

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Leave to Appeal in terms of Article 154P of the Constitution in the exercise of its jurisdiction granted by Section 5 A of the High Court of the Provinces (Special Provisions) Act No. 1990 as amended by Act No.54 of 2006.

1. Subramaniam Jegatheeswaran and wife
2. Jegatheeswari both of Sellapillaiyar Kovilady, Polikandy.

1st and 2nd Defendants-Appellants-Petitioners.

Vs

S.C. Appeal No. 8/2013
Application No. 120/12

1. Vaithilingam Rameswara Iyer and Wife
2. Krishnavimarosa both of Manthigai Amman Kovilady, Puloly.

HCCA/JAF No. 58/09
DC Pt. Pedro Case No. 17869/L

Plaintiffs-Respondents-Respondents

3. Vaithilanga Kurukkal Sundareswara Kurukkal Manthigai Amman Kovilady, Puloly

3rd Defendant –Respondent-Respondents

BEFORE	:	K. SRIPAVAN, C.J., S. E. WANASUNDERA, P.C., J., PRIYANTHA JAYAWARDENA, P.C. J.
COUNSEL	:	Ms. J. Arulananthan for the Defendants-Appellants-Appellants. Mano Devasagayam with M. Sathyendran for the Plaintiffs- Respondents-Respondents
ARGUED ON	:	08.08.2016
DECIDED ON	:	24.01.2017

K. SRIPAVAN, C.J.

The Plaintiffs-Respondents-Respondents (hereinafter referred to as the "Plaintiffs") instituted this action against the First and Second Defendants-Appellants-Petitioners (hereinafter referred to as the "First and Second Defendants") and the Third Defendant-Respondent-Respondent (hereinafter referred to as the "Third Defendant") seeking, inter alia, a declaration that the Plaintiffs are entitled to the property morefully described in the Schedule to the Plaint dated 5th January 2001 (hereinafter referred to as the "Trust property") and the right of performing the Poojas of "Manthikai Amman Kovil".

The legal basis upon which the Plaintiffs claim that they are entitled to the Trust property and the right to perform Poojas of "Manthikai Amman Kovil" is by virtue of the Deed of Trust No. 8335 attested by R. Sathananthan, Notary Public dated 29th September 1995 by which rights were transferred to the Second Plaintiff by her father Sivasithampara Kurukkal. The action of the Plaintiffs was heard **ex-parte** and a judgment was entered in favour of the Plaintiffs. The First, Second and Third Defendants sought to vacate the ex-parte judgment under Section 86(2) of the Civil Procedure Code and the learned District Judge after an inquiry permitted the Defendants to file their answer.

The Defendants fled their answer dated 23rd July 2001 and took up the position that the Trust property referred to in the Schedule to the Plaint and the right to perform Poojas have already been transferred to the Second Defendant by her father on 15th September 1995 by virtue of a Deed of Appointment of Trustee No. 556 attested by Saba Raveendran, Notary Public.

The Parties relied on the Principal Trust Deed No. 6815 dated 21st December 1941 attested by V. Sendthirajasekeram, Notary Public, by virtue of which Sivasithampara Kurukkal, the father of the Second Plaintiff and the Second Defendant became the rightful owner of the Trust property and the right to perform Poojas at the "Mathikai Amman Kovil."

The District Court, by its judgment dated 22nd February 2005 held that Deed No. 8335 dated 29th September 1995 was a valid Deed in relation to the Trust property and the Pooja rights of the "Manthikai Amman Temple". The Defendants preferred an appeal to the Provincial High Court of Civil Appeal of the Northern Province holden in Jaffna against the Judgment of the District Court. The Provincial High Court by its judgment dated 24th February 2012 dismissed the appeal. Hence,

the Defendants preferred an Appeal to this Court. This Court on 23rd January 2013, having heard the parties granted leave to appeal on the following question only :-

“Considering the nature of the action was it mandatory on the part of the original Plaintiffs (present Respondents) to resort to the provisions of Section 112(1)(i) of the Trusts Ordinance?”

Section 112(1) of the Trusts Ordinance reads thus:-

“In any of the following cases namely:-

- (i) Where it is uncertain in whom title to any Trust property is vested; or*
- (ii) Where a Trustee or any other person in whom the title to Trust property is vested has been required in writing to transfer the property by or on behalf of a person entitled to require such transfer, and has willfully referred or neglected to transfer the property for twenty right days after the date of requirement,*

the Court may make an order (in this Ordinance called a “vesting order”) vesting the property in any such person in any such manner or to any such extent as the Court may direct”.

Learned Counsel for the First and Second Defendants’ argued that the Civil Appellate High Court holden in Jaffna erred in holding that the Plaintiffs were entitled to vindicate their rights relating to the temple property by way of the “rei vindicatio” action without resorting to Section 112(1)(i) of the Trusts Ordinance relying on the case of *Tambiah Vs. Kasipillai* 42 N.L.R. 558. Counsel submitted that the said case is not an authority for the above position and only held that a party was “entitled to bring an action **rei vindicatio** in respect of the Trust property without having resort to Section 102 of the Trusts Ordinance. Counsel relied on the Judgment of *Karthigesu Amblavanar et al Vs. Subramaniam Kathiravelu et al* 27 N.L.R. 15 at 22, where the Court noted that “the appropriate remedy for the settlement of the affairs of the temple would be a vesting order under Section 112 of the Trusts Ordinance.”

In the case of *Rajammal vs. Balasubramaniyam* 61 N.L.R. 343, the Court noted that a vesting order would be granted in respect of the entire Trust property and not to a person who asserts a claim in respect of a part of it. This judgment referred to the cases of *Tambiah Vs. Kasipillai* 42 N.L.R. 558 and *Ambalavanar Vs. Somasundera Kurukkal* 48 N.L.R. 61.

In *Tambiah Vs. Kasipillai* 42 N.L.R. 558, the Plaintiff claiming to be the lawful hereditary trustee and manager of a Hindu Temple and its temporalities asked for a declaration that he is the lawful trustee and manager thereof on the ground it was uncertain in whom the legal title to the various properties comprising the temporalities vested. Kauneman J. at 561 observed as follows:-

“I hold that a claim to a vesting order may be asserted by an action, and that the present action is in order, so far it relates to a vesting order.”

The Court in the case of *Ambalavanar Vs. Somasundera Kurukkal* 48 N.L.R. 61 discussed the power to make vesting orders. Canekaratne, J. in the course of the Judgment at page 64 noted as follows:-

“The Court is also given power to make orders vesting Trust property by Section 102 Sub Section I(b) and 112 Sub Section (1). In the former case, it can make a decree vesting any properties in the trustees. In the latter case, an order vesting the property in such person as the Court may direct a vesting order. The former Section is of limited application; the action in which this relief is sought must be one instituted by five or more persons who are interested in a religious trust and have complied with the conditions of sub section 3. Section 162 is a part of the Chapter headed “Miscellaneous” . It is a general section and its application is not confined to any particular classes of persons. This Section makes provision for two cases. Any person who can prove the essentials required by Part 1 or Part 2 is entitled to come to District Court and request the Court to make a “vesting order”. (emphasis added).

The prayer of the Plaint in this application involves a dispute as to the persons on whom the Trust property vested. The reliefs sought by the Plaintiffs are as follows:-

- (a) For a judgment that the Plaintiffs are entitled to the property described in the Schedule to the Plaint **AND** to the right of performing Poojas of “Manthikai Amman Kovil” situated in that property by virtue of Deed No. 8335 attested by R. Sathananthan, Notary Public on 29th September 1995.
- (b) For a declaration that Deed No. 556 attested by Saba Ravendran, Notary Public on 15th September 1995 in favour of First and the Second Defendants, is null and void
- (c) For an Order that the Third Defendant be directed to hand over the Keys of the “Manthikai Amman Kovil” to the Plaintiffs to perform the Poojas with effect from 1st November 2001.

The Civil Appellate High Court of the Northern Province holden in Jaffna by its judgment dated 24th February 2012 re-iterated that the Plaintiffs instituted this action in the District Court against the

defendants praying for judgment, inter alia, that the Plaintiffs under Deed bearing No. 8335 are entitled to the **land (Trust property)** and to do the Poojas for the “Manthikai Amman Kovil”. (Emphasis added).

Thus, the Plaintiffs in an uncertain situation as to the title to the property when seeking a declaration that they be ordered entitled to the Trust property and to the right to perform Poojas, must in the first instance pray for a vesting order in terms of Section 112 of the Trusts Ordinance. Though the Plaintiffs in their written submissions state that they are asking for a declaration in terms of Deed N. 8335 dated 29th September 1995 only for the right to perform Poojas at the “Manithikai Amman Kovil” as trustees the prayer to the plaint filed in the District Court clearly and unequivocally show that they vindicate their rights to the “Trust property” as Trustees. When the Plaintiffs claiming as Trustees institute an action to safeguard or assert rights to the Trust property and the question at issue is whether the title to the Trust property is vested in the Plaintiffs or in the Defendants, the Plaintiffs are not entitled to maintain the action without first obtaining a vesting order under Section 112 of the Trusts Ordinance. (Vide *Thamotherampillai Vs. Ramalingam* 34 N.L.R. 359).

I therefore answer the question of law on which leave was granted in the affirmative. It is a well settled principle of law that the rights of parties must be determined as at the date of the action. As at the date of the action, the Plaintiffs have failed to obtain a vesting order under Section 112 of the Trusts Ordinance. For these reasons, I set aside the judgments of the District Court and the Civil Appellate High Court and direct that the Plaintiffs action be dismissed in all the circumstances without costs.

CHIEF JUSTICE.

E. WANASUNDERA, P.C., J.,

I agree.

JUDGE OF THE SUPREME COURT.

PRIYANTHA JAYAWARDENE, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT.

