Present : Pereira J. and Ennis J. 1913.

MURUGASU *et al. v.* ARULIAH.

221—D. C. Jaffna, 8,539.

u Temple—Customary law of India not introduced into Ceylon—Proof of custom—Issue—Duty of Judge to frame.

Where a person claims to be declared the manager of a Hindu temple, he must, in the absence of documentary evidence establishing his right, prove some custom or customary law providing for the appointment of managers of such temples, and establish his right in accordance therewith. The customary laws of the Hindus of India have not been introduced into this country.

A customary law of one country may be observed by a class or community in another country so long as to let it develop into a custom having the force of law in the latter country.

Where the parties to an action cannot agree to one consistent set of issues, it is the duty of the Judge to frame the issues himself.

THE facts appear from the judgment.

H. A. Jayewardene (with him *Arulanandam*), for plaintiffs, appellants.

Kanagasabai (with him *Balasingham* and *Mylvaganam*), for defendant, respondent.

Cur. adv. vult.

July 30, 1913. PEREIRA J.—

The question in this case is whether the plaintiffs are the owners of lot B in plan P 11 made by D. Thambiah, licensed surveyor. In the conveyance P 7 in favour of the first plaintiff there is an express exclusion of the " Vairava temple and banyan trees, " so that the plaintiffs were not entitled to the temple and the trees under that deed. Nine years after, that is, in 1910, the grantors of deed P 7

1913.

PEREIRA J.

Murugasu v. Aruliah

executed in the first plaintiff's favour deed P 8 appointing him manager of the temple, but it is manifest that this deed has been got up merely to enable the first plaintiff to make a show of right as against the claims of the defendant, and that it really vested no right in the first plaintiff. The temple is an ancient temple, and I think there is sufficient evidence to show that it was in existence at the time of the Crown grant in favour of Arumogam, the plaintiff's predecessor in title, to the rest of the land depicted on plan P 11. Clearly, the temple and the banyan trees are not the property of the plaintiffs ; but the question is how much of the land B can be said to belong to, or rather to be appurtenant to, the temple. I see no reason to disagree with the District Judge in his decision on this question. I think that, on the whole, the probabilities, as indicated by the evidence, are in favour of the assumption that the whole of lot B is temple property.

The District Judge has proceeded to answer issue (6) of the issues submitted by the plaintiffs and issue (3) of the issues submitted by the defendant, and to hold that the defendant is proprietor and manager of the temple, and that he is entitled to its possession. I do not think that there is anything in the record to justify these findings. True, the temple registers of 1884 and 1892 give the manager's name as Arumogam Ramu, but the registers can hardly be regarded as evidence on the question of the managership of the temples registered. Assuming, however, that Arumogam Ramu was at one time the manager of the temple in question, it is not clear whether the defendant claims to be manager by reason of Ramu's wife being his mother-in-law, or by reason of his being as alleged a descendant of Mania Udayar, the reputed founder of the temple. Ramu himself does not appear to have been in the direct line of descent from Mania Udayar. The defendant has not established by evidence any customs or customary law providing for the appointment of managers of Hindu temples, and has not shown that he was appointed manager of the temple in question in accordance therewith. It has been said that the customary law of the Hindus of India with reference to temples has been imported into this country. I am not aware of any legal process by which the law, customary or otherwise, of one country is imported into another, except, of course, express legislation. The customary law of one country may be observed by a class or community in another country so long as to let it develop into a custom having the force of law in the latter country, but in this case there is no proof of any such local custom or of any customary or other law of India to support the defendant's claim. The District Judge's findings on the issues referred to above cannot therefore be supported, although there is no doubt that the defendant is now, and has been for some time past, in possession of the temple as the *de facto* (possibly self-constituted) manager of it.

I would affirm the decree appealed from, but as success on the points raised for decision in the Court below is divided, I think that each party should, bear his own costs in both Courts.

Before parting with this case, I should like to observe that the order of the District Judge adopting the two sets of issues submitted by the parties is irregular, and calculated to lead to a deal of confusion and embarrassment. Under section 146 of the Civil Procedure Code, if the parties could not agree to one set of issues, the District Judge should have framed the issues himself, and there should have been only one set of issues to be dealt with.

ENNIS J.—Agreed.

Appeal dismissed.