

1924.

*Present: Schneider J. and Jayewardene A.J.*MARKANDAN v. AYER *et al.*

20—D. (C. Jaffna, 16,667)

*Hindu temple—Right of officiating as priest—Alienation of right by priest without consent of manager—Rights of manager—Hereditary rights of officiating priests.*

In case No. 12,525 a consent decree was entered to the effect that the defendants as officiating priests were under the control, guidance, and supervision of the manager of the temple, and that the officiating priests should not be dismissed without the intervention of a Court of law. The plaintiff, as manager, brought this action for the dismissal of the officiating priests (defendants), and alleged, as one of the grounds for dismissal, that the first defendant had donated his right of officiating as priest to his nephew. The first defendant claimed a right to do so. The District Judge held that the hereditary right which the defendants claimed, if it existed at all, did not exist any more in view of the settlement in No. 12,525.

*Held.* on appeal, affirming the judgment of the District Judge that the first defendant had no right to transfer the right of officiating in the temple to another person.

**A** PPEAL from a judgment of the District Judge of Jaffna (G. W. Woodhouse, Esq.):—

The plaintiff, respondent, who was duly elected manager of the Sivan temple, situated at Changanai in Jaffna, brought this action, praying that the defendants, appellants, be dismissed from their office as officiating priests of the temple on the ground of disobedience, insubordination, and malpractices. He alleged further "The first defendant has ceased to officiate as a regular priest in the temple, and he has donated his right of officiating in the temple to his nephew Ramachandra. The first defendant has no right in terms of the decree above referred to, to pass on his rights to has no right in terms of the decree above referred to, to pass on his rights to Ramachandra, who is a young man not fully qualified to perform the duties of an officiating priest of a Sivan temple."

The decree referred to in this paragraph was entered of consent in an action between a former manager, Regunatha, and the defendants, and was as follows:—

It is ordered and decreed of consent that the plaintiff be and he is hereby declared to be the manager of the whole of the temple premises in the land situated at Changanai . . . . .

It is further ordered that the defendants be and they are hereby declared the officiating priests thereof, and that such priests be not dismissed without the intervention of a Court of law:

It is further ordered that the manager do, within one month from the date of the decree, pay to the defendants Rs. 600 in full satisfaction of all their claims to lot 2 and for compensation . . . . .

It is further ordered that the priests be under the control, guidance, and supervision of the manager according to the custom prevailing in Hindu temples in Jaffna:

The decree then went on to recite the duties of the manager and priests as set out in the following memorandum submitted by the Secretary:—

- (1) The manager shall be in charge of the buildings and property, movable as well as immovable, belonging to the temple.
- (2) The manager shall keep all the buildings in proper repair.
- (3) All the income of the temple shall be left in the hands of the manager, except as provided below.
- (4) The priest shall give a receipt to the manager for all articles in the temple and supplied by the manager for use inside the temple and the keys of the Holy of Holies and the apartments to which men of other castes, except Brahmins, can have no access shall be in the hands of the priest.
- (5) The priest shall perform poojas three times a day for the present, and the manager shall find the wherewithal to carry on the poojas. The manager shall, however, have the discretion to increase the number of poojas when he can find the necessary funds.
- (6) For the present the manager shall furnish the following for the purpose of carrying on the poojas:—(a) 5 measures of rice per diem; (b) 10 measures of coconut oil per mensem; (c) 6 measures of gingelly oil per mensem; (d) the necessary fruits, coconuts, camphor, incense, betel, arecanuts, sandalwood, and other sundries required for the poojas, or Rs. 10 a month.
- (7) The emoluments of the priest are, according to the custom of the country, the appropriation of all moneys given by the congregation for the performance of Arichchanai and a portion of the Neivathiam or meal-offering, but the manager is not willing to permit such wholesale appropriation, as there are no endowments to the temple except a piece of land, and as the income of the temple will be barely sufficient to carry on the daily poojas which will cost about Rs. 75 per mensem. As the parties could not arrive at a reasonable settlement in this matter, I would suggest that for the present the priest should forego a sum of Rs. 10 a month out of his emoluments for the benefit of the manager and as contribution for the pooja expenses.

1924.  
*Morkenslan*  
*v. Ayer*

(8) The priest shall be under the control, guidance, and supervision of the manager according to the custom prevailing in Hindu temples in Jaffna.

The defendants admitted that first defendant had transferred his rights to Ramachandra and the second defendant, but maintained that they were hereditary priests of the temple, and that they were entitled to appoint qualified priests as their successors, subject only to the control of the manager according to the custom prevailing in Hindu temples in Jaffna.

The District Judge held as follows:—

"In the result I find that none of the charges are proved against the defendants, except perhaps the one against the first defendant of ceasing to officiate without permission. The plaintiff should have called upon him to resign, and, if he resigned, accepted the resignation. Then it was open to the manager to call a meeting and appoint another priest in his place."

"I hold that it is not competent for first defendant to appoint any one without the consent and approval of the manager. The hereditary right which the defendants claim, if it existed at all, does not exist any more. The right of appointment and dismissal are in the manager, who, of course, can only dismiss with the approval of the Court."

Decree was entered dismissing the action as against the second defendant, with costs, and giving judgment for the plaintiff as against the first defendant.

The defendant appealed.

*H. J. C. Pereira, K.C.* (with him *J. Joseph*), for appellants.

*Balasingham*, for respondent

July 28, 1924. SCHNEIDER J.—

This is an appeal by the two defendants, who are the officiating priests of the Sivan temple at Changanai, for whose dismissal from office the plaintiff sued on the ground of certain acts of disobedience and neglect which are set out in the plaint. One of the acts alleged against the first defendant is that he had ceased to officiate as a regular priest in the temple, and has donated his right of officiating to his nephew Ramachandra. In the plaint the plaintiff also alleged that he was seeking the intervention of the Court for the purpose mentioned in his plaint in pursuance of the decree in action No. 12,525 of the District Court of Jaffna. It is proved that in that action a consent decree was entered to the effect that the defendants, as officiating priests, are under the control, guidance, and supervision of the manager, and that the officiating priests should not be dismissed without the intervention of a Court of law. The defendants denied the acts alleged against them. They denied that they had rendered themselves disqualified from further continuing in the office of officiating priests. They admitted that the first defendant had donated his right of officiating as priest in the temple as alleged in

the plaint, and stated that the first defendant had a right to do so. It would appear from the proceedings that this right was claimed on the ground that succession to the priesthood was hereditary. The learned Judge showing a full appreciation of the position between the parties in his judgment holds that the defendants were not guilty of any of the acts alleged in the plaint, except the admitted fact of the first defendant appointing his nephew to officiate. It was urged by counsel for the appellant that the first defendant having been convicted of being in possession of ganja had been compelled to undergo a term of imprisonment owing to his failure to pay the fine imposed, and that this imprisonment disqualified him from officiating as a priest, and that he had, therefore, appointed his nephew to act as officiating priest. He contended that the action as against the first defendant was superfluous, as the first defendant had dismissed himself from office before the institution of the action. He urged on us to make some declaration as to the person who was entitled to appoint priests to this temple. I am unable to comply with that request, because that question was not raised or tried. The learned District Judge dismissed the action as against the second defendant, with costs, and directed that decree be entered for the plaintiff as against the first defendant with costs, for the reason that he had ceased to act as priest without the permission of the plaintiff who is the manager of the temple. It seems to me that there is absolutely nothing to urge against the decision of the learned District Judge which is eminently just and in accordance with the facts proved at the trial. The learned District Judge held that the hereditary right which the defendant claimed, if it existed at all, did not exist any more in view of the settlement arrived at in D.C. Jaffna, No. 12,525. He also expressed the opinion that "the right of appointment and dismissal are in the manager, who, of course, can only dismiss with the approved of Court." The second defendant appears to have joined in the appeal of the first defendant with a view to obtaining a variation of the judgment of the District Judge by a finding in appeal that the office of priesthood is hereditary and alienable. I see no reason whatever to disturb the holding of the learned District Judge on the second issue that the first defendant had no right to transfer the right of officiating in the temple to another person. In regard to the contention in support of the first defendant's appeal that there was no reason for bringing this action against him, I am of opinion that the action was necessary, in view of the decree in D.C. Jaffna, 12,525.

The appeal of both defendants is dismissed, with costs.

JAYEWARDENE A.J.—I agree.

*Appeal dismissed.*

1924.

SCHNEIDER

J.

Merkurian

v. Auer