

1906.

[Full Bench.]

December 11.

Present: Sir Joseph T. Hutchinson, Chief Justice, Mr. Justice Wendt, and Mr. Justice Middleton.

SARAVANAMUTTU *v.* SINNAPPA AIYAR *et al.*

D. C., Jaffna, 4,236.

*Manager of Hindu temple—Right to maintain action to be declared such—
Injunction—Cancellation of appointment.*

The duly appointed manager of a Hindu temple is entitled in law to maintain an action for a declaration of his rights as such manager, and for an injunction restraining a third party from interfering in the management of such temple.

THE plaintiff alleged that he was the sole manager, under deed No. 99 dated 28th April, 1877, of the Hindu temple called Kirupaharasivasupiramaniaswamy Kovil situate at Kokkuvil; that he appointed the first and second defendants the officiating priests of the temple; that they refused to account to him for the articles entrusted to them, repudiating his right to manage the temple, and claiming to hold office under the third defendant, who, they alleged, was the manager of the temple. The plaintiff prayed that he may be declared the manager of the said temple; that the first and second defendants be ejected therefrom; that the third defendant be restrained by injunction from interfering with the plaintiff's management of the temple; and that the defendants be ordered to deliver to him the articles mentioned in the schedule to the plaint.

The defendants denied that the plaintiff was ever the manager of the temple, and alleged that the third defendant was the manager, and that they held office under him.

Among the issues framed at the trial were:—

- (1) Is the plaintiff or the third defendant the manager of the temple?
- (2) In view of the deed of 1877, has not the plaintiff to seek his remedy at the hands of the trustees?

The District Judge held in favour of the plaintiff on both the issues.

The defendants appealed.

Walter Pereira, K.C., S.-G. (with him *Hon. Mr. Kanagasabai* and *Balusingham*), appeared for the appellants.

H. A. Jayewardene, for the plaintiff, respondent.

Cur. adv. vult.

11th December, 1906. HUTCHINSON C.J.—

1906.

December 11.

The plaintiff claims to be the sole manager of a temple at Kokkuvil East by virtue of a deed dated 28th April, 1877, and to be entitled as such manager to the possession of all the property of the temple. He says that in 1877 he appointed the first and second defendants the officiating priests of the temple and entrusted them with certain articles for use in the temple ceremonies, and that they now refuse to deliver to him or account to him for those articles, and repudiate his right to manage the temple, and claim to hold office under the third defendant as manager. He therefore asks that he may be declared manager of the temple and may be put in possession of it, and that the first and second defendants may be ejected from it, and the third defendant restrained from interfering with its management, and that the defendants may be ordered to deliver to him such of the articles above mentioned as are in their possession.

The defendants replied that, according to the terms of the deed on which the plaintiff relied, he ought to conform to customs mentioned in the deed; they denied that he is or ever was the manager, and denied his right to call on them to account for the above-mentioned articles, and they stated that the third defendant is the manager of the temple.

The only issues necessary to be now considered are: (1) "Is the plaintiff or the third defendant the manager of the temple?"; and (2) "In view of the deed of 1877, has not the plaintiff to seek his remedy at the hands of the trustees?"

At the trial the defendants produced evidence to show that the plaintiff had never in fact performed the duties of manager, and also that his appointment had been cancelled by a notice which appeared in a local newspaper in 1892, and which purports to be signed by some of the signatories to the deed of 1877. There was no proof that that notice was really signed by those persons, or that they had any authority to sign it, or that it was even communicated to the plaintiff. The District Judge held that the plaintiff was duly appointed manager by the deed of 1877, and that the newspaper notice of 1892 had not the effect of cancelling his appointment. That finding, I think, was right. With regard to the fifth issue, by the deed of 1877 a "committee of five" and a number of other signatories appointed the plaintiff to conduct the affairs of the temple property and regularly to collect subscriptions and spend them for building works, *upayam*, &c. He should annually submit accounts of income and expenditure to the said committee of five persons; he was to recover sums due for temple ceremonies and to

1906. notify and attend meetings; and it was agreed that, if any fault
 December 11. should be found in the ceremonies, the conduct thereof, or the
 HUTCHINSON articles, or the committee of five, or the manager's accounts, or
 C.J. with any of the signatories, " and if any one makes complaint to the
 committee in writing, the complaint will be inquired into and the
 person found fault with should be punished. " If there is any point
 which could not be properly decided by the said committee, he shall
 abide by " the decision of four leading men of other temples and by
 the decision of one who is conversant with the Sivite rules. "

The present dispute does not seem to be one which is contemplated by this agreement, and if plaintiff is still the manager under this deed, as I have held that he is, he is not precluded by the terms of the deed from invoking the aid of the Courts of law to settle the dispute. He is trying to enforce his rights as manager against persons who deny his rights. His powers as manager are not clearly or fully defined in the deed, but they must include the right to the custody of the temple property. There is no evidence that he has ever been removed, or has voluntarily withdrawn from his office; possibly he may be removable; but it is not shown that he has been removed. He has on three previous occasions, viz., in 1881, 1882, and 1898, enforced his rights as manager in a Court of law; and he was returned as the manager of this temple in the Official Register of Temples in 1892. In my opinion he is entitled to a declaration that he is the manager, and to an injunction to restrain the defendant from interfering with his management, and to an order for delivery to him of the articles specified in the plaint. The decree appealed from should be amended by omitting the order to eject the first and second defendants. In other respects it should be affirmed, and the appellants should pay the costs of the appeal.

WENDT J.—

I agree, and do not think it necessary to add anything.

MIDDLETON J.—

This was an action brought by the plaintiff, claiming to be sole manager of Kirupaharasivasupiramaniaswamy Kovil or temple by virtue of a deed No. 99 dated 28th April, 1877, to be declared manager of the temple, to obtain possession, to eject the first and second defendants, to restrain the third defendant from interference in the management, for the delivery up to the plaintiff of certain movables specified in a schedule to the plaint, and for damages and costs.

The first and second defendants are the priests of the temple, and the third defendant is a maternal grandson of one Sammugam Murugesar, who was formerly manager of the temple, and who signed the deed No. 99 appointing the plaintiff manager.

1906.
December 11.
MIDDLETON
J.

The defendants denied that the plaintiff was duly appointed manager, but they did not plead in their joint answer that such appointment had been cancelled by the notice in the "Hindu Organ," which two of the defendants' witnesses who had signed deed No. 99 admitted that they had with twenty-two others published with that view.

The object of referring this case to the Full Court was to obtain an authoritative decision as to the mode of appointment of a manager of a Hindu temple.

The facts of the case as proved, however, do not enable this Court to lay down in what way such a manager should be appointed, and I agree that we must assume from the existence of deed No. 99 and the proceedings in case No. 9,210 that the plaintiff was considered to be duly appointed, and was appointed by those who are now contending that he was not.

The third defendant, it is true, was not a party to deed No. 99, but he admits that his grandfather was, and that this same grandfather, who was the first signatory of deed No. 99 and former manager, submitted to judgment conceding the plaintiff's appointment to be a lawful one.

The fact that a notice purporting to cancel the appointment has been published in the "Hindu Organ" by the survivors of those who made the original appointment, two of whom are defendants' witnesses, shows that it was deemed by them to be a lawful appointment.

There has been no evidence led by the defendants to show that such appointment was not duly made in accordance with the usage and practice observed in such matters, and I would therefore hold, not on the ground of estoppel, but on the evidence led, that the plaintiff was lawfully appointed manager under deed No. 99.

There is no evidence that the publication of the notice purporting to cancel that appointment ever came to the plaintiff's knowledge, and I fail to see that the mere publication in a newspaper is sufficient notice to determine any arrangement made solemnly in the temple in the form of a deed notarially attested.

I presume that the plaintiff could hardly question that those who have the authority to appoint have also the power to remove, and that his removal might be brought about if carried out in accordance with the usage and practice customary in such matters.

1906. As regards the fifth issue, I agree that the terms of his appoint-
December 11. ment under the deed do not debar the plaintiff from resort to the
MIDDLETON Courts to enforce his rights, where those rights must necessarily
J. include a claim to the custody or possession of temporal property
involve in the vindication of his religious status.

It is not necessary to consider the other issues, and I agree that
the appeal should be dismissed with costs, and the judgment of the
learned District Judge affirmed with the amendments proposed by
my Lord.

Judgment affirmed: decree varied.

