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CHANGARAPILLA *v.* CHELLIAH.

D. C., Jaffna, 1,966.

Possessory suit— Action by manager of Hindu temple.

BONSER, C.J.—If the manager of a Hindu temple has the control of the fabric of the temple and of the property belonging to it, his possession is such as would entitle him to maintain a possessory suit.

Ahamado Lebbe v, Semberem, 3 Lorensz. 28 disapproved; Mascoreen v. Genys, Ramanathan, 1862, p. 195. and Tissera v. Costa. 8, S. C. C. 193, explained.

THE plaintiff, claiming to be the manager of the Kandaswami Temple at Nallur and its property, complained that the defendant unlawfully kept him out of possession of a land called Pandaranpoddu Valavu from the 15th August, 1899. His action was filed on the 23rd December, 1899. He prayed that, as manager of the said temple, he be declared entitled to possess the said land, and that defendant be ejected therefrom.

The defendant denied plaintiff's right to be manager of the said temple, and pleaded that he was a lessee under one Mr. Kandaiya, the lawful manager of the said temple.

The District Judge found, after hearing all the evidence, that plaintiff possessed the land in dispute, for more than a year and a day before the action was instituted, as manager of the temple, and that defendant ousted him on the 15th August, 1899. He gave judgment for plaintiff.

Plaintiff appealed.

Rámanáthan, S.-G., and *Sampayo* appeared for appellant.

Dornhorst and *H. Jayawardene*, for respondent.

The following authorities were cited in the course of the argument: *Grotius, II., 2, 7; Mascoreen v. Genys, Rámanáthan, 1862, p. 195; Miguel Perera v. Sobana, 6 S. C. C. 61; Ayaturai Aiyar v. Navaratnasingam, 7 S. C. C. 27; Duncan v. Kiria, Rámanáthan, 192; MacCarogher v. Baker, Wendt, 253; Tissera v. Costa, 8 S. C. C. 193; Voet, VI., 1, 29; Ahamado Lebbe v. Semberem, 3 Lorenz, p. 28; Alim Saibo v. Cadersa Lebbe, 9 S. C. C. 4.*

13th February, 1902. BONSER, C.J.—

This is an action brought by a person who is described as the manager of the Hindu temple, complaining that he has been forcibly dispossessed of the property and asking to be restored to

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possession, in a possessory suit. The District Judge gave him the relief he sought, and the dispossessor has appealed to this Court

The only point argued before us was as to the competency of the plaintiff to maintain the action. It was urged that whatever his duties and rights were, and whatever his powers were, he did not claim to be the owner of the property *ut dominus*, and that therefore he could not maintain this action.

Now we think that that is too narrow a view to take of the requirements of a possessory action. The remedy given by such an action is a most beneficial one, and it seems to me that the Court should not seek to narrow its operation, but rather to enlarge it if it can do so consistently with principle. No doubt in an ordinary case the person who seeks to maintain such an action must be a person who claims a beneficial interest in the property. and it was laid down by Voet that persons such as tenants of houses. *coloni*, agents, and bailiffs had not such an interest in the property as entitled them to maintain the action. But even that rule was subject to exceptions in the case of absent owners, whose agents and bailiffs were allowed to maintain an action for the purpose of protecting their masters' property. Otherwise irreparable damage might be done, and the right of restoration to possession be lost owing to the absence of the owner. In the case of property belonging to churches and religious bodies, it is distinctly laid down in *Voet, VI, 1, 29*, that persons whom he calls *œconomi* and other like officers can recover property belonging to churches or religious institutions by an action *rei vindicatio*, and if that is so, it follows *a fortiori* that they can recover it by the lesser remedy of a possessory action.

As far back as 1858 it was decided by this Court that the mohideen or principal manager or trustee of a mosque, who had the management in trust for the mosque, was entitled to maintain an action against those who turned him out of possession. That case is reported in *3 Lorenz, p. 28*. There is indeed a later case, of 1889, where my predecessor and Mr. Justice Dias held that the officiating high priest of a mosque was not entitled to maintain a possessory action, but it seems to me that that case was decided on too narrow a ground. It may have been rightly decided upon the facts, but the Court held the broad proposition that, inasmuch as his possession was not avowedly *ut dominus* (because he claimed that he had possession on behalf of the mosque and the congregation of the mosque). therefore it followed as a matter of course that his action was not maintainable. But that judgment is inconsistent with the judgment to which I have referred. but which was not then cited, and is not supported by the Roman Dutch authorities which

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we have been able to consult. It seems to me that each case must depend upon its facts. The only case which was cited apparently to the Court in that last case was the case of *Tissera v. Costa* reported in *8 S. C. C. 193*, where it was held that a person called the *muppu* of a Roman Catholic church was not entitled to maintain an action. It seems to me that that case was rightly decided on the facts. The *muppu*, who appears to be a kind of beadle, has no control over the fabric of the church, and was only a caretaker entrusted with the custody of certain movables, a very subordinate servant, whose duty it was to keep the church clean, but who had no sort or kind of possession either on behalf of himself or anybody else.

In this present case it seems to me that if the plaintiff, who is called the manager of the temple, has the control of the fabric of the temple and of the property belonging to it, he has such possession as would entitle him to maintain an action, even though he makes no pretence of claiming the beneficial interest of the temple or its property, but is only a trustee for the congregation who worship there. If the parties are unable to agree whether or not the plaintiff does fall within the category I have just referred to, the case must go back for the District Judge to take evidence on the point.

WENDT, J.—

I am of the same opinion, and agree with the Chief Justice in thinking that a remedy like that of a possessory action ought to be beneficially and liberally construed, and not restricted unduly in its operation. The principle of possession *ut dominus* which was laid down in the case of *Tissera v. Costa* has been, I think, too far extended in some of the other cases which have been cited to us, without sufficiently attending to the difference in the capacity of the plaintiffs as disclosed by the facts of the different cases.

In the present case, I think, evidence should be taken as to the exact nature of the interest which the plaintiff has in the temple property. Our judgment in the present case is in accordance with the decision of this Court in *Mascoreen v. Genys* reported in *Rámanáthan, 1862, p. 195*, where the Court referred to certain authorities as establishing that precarious possession on the part of the defendant was enough as against strangers, and that possession *virtute officii*, such as that of the plaintiff in that case, a Roman Catholic priest, came under the category of precarious possession.

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WENDT, J.

It would seem that the word *not* in the third line from the end of the report is a mistake, which just reverses the sense of what the Court intended to say. The concluding part of the judgment, as I have ascertained from an examination of Chief Justice Sir Edward Creasy's draft, should run as follows: "A passage in "*Grotius* showed that precarious possession is not enough as "against the true owner, but it is enough as against strangers. "Another passage cited from *Bort's Tracts* establishes that posses- "sion *virtute officii* is precarious possession. Assuming then that "the defendant is right in his assertions as to the nature of "plaintiff's possession, the plaintiff can maintain this action "against a stranger, which the defendant has proved himself "to be."