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Present: Schneider A.C.J. and Lyall Grant J.

THAMOTHRAM PILLAI *v.* ARUMOGAM

27—D. C. Jaffna, 19,852.

Injunction—Action by one trustee against another—Hindu Temporalities—Courts Ordinance, s. 87 (1).

In an action brought by the co-trustee of a Hindu temple against another for the removal of an obstruction caused by a building to the free passage of religious worshippers—

Held, that the plaintiff was entitled to ask for an order for the removal of the building.

A PPEAL from a judgment of the District Judge of Jaffna.
The facts appear from the judgment.

Hayley (with *Rajaratnam*), for defendant, appellant.

H. V. Perera, for plaintiff, respondent.

December 20, 1926. SCHNEIDER A.C.J.—

The plaintiff, a trustee and manager of a Hindu temple jointly with the defendant, objects to the defendant erecting two rooms in the temple courtyard on the ground that they will cause obstruction to the free passage of the worshippers at the temple

and also inconvenience to them during processions by straitening the space available. The defendant denied that any obstruction was caused in fact, or was likely to be caused, and pleaded that the rooms were intended for a residence and store for the " officiating priest " of the temple. It was stated in Court that the foundations had already been laid elsewhere in the courtyard for a residence for the priest, and the parties agreed that the Judge should " inspect and decide which building is suitable for that purpose." This was in April, 1925, before Mr. Woodhouse. In October, 1925, Mr. Kantawala, District Judge, inspected the place in the presence of the advocates, proctors, and others, and noted on the record that he would express " his impressions upon the inspection along with his judgment." But instead of deciding the case upon the conclusions he arrived at as the result of his inspection which he was entitled to do, and could have done as those conclusions stand disclosed in his judgment, he entered upon a long trial which has made no contribution of any value to the decision of the fact about which alone the parties were in controversy. This District Judge, we were informed, is a Hindu gentleman and familiar with the ceremonials and festivals of the Hindu religion. Whether that statement be correct or not, he gives unmistakable indications of knowledge and familiarity with a particular religious procession in regard to the conducting of which the evidence was principally directed to prove the causing of obstruction. Apart from the fact that by the agreement of the parties the Judge was constituted arbitrator of the matters in dispute and his decision therefore was final, as there has been a trial and evidence called, I would say that I see no reason whatever to differ from the learned Judge's finding that the building complained about " does cause obstruction and inconvenience to the worshippers who attend the temple during the festivals and on other occasions." This was issue 2. Upon that finding plaintiff was entitled to judgment. The District Judge gave judgment for him. But there were three other issues. Issue 1 raised the question whether it was competent for the defendant to put up the building without the consent of the plaintiff, who was the manager jointly with him. One of the other two issues raised the question whether the plaintiff was acting in the interests of the temple in bringing the action, or for the benefit of his son-in-law. The other issue was whether the defendant was acting in the interests of his brother-in-law and with a view to harassing the plaintiff's son-in-law, in putting up the building. It should be pointed out here that these issues did not raise—nor was there any issue raising—the question whether the action could be maintained or not. The District Judge held that both the plaintiff and the defendant had acted, not so much in the interests of

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the temple, but, as alleged in the issues, in the interests of their respective relations. In other words, that both parties had acted without *bona fides*. On the first issue he held that the defendant had no right to put up the building without the plaintiff's consent. In the decree he granted an injunction restraining the defendant from continuing the building of the rooms, provided the plaintiff deposited within a fixed period Rs. 200 to the credit of the temple for the purpose of erecting another building on a suitable site in lieu of the present one. He ordered the building to be demolished, and declared that if that sum of money were not deposited that the defendant was at liberty to continue the erection of the building in such a manner as would cause the least inconvenience to the "temple processions." Finally he ordered each party to bear his own costs. The reasons which actuated him to make these orders as to the sum of money to be paid and the costs would appear to be that he desired to punish both the plaintiff and the defendant for their want of *bona fides*. He finds that the *kurukal* who gave evidence is the person whom the defendant described as the "officiating priest" for whose use the rooms were intended. He finds that this *kurukal* had not only not requested the defendant to put up a residence for him at this particular spot, but that the *kurukal* says that he would not live in that building if it were completed because it is quite unsuitable, as it lacks water, a back compound, and privacy. He finds that there already exists a store-room for the temple vessels, and that if more accommodation was required for that purpose, it could be easily obtained at a small cost by constructing a roof over an existing building. The main directions of the decree accordingly would appear to be eminently equitable. It does contain some inconsistencies. Although there is no evidence as to the terms of the trust upon which the parties hold the property, the evidence called at the trial proceeded upon the footing that they held the property for the benefit of the worshippers at the temple. That being so, when the Judge came to the conclusion that the building would cause obstruction and inconvenience to the worshippers, and that there was no real necessity for it, he should not have made the order restraining the continuance of the building depend upon the plaintiff paying a sum of money. I will not interfere with that part of his order which decreed him to pay that sum of money, as the plaintiff has not appealed against it. The decree is vague as to the person who is to "demolish" the building. It also fails to say what would happen if the defendant or any person under obligation to "demolish" it fails to carry out the order.

On appeal, Mr. Hayley attacked the plaintiff's action as being misconceived. He argued that the Court had no jurisdiction to grant an injunction upon the facts relied on by the plaintiff,

inasmuch as the plaintiff's application cannot be sustained under the provisions of section 87 of the Courts Ordinance, under the provisions of which alone a District Court is empowered to grant injunctions. The initial weakness of this objection to the action is that it is taken for the first time on appeal. But as it goes to the root of the matter, I will deal with it. If what the plaintiff demands in this action be brought within section 87 (1) of the Courts Ordinance, the argument fails, and there can be no other objection to the success of the action upon the findings of fact which the District Judge had arrived at, and which, as I have already stated, I accept. The material portion of section 87 is the following:—

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“ Where it appears from the plaint that the plaintiff demands and is entitled to a judgment against the defendant restraining the commission or continuance of an act, the commission or continuance of which would produce injury to the plaintiff, it shall be lawful for such Court to grant an injunction restraining any such defendant from committing or continuing any such act. ”

Can what the plaintiff complains as being done by the defendant be said to produce injury to the plaintiff? “ Injury ” would mean the infraction of a legal right. It is found as a fact that the existence of the building which is being erected would cause obstruction to a religious procession in which the worshippers take part. Its existence would, therefore, be an infraction of their legal right to have this procession conducted and take part in it. The plaintiff, as manager or as trustee, is bound to see that no such obstruction is caused. If he were the sole manager or trustee, he would have undoubtedly the right to maintain this action against another person who is not a trustee or manager to prevent the erection of the building complained of. Does it make any difference to that right that the defendant is a co-trustee and manager? Mr. Hayley argued it does. I think it does not. It is the duty of the defendant equally with the plaintiff to administer the property of which they are co-trustees and managers in such a manner as to preserve the amenities of the temple. The defendant is committing an act inconsistent with his duty as a co-trustee, and if the plaintiff stood by and permitted it to be done, the plaintiff himself would also be answerable for the wrongful act of the defendant. I would, accordingly, hold that the continuance of the building would produce injury to the plaintiff as co-trustee and manager with the defendant, and that the plaintiff is therefore entitled to judgment against the defendant restraining the continuance of the building.

It was argued by Mr. Hayley that it was contrary to the principles upon which an injunction is granted to direct the building in question to be demolished. It is true that injunctions are not

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granted directing something to be done, but that something should not be done. The plaintiff's present action is not only for an injunction, but also for an order apart from the injunction that the obstruction should be removed. That he is entitled to ask. I would affirm so much of the decree as orders that the defendant be restrained from building the two rooms on the land, and that each of the parties should bear his own costs of the action. As to the rest of the decree, my order is as follows: The defendant is ordered to pull down the said building in such a manner as to cause the least damage to the materials used in the building. If he fails to do so within two months of the date from which this record reaches the District Court of Jaffna, the plaintiff is authorized to pull down the said building, and the defendant must pay to the plaintiff the costs incurred by the plaintiff in doing the work.

The plaintiff must deposit in Court a sum of Rs. 200 within one month of the record reaching the lower Court, to the credit of the temple, for the purpose of erecting another building on a suitable site in lieu of the building directed to be pulled down. On failure of the plaintiff to pay the said sum, this order shall be enforced at the instance of the defendant as if he held an order for the payment of that sum into Court for the purpose aforesaid.

The defendant must pay to the plaintiff his costs of this appeal.

LYALL GRANT J.—I agree.
