1933 *Present :* **Dalton A.C.J.**

NESSAEMMAH *v.* SINNATAMBY.

137—C. R. Batticaloa, 8,873.

Hindu temple—Right of a worshipper—Civil right recognized by Courts of law.

The right of a person to worship at a Hindu temple is a civil right enforceable in a Court of law.

APPEAL from a judgment of the Commissioner of Requests, Batticaloa.

H. V. Perera (with him *Kariapper* and *D. W. Fernando*), for defendant, appellant.

N. E. Weerasooria (with him *E. B. Wikramanayake* and *C. T. Olegasagaram*), for plaintiffs, respondents.

Cur. adv. vult.

September 15, 1933. DALTON A.C.J.—

The only point arising on this appeal is whether the claim set forth in the plaint discloses a breach of a civil right, and gives rise to a cause of action that the Court has jurisdiction to try.

The following facts as found by the learned Commissioner are not disputed in appeal. The temple concerned is a public temple dedicated by the founders to the deity "Pillayar" for the advancement of the Hindu religion and for the benefit of that section of the public who follow that religion. The original founders' intention and purpose was that every such beneficiary should have the absolute right and freedom to have access to any part of the temple premises. The temple has been controlled and managed by two vannakkus or managers who are elected respectively by the Vellala community resident at Koddamunai and the Karawe community resident at Amirthakali and the adjoining villages. Meetings of these two communities were also called from time to time to decide questions relating to and connected with the

management of the temple, the vannakkus acting together in matters relating to such management.

It appears that some trouble arose between some members of the dhoby community at Amirthakali and others, and that a meeting was held by the members of the Karawe community at which the defendant, the vannakku representing the Karawe community, was present. This meeting decided that inasmuch as the dhobies of Amirthakali had refused to perform certain customary ceremonies, and had further declined to wash for the members of the congregation of the temple, those dhobies and their families and those who continued to engage the services of such dhobies be prohibited from entering the inner portion of the temple until they consented to perform such ceremonies and to wash for the congregation. It is admitted that the resolution was not passed at a meeting composed of both Vellala and Karawe communities, and the Vellala vannakku took no part in the proceedings nor was he present at the meeting. I might add here that even if the resolution was passed by both communities it would make no difference to the decision in this case.

The plaintiff and her husband are members of the Karawe community and continued to engage the services of dhobies who were mentioned in the resolution. On August 10, 1931, whilst she was engaged in worshipping at the temple during the night poojah of the 8th day of the annual festival held there, the defendant ordered her to quit the temple premises, and when she refused to go, put her out and prevented her from entering again or from worshipping there. She claims that she has been greatly humiliated and has suffered much pain of body and mind, and suffered in her reputation, and that she has been prevented from exercising her lawful rights. The learned Commissioner found the defendant acted without any justification, and that the resolution under which he purported to act was *ultra vires*, so far as it affected the temple in question, the rights of plaintiff being absolute, subject only to conformity with the rules of the Hindu religion, and the law of the land. The case, however, having been brought mainly to test the right of the plaintiff, to ascertain whether there was a violation of that right, and if so whether that violation would give rise to a cause of action in the lower Court, he awarded her nominal damages and costs of suit.

Although there seems to be no local decision on the point, there are several Indian authorities and the cases cited show in such cases as this that the right claimed by the plaintiff of entry to all parts of the temple is of a civil nature and within the cognizance of the civil Courts (*Venkatachalapati v. Subbarayadu and others* [1]). This decision was followed in *Krishnasami Ayyangar v. Samaram Singrachariar* [2], where Wallis J. in the course of his judgment states that the right of a worshipper to worship at a given temple is recognized by the Indian courts as a civil right, and the courts will enforce by suit a right of worship to which the plaintiff proves himself entitled. *Appaya and another v. Padappa* [3] and other decisions are to the same effect. Mr. Perera has suggested that

[1] *13 Mad. 293.*

[2] *30 Mad. 158.*

[3] *23 Bom. 123.*

the Indian courts have, under the provisions of the Indian Civil Procedure Code, given a wider construction to the term "civil right" than could be given in Ceylon, but he has not satisfied me there is any good ground for that argument, so far as the right claimed in this case is concerned. I think the learned Commissioner was correct in holding he had jurisdiction to try the cause of action set out in the plaint, and the appeal must therefore be dismissed with costs.

Appeal dismissed.