opera-tive. Counsel contended that the definition of 'hereditary trustee' in Section 6(9) of the Madras Act of 1951 was restrictive and did not apply to nominated trustees. Similar was the position under Section 6(11) of the 1959 Madras Act defining 'hereditary trustee' and hence the persons filled into the past 1951 vacancies in the Board of five trustees would not be described as 'hereditary trustees'.

The point that arises for consideration is whether the present appel-lant trustee has been nominated by the trustees for the time being and could be treated as 'hereditary trustees' and whether the three original plaintiffs could also have been treated as 'hereditary trustees' from the time when O.A. No. 165/1966 was filed by three persons in 1966 before the Deputy Commissioner?

For a proper appreciation of the above issue, it is necessary to resort to the definition of 'Excepted temple' in sub-clause (5) of Section 9 of 1927 Act and also to the definition of 'hereditary trustee' in sub-clause (6) of Section 9 of 1927 Act.

Sub-clause (5) of Section 9 of 1927 Act reads as follows: 'Excepted temple' means :

(a) a temple which before 1801 was, and since 1963 has con-tinued to be, under the sole management of a trustee whose nomination did not vest in, nor was exercised by, the Government nor was subject to the confirmation of the Government or of any public officer, or

(b) a temple founded since 1842, the right of succession to the office of trustee whereof is hereditary or specially provided for by the founder".

Sub-clause (6) of Section 9 of 1927 Act reads as follows :

"'Hereditary trustee' means the trustee of a religious endow-ment, succession to whose office devolves by hereditary right or by nomination by the trustee for the time being, or is otherwise regulated by usage or is specially provided lor by the founder, so long as such scheme of succession is in force".

From the above said definition, it will be noticed that under sub-clause (6) of Section 9 of 1927 Act, the definition of 'hereditaiy trustee' included a person who was nominated by the trustees, for the time being in office.

The 1951 Act did not recognise the plea of 'Excepted temple', which was a particular class of temple, for which provision was made only under the 1927 Act. In the 1951 Act, in Section 6(9) 'hereditaiy trustee' has been defined as follows :

"Section 6(9) : 'hereditary trustee' means the trustee of a religious institution ia succession to whose office devolve by hereditary right or is regulated by usage or is specifically piovided for by the founder, so long as such scheme of succession is in force".

It will be noticed that this definition in the 1951 Act omits the system of nomination which was there in Section 5(6) of 1927 Act.

Sub-clause (1) of Section 5 of the 1951 Act repealed the provisions of 1927 Act. Section 5 of 1951 Act is however to be read in conjunction with Section 103 of the said Act. We are only concerned with sub-clauses (a) and (b) of Section 103 of the 1951 Act, which read as follows :

"(a) all rules made, notifications or certificates issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the Government, the Board or its President or by an Assistant Commissioner under the said Act, shall, in-so-far as they are not inconsistent, with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act and shall, subject to the provisions of clause (b) must have effect accordingly;

Explanation : Certificates issued by the Board under Section 78 of the said Act shall be deemed to have been validly issued under that Section, notwithstanding that the certificates were issued before the making of rules prescribing the manner of their issue.

(b) If the Government are satisfied that any such rule, notifica-tion, certificate, order, decision, proceeding, action, scheme or thing, although not inconsistent with this Act would not have been made, issued, passed, taken, settled or done, or would not have been made, issued, passed, taken, settled or done in the form adopted, if this Act had been in force at the time, they shall have power, by order made at any time within one year from the commencement of this Act, to cancel or to modify in such manner as may be specified in the order, the said rule, notification, certifi-cate, order, decisions, proceeding, action, scheme or thing, and thereupon, the same shall stand cancelled or modified as directed in the said order, with effect from the date on which it was made or from such later date as may be specified therein :

Provided that before making any such order, the government shall publish, in the Fort St. George Gazette, a notice of their intention to do so, fix a period which shall not be less than two months from the date of the publication of the notice for the persons affected by the order to show cause against the making thereof and consider their representations, if any;

A reading of Sections 5 and 103 of the 1951 Act, would show that the 1927 Act was repealed, but the repeal was subject to certain conditions as stated in Section 103 of 1951 Act. We shall come back to the effect of Section 103 on the 1927 Act a little later.

We shall next come to the effect of the order dated 4.10.1935 passed in O.A. No. 165/1935 and also as to the effect of the Will executed by D. Venkatarangaiah on 9.9.1941 which came into force on his death on 19.9.1943. The order dated 4.10.1935 was passed when the 1927 Act was in force, and by virtue of the Will executed by the said Venkatarangaiah, who was already managing the temple affairs, he would be a 'hereditary trustee' inasmuch as, so far as he was concerned, the original founder P. Venkata Varada Doss in his Will dated 9.7.1915, nominated D. Venkatarangaiah, as his successor. As already stated, sub-clause (6) of Section 9 of the 1927 Act defined 'hereditary trustee', among other persons, as a person who was nominated by the trustees, for the time being in office, or otherwise nominated by the founder. Venkatarangaiah was the person who was nominated by the founder, and therefore, in that capacity he became the 'hereditary trustee'. The Commissioner's order dated 4.10.1935 does not, however, deal with the question as to what should happen after the death of Venkatarangaiah. During the time of Venkatarangaiah the temple was 'Excepted temple' under Section 9(5) of the 1927 Acl, because succession

was specifically provided by the founder.

The next question is as to whether the persons appointed by Venkatarangaiah, as per his Will, became 'Hereditary Trustees' ?

Inasmuch as Venkatarangaiah died on 19.9.43 and nominated the five persons, whose names have been mentioned earlier, as trustees to take over the management of the temple, the question arises as to whether these five persons could be 'Hereditary Trustees'. It will be noticed that in 1943, the Statute that was in force was the 1927 Act and under sub-clause (6) of Section 9 of the Act, persons nominated by the Trustees for the time being in office would also be 'hereditary trustees' and there would be no difficulty in calling the said five persons nominated by Venkatarangaiah as 'hereditary trustees' for the purposes of the Act of 1927.

We have already stated that the suit of 1972 was filed by E. Venkatasubbaiah, D. Adiseshayya and Y.R. Natarajan. Of them only E. Venkatasubbaiah was one of the five trustees nominated by Venkatarangaiah. Others were nominated by the surviving trustees. Thus, so far as E. Venkatasubbaiah, the first plaintiff was concerned, he was one of the five persons nominated by Venkatarangaiah. But Adiseshayya and Natarajan were not persons nominated by Venkatarangaiah. It must, therefore be accepted, so far as E. Venkatasubbaiah was concerned, inasmuch as he became a trustee in 1943, on the death of Venkatarangaiah and before the commencement of the 1951 Act, he was a 'hereditary trustee' being a person nominated by Venkatarangaiah, within the meaning of sub-clause (6) of Section 9 of the 1927 Act. But the position is that the said E. Venkatasub-baiah is also no more and any declaration concerning him will be of no consequence. In fact, he was impleaded as a 2nd respondent in the L.P.A. and shown as a person who died and that there are no legal representatives.

So far as the other plaintiffs, namely D. Adiseshayya and Y.R. Natarajan are concerned, the question would be whether they could be called "hereditary trustees" under sub-clause (11) of Section 6 of 1959 Act? That was the Act in force in 1927. The further question would be whether the appellant before us, who is D. Srinivasan and who was a person who was nominated subsequently by the remaining trustees, and which event took place after 1951, could be called 'hereditary trustee'?

After the commencement of the 1951 Act, the definition of 'hereditary trustee' contained in sub-clause (9) of Section 6 of that Act did not recognise a person who was nominated by other trustees, as 'hereditary trustees'. Thus, so far those trustees nominated by the said five persons after the 1951 Act are concerned, they being persons nominated by the trustees who were nominated by Venkatarangayya's nominees, in our view, would not be 'hereditary trustees' under Section 6(9) of the 1951 Act. It is true that the Board of trustees created by Venkatarangayya could be treated as a fluctuating body from time to time and any rights vested in that body to nominate 'hereditary trustees' under sub-clause (6) of Section 9 of the 1927 Act, would remain unless taken away by the 1951 Act. The question is whether after the 1927 Act was repealed in the 1951 Act, any rights created under the 1927 Act in the Board of trustees could continue in force and this question would depend upon the provisions of Section 103 of the 1951 Act.

We have already referred to sub-clause (a) of Section 103 of 1951 Act. It will be noticed that under the definition of 'hereditary trustees' in the 1951 Act, a person nominated by the Board of trustees is no longer to be treated as 'hereditary trustees'. The same position prevails under sub-clause(ll) of Section 6 of 1959 Act. Both the 1951 Act and 1959 Act do not describe a person nominated by Board of Trustees by an existing Board of trustees as 'hereditary trustees'. It is true that rights vested in any person or authority under a repealed Statute are not to be deemed to be interfered with by the repealing Statute, unless there is any provision in the repealing Statute which expressly or by necessary implication interfere

with the rights ac-crued to any person or body under a repealed Statute of 1927. But in our view, the language contained in sub-clause (a) of Section 103 of 1951 Act evinces a clear intention to depart from the scheme of the 1927 Act and no longer to call the persons nominated by the Board of 'hereditary trustees', after 1951 as 'hereditary trustees'. In other words, if any trustees are nominated subsequent to the commencement of 1951 Act, by the Board of Hereditary trustees, (who came into office pursuant to the Will of Venkatarangayya or their nominees) then those persons would not be governed by the definition of sub-clause (6) of Section 9 of the 1927 Act, but will be governed by Section 6(9) of the 1951 Act. Such person cannot be described as 'hereditary trustees' inasmuch as by altering the definition of 'hereditary trustees', the 1951 Act has chosen to interfere with an existing right of Board to nominate fresh trustees as 'hereditary trustees'.

We, therefore, hold that if any trustee has been nominated sub-sequent to the commencement of the 1951 Act by the Board of Trustees who were in office prior to the 1951 Act or by their nominees then such persons could not be called 'hereditary trustee' within the meaning of sub-clause (6) of Section 9 of 1951 Act. Similarly, if the persons who were themselves not hereditary trustees after the 1951 Act, either by themselves or along with other hereditary trustees after 1951, nominated trustees, then such trustees would not be hereditary trustees. The position is no different after the 1959 Act.

Therefore, the other two plaintiffs in the suit, namely, D. Adiseshayya and Y.R. Natarajan and the present appellant - D. Srinivasan before us being persons who were nominated as trustees subsequent to the commen-cement of the 1951 Act, cannot be described as 'hereditary trustees' for the purposes of 1951 Act or 1959 Act.

This does not, however, mean that the right conferred on the Board of Trustees, whenever a vacancy occurs in the five places created by Venkatarangaiah, is done away with altogether by the 1951 Act or by the post 1951 Acts. It will be open to the nominated five trustees in office, from time to time to nominate fresh trustees whenever there is any vacancy in these five offices of trustees. Such persons can be trustees but cannot be called 'hereditary trustees'. They will have to be described as 'non-hereditary trustees'. What their rights are will necessarily have to be governed by the provisions of the statute. We need not go into the question as to their rights. Suffice to say that they are not 'hereditary trustees'.

Other submissions on the ground of usage made by the appellant's counsel cannot be permitted inasmuch as no such question was raised or pleaded in the pleadings before the Department or in the suit. As the said question was raised for the first time in the appeal, the said contention is not permitted.

For the reasons stated above, the appeal is dismissed, subject to the above observations and directions. There shall be no order as to costs.