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GOVERNMENT AGENT, NORTHERN PROVINCE,  
v. PARARAJASINGHAM.

D. C., Jaffna, 2,467.

*Hindu temple—Acquisition of glebe land for public purpose—Price brought into Court by Government Agent in land acquisition case—Claims to trusteeship of temple—Duty of Court to see that price is not expended for mere temporary purposes.*

Where money was brought into Court as the value of a land which belonged to a Hindu temple and had been acquired by the Government under the Land Acquisition Ordinance, and several parties claimed the proceeds, each alleging himself to be a trustee of the temple,—

*Held*, that the question of trusteeship of the temple should be settled in the very case in which the money was brought into Court, and that if paid out, the Court should take care that the money, representing the value of glebe land, was not expended for mere temporary purposes, but in some way that will permanently benefit the charity.

IN this case the issue was, which of the defendants were entitled to draw the money brought into Court by the plaintiff as the value of the land acquired by the Government under the Land Acquisition Ordinance.

The District Judge ordered that the money should remain in Court till the dispute between the defendants regarding the trusteeship of the temple, which each of them professed to hold, and by virtue of which each claimed the money, should be settled in a separate case. He made this order relying upon a judgment of the Supreme Court delivered in case No. 2,096 of the District Court of Jaffna.

The defendants in that case, who were defendants in this case also, having disputed among themselves as to who were entitled to the management of this very temple, the District Judge found that the first defendant was the *de facto* manager, and ordered the money brought into Court by the Government Agent as the value of the land acquired in that case to be paid to him. But Bonser, C.J., reversed that order as follows: "In my opinion the fund in Court should not be so paid out. It should be paid out to a person in the position of a trustee of the temple who can safely be trusted to expend it, not for mere temporary purposes, but in some way that will permanently benefit the charity. The order will be that the money remain in Court until application be made by some person legally entitled to receive it." And Lawrie, J., concurring with the Chief Justice, said: "We have not entered into the question whether the first defendant is manager of the temple, but assuming he is, he is not entitled to draw the money and to spend it as he chooses. The money is the price of glebe land. The Court

below must keep it in its hand until some one interested satisfies the Court how the money can best be spent, either by buying a bit of land, or by repairing the edifice, or by erecting a new building."

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The District Judge, finding that no trustee had been appointed, and that the money brought into Court in that case still remained there, held as follows in the present case:

"In the face of this judgment of the Supreme Court, it would be mere waste of time to hear evidence as regards the management of the temple. I can only repeat the order made by the Supreme Court in case No. 2,096."

The first defendant appealed against this order.

*Sampayo*, appearing for appellant, cited *Changarapillai v. Chelliah* (5 N. L. K. 270), and argued that the first defendant was entitled to lead evidence in the present case to prove his allegation that he was trustee and manager, and as such entitled to draw the money in deposit.

*Rāmanāthan*, S.-G., for the respondents.—As Bonser, C.J., had ordered in case No. 2,096 that "the money should remain in Court until application be made by some person legally entitled to it," it was the duty of the first defendant to have proceeded summarily under sections 595 and 582 of the Civil Procedure Code, by "applying" to the District Court to be appointed a trustee, and that in the face of such an order of the Supreme Court in that case, no other order could be made in the present case.

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A portion of land was acquired by the Government Agent of Jaffna for the purposes of the Jaffna Railway. A number of claimants came forward, and the Government Agent assessed the value of the land to be taken at Rs. 41.25. The claimants agreed that that was an offer of compensation which might be accepted. However, it appearing that the claimants put forward claims adverse to each other, the Government Agent referred the matter to the District Court. The first claimant, Tambaia Pararajasingham, averred that he was the sole manager and trustee of the temple Chandirasekara Vairava-natha Sivankovil, to which the land belonged, and as such he claimed that the money should be paid into his hands. He asserted that he had become manager and trustee by inheritance in 1899, and that in that capacity he managed the temple and all the property belonging to it. He also asserted that his father, the late manager, had left another son named Mailvakanam, and that he himself and that son were the only heirs of his father. Mailvakanam was at that time a minor, and

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the first claimant assumed or usurped the management of the temple and its property. The other claimants, as I understand, claim also as heirs.

In dealing with the case the District Judge heard no evidence, but ordered that the money should remain in Court until a duly appointed trustee of the temple applied for it, the parties to bear their own costs. He made this order on the authority of a decision of the Supreme Court dated 5th December, 1900, in D. C., Jaffna, 2,096. In that case the first claimant was respondent, and the other parties were the other parties in this case. The judgment was on a similar matter, and the first claimant claimed as manager of the temple to draw out a certain sum of money. His claim was resisted by the other claimants. The District Judge in that case held that the first claimant was the manager of the temple and apparently gave him leave to draw out the money, but on appeal the decision was not approved. In this Court Mr. Justice Lawrie was at pains to explain that the Court did not adjudicate upon the question whether the first claimant was the manager of the temple, and whether he was recognized as the legal custodian of its property. He assumed that he was so, but held that he was not entitled to draw the money, I presume, for the reasons given by Chief Justice Bonser. The Chief Justice says: "In my opinion the fund in Court should not be so paid out. It should be paid out to a person in the position of a trustee of the temple who can safely be trusted to expend it, not for mere temporary purposes, but in some way which will permanently benefit the charity." From these words I gather that the Chief Justice, whatever he may have thought about the managership of the temple, did not think that the first claimant had made out a case such as would entitle him to represent himself as trustee, or as a person acting as trustee of the temple. Our attention was drawn to another decision (*Changurapillai v. Chelliah*, 5 N. L. R. 270), in which Chief Justice Bonser and my brother Wendt dealt with the managership of a Hindu temple, and I refer to it for the purpose of showing that the Chief Justice did not mean by the judgment in the case above cited that the trustee he spoke of must necessarily be a person regularly appointed by deed or in terms of the Civil Procedure Code. The question was whether the manager of a temple could maintain a possessory suit on behalf of a Hindu temple. Towards the end of his judgment the Chief Justice speaks of the manager of the temple as having the control of the fabric of the temple and the property belonging to it, and as having such possession as would entitle him to maintain an

action, even though making no pretence of claiming the beneficial interest of the temple and its property, but as only a trustee for the congregation who worshipped there.

I think that the District Judge has been hasty, and has concluded too readily that the order in D. C., Jaffna, 2,096, covered the present case. The Chief Justice in the judgment in question says that application for payment must be made by a person "in the position of a trustee" of a temple. I am therefore unable to see how the District Judge could in this case come to a proper decision without having before him some facts establishing or not establishing the pretensions of the claimants. The first claimant avers that he is the sole manager and trustee, and the Judge before deciding the case should, I think, have heard evidence and considered whether the first claimant or any of the other claimants could make out the rights to which they pretend, and, after having heard the evidence, given his decision as to which of them had made out their rights. If none of them made out a right, he should have made some such order as he has made.

I think the case should go back to the District Court in order that this may be done. The costs will abide the result.

WENDT, J.—

I am of the same opinion. There is no magic in the term "trustee." I believe the word "manager" is used in connection with the administration of the temporal affairs of Hindu temples as describing an officer who, in the eye of the law, would be a trustee for the temple. I do not think the decision in the case D. C., Jaffna, 2,096, which has been cited to us, was intended to decide that a manager was not a trustee of the description mentioned by the Chief Justice and Mr. Justice Lawrie in that case. The parties there appear to have fought out the question of who was manager, and to have devoted very little attention to the question of what the rights of a manager were, and this Court was of opinion that what was disclosed in the record did not prove a manager to be such a trustee as would be entitled to receive the price of the temple land, and to administer it on behalf of the temple. The amount involved in the present litigation is small; but I understand that the other property of the temple is extensive and valuable. I know that the office of manager of a temple is one which is much desired and held in honour by the members of the community to which the temple belongs. I think, therefore, we ought to accede to what appears to be the desire of the parties in this litigation, to have the right to the managership or trusteeship finally settled by a decree of Court.

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