1977 *Present :* **Pathirana, J., Ratwatte, J. and Wanasundera, J.**

(1) LETCHI RAMAN BALASUNDERAM and OTHERS,
Respondents-Appellants

and

KALIMUTTU LETCHI RAMAN and OTHERS—Respondents

S.C. 24/76 (F), S. C. 88/76, S. C. 89/76—D.C. Chilaw 10/T

Trusts Ordinance (Cap. 87), sections 106, 107, 112—Hindu temple—Uncertainty as regards title to temple and temporalities—Mode of devolution of title—Proof—Vesting order.

Judgment—Requirement of definite findings on points in issue—Reasons—Scrutiny by Appellate Court.

Held : (1) That the title to the trust property which was the subject matter of this action, namely, the Hindu temple called Badrakali Kovil and its temporalities situated at Munneswaram was on the evidence before court uncertain. It is only in such a situation that an order vesting the property in a trustee under section 112(1) of the Trusts Ordinance can be made.

(2) That the trusteeship in respect of this kovil devolved as set out by the petitioner, namely, that by usage and custom the eldest male descendant succeeds as the trustee, kapurala or the manager.

(3) That accordingly, the petitioner was entitled as the sole hereditary trustee, kapurala or manager to be vested with the property in question under section 112(1) of the Trusts Ordinance.

Held further : That, however, the other male descendants of the previous trustee had also by usage and custom performed functions as priests or poosaris at the kovil in connection with the poojas, ceremonies and rituals and the petitioner would be bound to respect those rights and allow them to officiate as priests or poosaris in the temple and enjoy the perquisites and emoluments which they may be entitled to subject however to the petitioner's power, control and directions.

Per Pathirana, J. : "A judgment of a court must be a judicial pronouncement in which at least the trial judge should deal with all the points in issue in the case and pronounce definite findings on the issues. Even though the judgment may not on a reading on the face of it disclose that the trial judge has considered and subjected to examination and critical analysis the evidence of witnesses, but has chosen to act only on the documentary evidence, an Appellate Court can still uphold such a judgment if it is satisfied that the reasons, however brief, and conclusions reached have been on the hypothesis that there had been a rational examination and analysis in his mind of relevant evidence and the rejection of what is irrelevant. Adopting this test I am satisfied that although the judgment in the present case does not disclose a recital even of the main points of the evidence of the witnesses, an analysis of the evidence, an adjudication on the belief and the disbelief of the witnesses, nevertheless implicit in the logical conclusions reached by the trial judge, the reasons and answers he has given to the main points in issue and his findings generally is

that this can only be on the hypothesis that he has done so after a rational examination and analysis of the main points of the relevant evidence in the case although he has chosen not to give expression to them explicitly in his judgment, which he might have done."

Cases referred to :

Balasunderam v. Raman, 76 N.L.R. 259 and 289.

Kumaraswamy Kurukkal v. Karthigesu Kurukkal, 26 N.L.R. 33.

2 Times of Ceylon L. R. 120.

Ambalavanar v. Kathiravelu, 27 N.L.R. 15.

Kandappa Chettiar v. Janakiammah, 62 N.L.R. 447.

Ramanathan v. Kurukkal, 15 N.L.R. 216.

Ramalakshmi Ammal v. Sivanatha Peremal, 14 Moore's Indian Appeals 570.

Muthucumaru v. Vaithy, 12 C.L.W. 9 ; 18 C.L. Rec. 5

Dabare v. Martelis Appu, 5 N.L.R. 210.

Ranasinghe v. Dhammananda, 37 N.L.R. 19.

Velupillai Arumugam v. Saravanamuttu Ponnasamy, 27 N.L.R. 173.

Thamotherampillai v. Sellapah, 34 N.L.R. 300.

APPEAL from an order of the District Court, Chilaw.

C. Thiagalingam, Q.C., for the 1st, 2nd, 4th, 5th and 6th respondent-appellants with *Sri Pathmanathan* and *K. Kanag Iswaran* in S. C. 24/76.

C. Thiagalingam, Q.C., for the 1st, 2nd, 4th, 5th and 6th respondents-respondents in S. C. 88 and 89/76.

C. Ranganathan, Q.C., with *S. Mahenthiran* and *S. A. Parathalingam,* for the 7th respondent-respondent in S. C. 88/76 and 89/76.

K. Kanag Iswaran, for the 3rd and 8th respondent-appellants in S.C. 89/76.

K. Kanag Iswaran, for 3rd and 8th respondents-respondents in S.C. 24 and 88/76.

H. W. Jayewardene, Q.C., with *A. C. Gooneratne, Q.C., S. Nadarajasunderam, J. C. Ratwatte and Miss S. Fernando,* for the petitioner-respondent in all the appeals.

Cur. adv. vult.

November 29, 1977. PATHIRANA, J.

The appeals are from the order of the District Court of Chilaw granting an application under section 112 of the Trusts Ordinance vesting the Hindu temple called Badrakali Kovil and its temporalities, situated at Munneswaram in Kalimuttu Lechiraman (who is hereafter referred to as the "petitioner") on the ground that it was uncertain in whom the title to the trust property was vested.

The petitioner, Kalimuttu Lechiraman, claiming to be sole hereditary trustee, kapurala or manager of the said Badrakali Kovil filed this application by way of summary procedure on 28.6.69 praying for a vesting order under section 112 of the Trusts Ordinance. He traced the original trusteeship of this temple to about the year 1830 when one Narayanan officiated as trustee. He claimed that according to the custom and usage from time immemorial pertaining to the said temple the eldest male descendant succeeded to the office of trustee, kapurala or manager of the said temple. At one stage his grandfather Lechiraman functioned in this office. Lechiraman had 9 children, the eldest being Kalimuttu, the petitioner's father, and the 1st, 2nd, 4th, 5th, 6th, 7th and 8th respondents. The 3rd respondent is the widow of another son Sabaratnam who died on 10.10.65. Kalimuttu predeceased his father in 1958 and Lechiraman died in 1962. The petitioner as eldest male descendant claimed that he succeeded as sole hereditary trustee, kapurala or manager of this temple and its temporalities.

The petitioner says that he was a minor at the time of Lechiraman's death. He alleged that the original 1-8 respondents who were his father's brothers and sisters wrongfully and unlawfully asserted that they were entitled to be the trustees, kapuralas or managers of the temple and its temporalities since the death of Lechiraman in 1962. He averred that title to the said temple and its temporalities was uncertain and claimed a vesting order of the trust property in him as the sole hereditary trustee, kapurala or manager. He stated that he was a minor at the time of Lechiraman's death and he made this application when he became a major in 1969.

The respondents in their affidavits denied the claim of the petitioner. They contested the right of the petitioner to obtain a vesting order under section 112 of the Trusts Ordinance on the facts alleged in his petition and affidavit and further pleaded that the petitioner has no right to proceed by way of summary procedure to obtain the relief he sought. The respondents took the pedigree a step beyond Narayanan and averred that one Ratnasinghe Giri Iyer and his adopted son Narayanan were the joint trustees, kapuralas or managers of the said temple and its temporalities from 1819. They denied that the eldest male descendant functioned as sole trustee, kapurala or manager. They averred that on the death of Ratnasinghe Giri Iyer, Narayanan Kapurala and his male issues namely, Sinnetamby and Appukutti became joint holders of the said office. Thereafter in accordance with usage and custom on the death of Narayanan and Sinnetamby the survivor Appukutti along with Sinnetamby's son Kalimuttu became joint trustees and after them their male

issues "as and when they were born" became joint trustees, kapuralas and managers of the said kovil.

The pedigree R18 sets out the devolution of trusteeship ending up with the trusteeship devolving on the children of Lechiraman, namely, Kalimuttu and 1st, 4th, 5th, 6th, 7th respondents and Sabaratnam (since deceased) to a 1/7th share each as joint trustees. The 2nd respondent and 8th respondent being females did not succeed as trustees. Kalimuttu having died in 1958 his 1/7th share devolved on his sons, the petitioner and his two brothers. Sabaratnam died in 1965 and his 1/7th share devolved on his male heirs. The 4th respondent died in 1976 and his 1/7th share devolved on his male heirs. They averred that according to the custom and usage pertaining to the Hindu temples in this country and in particular to this temple this was the mode of devolution of the office of trusteeship.

When the inquiry commenced on 10.8.69 preliminary objections were raised by the respondents firstly that on the matters averred in the petition and affidavit of the petitioner section 112 of the Trusts Ordinance could not be availed of by him as the averments therein did not disclose that there was uncertainty in the title to the trust property. Secondly, they objected to the right of the petitioner to proceed by way of summary procedure. The learned District Judge on 5.9.69 overruled the objection.

The respondents appealed to this Court on 28.2.72. In the judgment reported in *Balasunderam v. Raman,* 76 N.L.R. 259, this Court held that a reading of the entire petition left no room to doubt that there was uncertainty as to the person in whom title to the property was vested and therefore section 112 of the Trusts Ordinance would apply. It also held that where a person who asked for a vesting order under section 112 without asking for any further relief the appropriate procedure is by way of summary procedure under Chapter XXIV of the Civil Procedure Code. The respondent thereafter appealed to the Court of Appeal and the judgment of the Court of Appeal is reported in *Balasunderam v. Raman,* 76 N.L.R. 289. The Court of Appeal held that on the affidavits filed in the District Court by the petitioner and the respondents there can be little doubt that there was uncertainty as to the title to the trust property. The petitioner was prima facie entitled to initiate proceedings for an order under section 112 of the Trusts Ordinance. It also took the view that the appropriate remedy was by way of summary procedure.

At the outset of the argument in this case we were reminded of two distinct and different modes associated with the devolution of trust property, one in regard to title and the other in

regard to the office of trusteeship. The principles regulating the devolution in the two cases are set out in the judgments of Bertram, C.J. in *Kumaraswamy Kurukkal v. Karthigesu Kurukkal,* (1923) 26 N.L.R. 33, and *Ambalavanar v. Kathiravelu,* (1924) 27 N.L.R. 15. These may be summarized as follows.

When a person who owns a land dedicates it for the purpose of religious worship or transfers it to a temple, the effect of his doing so is to constitute himself a trustee for a charitable trust for the purpose of the religious worship to be carried out at the temple. Our Courts have refused to recognise a Hindu temple as a juristic person though in India it is so regarded. *Kurukkal v. Karthigesu,* (1923) 2 Times of Ceylon L.R. 120 at 122.

In dealing with any property alleged to be subject to a charitable trust, there need not be an instrument of trust within the meaning of the definition in section 3 of the Trusts Ordinance. Section 107 of the Trusts Ordinance states that in such a case the Court shall not be debarred from exercising any of its powers by the absence of evidence of the formal instrument of trust, if it shall be of the opinion from all the circumstances of the case that the trust in fact exists, or ought to be deemed to exist.

The legal title or dominium remains with the dedicator or the author of the trust and on his death passes to his heirs subject to the obligations of the trust, the heirs being constructive trustees. It is held on behalf of the beneficiaries who consist of that section of the public which constituted its congregation for whose benefit the trust was founded. The legal ownership or dominium does not ordinarily devolve with the office of trustee. This could take place in that manner in certain defined cases as set out in section 113(1) and (2) which have no relevance in this case. Upon the death of the trustee in whom legal title is vested to the property the legal ownership does not pass to the new trustee. In the absence of any formal instrument it will pass to the trustee's heirs who will hold it subject to the trust.

The difficulties that would arise in cases where a trustee does not in his life time provide for the devolution of the truth property by a formal instrument is referred to in the following passage by Bertram, C.J., in *Kumaraswamy Kurukkal v. Karthigesa Kurukkal,* 26 N.L.R. at 39 :—

> "It will thus be seen that in a trust of this sort confusion is always likely to arise on the death of a trustee, unless he provides for the devolution of the trust property either by will or by an instrument executed during his life time. If he

> does not do so, the legal ownership passes to his heirs. The heirs, it is true, hold it subject to the trust, and can be made to transfer the legal ownership to the new trustee, but it must always be very troublesome to induce them to do so."

In the absence of any formal instrument the only way of vesting it in a succeeding trustee is to obtain a vesting order under section 112.

Subject to any arrangement made by the founder the right of management of the foundation vests in the founder himself and after him in his heirs. But the founder is entitled to make express provisions for its future management. This he need not do contemporaneously with the foundation. It can be done in a subsequent different instrument. In the absence of any formal instrument providing for the devolution of the trusteeship or any special customary rule pertaining to the temple in question, the trusteeship devolves on the heirs of the founder. The two different modes of devolution are also referred to by Sansoni, J. in *Kandappa Chettiar v. Janakiammal,* 62 N.L.R. 447.

In regard to the devolution of a trusteeship of a Hindu temple and its temporalities the fundamental rule to be kept in mind is that if there is an instrument of trust by the founder providing for the devolution of trusteeship the devolution will take place in accordance with the terms and conditions contained in the instrument of trust. In the absence of such a deed or any statutory provision the Court will have regard to the custom and usage of the temple in question. As Grenier, J. observed in the case of *Ramanathan v. Kurukkal,* 15 N.L.R. 216 at 218, on the question of custom and usage in regard to the ownership, devolution and management of Hindu temples and temporalities in this country,

> "There is the Hindu customary law, which is capable of proof in the way in which customs and usage to other matters can be proved. Whether these customs and usages have been imported from India, or have grown up amongst the Hindus of this country and possess the sanctity of age, their existence cannot be overlooked ; they are potent factors which have governed, and still govern, the ownership, devolution, and management of Hindu temples and the administration of their temporalities."

It must be noted therefore that it is the custom and usage of the temple in question that must be considered and not the general customs of the locality. This principle has received legislative recognition in section 106 of the Trusts Ordinance which lays down inter alia that in determining any question relating to

the constitution or existence of any such trust, the devolution of the trusteeship and the administration of the trust the Court should have regard to,

(1) the instrument of the trust (if any) :

(2) the religious law and custom of the community concerned ;

(3) the local customs or practice with reference to the particular trust concerned. Customs may provide the religious usage by which the trusteeship should devolve.

More precisely in *Ambalavanar v. Kathiravelu,* 27 N.L.R. 15 at 22, Bertram, C.J., observed that "in all such foundations the custom or course of action observed in the family must be taken into account." In *Ramalakshmi Ammal v. Sivanatha Perumal,* 14 Moore's Indian Appeals 570 at 585, which is cited in Mayne's Hindu Law and Usage, 8th Edition, page 58, the Privy Council laid down the requirements for long established usage which can receive the recognition of the Courts and acquire legal force :—

> "Their Lordships are fully sensible of the importance and justice of giving effect to long established usages existing in particular districts and families in India, but it is of the essence of special usages, modifying the ordinary law of succession, that they should be ancient and invariable ; and it is further essential that they should be established to be so by clear and unambiguous evidence. It is only by means of such evidence that the Courts can be assured of their existence, and that they possess the conditions of antiquity and certainty on which alone their legal title to recognition depends."

It must also be kept in mind that apart from the office of trusteeship in a temple there are various other office holders who perform certain rights and ceremonies in the temple and claim such rights by hereditary succession.

The Court of Appeal had made a pointed reference to the fact that the respondents in their pedigree had set out only the devolution of the trusteeship but not the devolution of title and the petitioner also did not say that the title was in Narayanan. This was perhaps one of the reasons that influenced its decision that there was prima facie uncertainty of title to the trust property.

In view of these observations and in order to meet the petitioner's case that the title to the trust property was uncertain and therefore to put the question of uncertainty in issue, the 1st, 4th, 5th, 6th and 7th respondents on 18.12.73 filed a supplementary affidavit in which they averred that by virtue of

" document of transfer " dated 27th September, 1819, the decree entered in D.C. Chilaw case No. 13846 in 1853 and by long prescriptive possession, legal title to the trust property was in Narayanan Kapurala, the adopted son of Ratnasinghe Giri Iyer. They relied on the same pedigree that they set out in the earlier affidavit regarding the devolution of the trusteeship for the purpose of the devolution of the title to the trust property, excluding the females who were not considered title-holders or entitled to officiate as trustees of the said temple. They claimed that on the basis that all the male children of Lechiraman were entitled to 1/7 share each of the trusteeship as joint trustees, kapuralas or managers. Kalimuttu being dead his 1/7 share devolved on the petitioner and his two brothers. Sabaratnam, the 4th respondent having died in November, 1976 his 1/7th share devolved on his three sons. They claimed that the property should be vested in these persons on this basis in the event of there being uncertainty as to the title to the trust property.

On 24.6.74 issues were framed. Counsel for the petitioner suggested issues whether the petitioner was the sole hereditary trustee, kapurala or manager in accordance with the devolution as set out in his petition or whether the trusteeship devolved in the manner set out in the affidavits of the respondents. If the devolution was as claimed by the petitioner whether he was entitled to be the sole hereditary trustee, kapurala or manager of the said temple and if so whether he was entitled to the vesting order in his favour under section 112.

Counsel for the respondents objected to these issues on the ground that the Court had no jurisdiction to determine any of these issues as the proceedings were confined only to vesting of title to the trust property of which title was uncertain. The learned District Judge overruled this objection and accepted the issues. After obtaining leave to appeal the respondents appealed to this Court. This Court by its judgment dated 28.2.75 took the view that the Court had to decide who was the competent person to be vested with the trust property under section 112 as the person who claimed to be vested with the property must do so on some basis or capacity as sole heir, or as one of the trustees or as a fit and proper person.

The inquiry finally commenced in the District Court on 30.6.75 on which date the respondents also raised issues, on the basis that legal title was not uncertain in that it devolved on the successors-in-title of Narayanan Kapurala and secondly that all the male descendants of Narayanan Kapurala succeeded to the office of joint trustees, kapuralas or managers.

There were three questions therefore in issue before the District Court. Firstly, whether the title to the trust property was uncertain. Secondly, whether the trusteeship devolved as stated by the petitioner or as claimed by the respondents and thirdly. If the title to the property was uncertain in whose favour the vesting order should be made. I agree with the observations made by Moseley, J. in *Muttucumaru v. Vaithy,* 12 C.L.W. 9, that if the petitioner fails to prove that the title to the property is uncertain the petitioner's claim must fail and the other issues do not arise for decision.

The learned District Judge by his judgment dated 4.2.1976 held that the title to the trust property was uncertain that the petitioner was the sole, lawful hereditary trustee, kapurala or manager of the said temple and its temporalities in accordance with the devolution set out by him. He therefore made a vesting order under section 112 of the Trusts Ordinance in regard to the trust property in the petitioner.

I have, at this stage, to refer to the answer of the learned District Judge to issue 8 which was raised by the respondents, namely,

> (8) Did the male heirs of the original founder and their male issues succeed to the office of manager and trustee and the right to officiate at the temple with the exclusion of the females ?
>
> A. No. But selectively by the system of primogeniture to the office of trustee and manager and generally and directly to the priesthood of the temple.

The relevance of this issue and the answer to it will be of significance in assessing the oral testimony of the witnesses called both by the petitioner and the respondents who spoke either of certain persons coming in the pedigree of the respondents performing poojas or assisting in the performing of poojas at the Badrakali Kovil. The relevance of this issue and its significance must be kept in mind for the reason that apart from the office of trusteeship of the temple there are various other officeholders who perform various rights and ceremonies in the temple and claim such rights by hereditary succession.

The repondents have appealed against the vesting order. While I shall continue to refer to the petitioner as the "petitioner", the appellants will be referred to as the "respondents".

I shall deal with the first question whether the petitioner has satisfied the Court that the title to the trust property is uncertain. Section 112 (1) of he Trusts Ordinance in so far as it is relevant to this case reads as follows :

> " 112 (1). Where it is uncertain in whom the title to any trust property is vested the Court may make an order (in this Ordinance called a " vesting order ") vesting the property in any such person in any such manner or to any such extent as the Court may direct. "

The respondents relied on the documents R1, R2, R3, R4 and R5 to refute the petitioner's contention that the title to the trust property is uncertain. R1 is a true copy of the translation of the agreement dated 27.9.1819 filed of record in the District Court case No. 13,846 instituted on the 15th of January, 1849. Before I deal with the legal effect of this document I must point out that this document is very informative as it throws light on who the founder of Badrakali Kovil was and it takes the pedigree of the respondents yet another step higher. According to R1, Mayasinghe Giri Iyer, the father of Ratnasinghe Giri Iyer had purchased a waste land in the village of Munneswaram and constructed on it the temple Badrakali Kovil. A portion of this land was converted into a garden for the performance of ceremonies in connection with the temple. He had also purchased another land and converted it into a paddy field, the income of which was used for the temple. This would show that Mayasinghe Giri Iyer, a Brahmin was the original legal owner of the property and considered himself a trustee for a charitable trust for the purpose of religious worship to be carried out at the temple. On his death therefore the legal title and office of trusteeship vested on his son Ratnasinghe Giri Iyer. Ratnasinghe Giri Iyer although a Brahmin adopted a son called Narayanan, a non-Brahmin, who belonged to the Chetty caste. Ratnasinghe Giri Iyer's wife was Thevani. He had a daughter Valli Amma. Valli Amma's daughter was Kali Amma. Ratnasinghe Giri Iyer ran into financial difficulty in managing the affairs of the temple. He had borrowed from three persons 191 Rix Dollars. By R1 of 27th September, 1819 Ratnasinghe Giri Iyer referred to this debt he owed to these three persons and for the purpose of paying and satisfying this amount he divided the " garden and the village and all the high and low ground into 3 portions ". A 1/3rd share he retained for himself and his wife Thevani. The other 1/3rd share he gave to his grand daughter Kali Amma and the balance 1/3rd share to his adopted son Narayanan. They were to possess the shares and pay the said debt in equal proportions. Valli Amma and Narayanan were to perform the ceremonies due to the deity of

the temple. It was further covenanted by the said agreement that any of them who failed to perform the ceremonies due to the deity will not be entitled to any share from the lands. On the 15th of January, 1849, Kali Amma ,the grand daughter of Ratnasinghe Giri Iyer, one of the grantees in R1, instituted an action in the District Court of Chilaw in Case No. 13,846, against Narayanan Kapurala, the adopted son of Ratnasinghe Giri Iyer.

According to the plaint, R2, the plaintiff alleged that she demanded from the defendant the possession of the paddy field, the adjoining garden and a garden attached to the paddy field. She alleged that these properties were lawfully owned by Mayasinghe Giri Iyer and after his death by his son Ratnasinghe Giri Iyer. She referred to the agreement R1 whereby the parties agreed to perform ceremonies due to the said temple and out of the revenue to pay the debt referred to in the agreement. She alleged that the defendant had neglected the temple but enjoyed the produce of the temple lands. She asked that the defendant should hand over possession to the plaintiff and also to pay her a certain amount out of the profits from the said lands. The defendant filed answer R3 on the 28th of November 1850, stating that the property in question was a property of the Badrakali Temple and that the defendant was placed in charge of the said premises about 20 years ago (that will be about 1830) as the Kapuwa of the said temple and that he had accordingly been in possession of the said paddy field and garden without interruption or dispute, and he thereby pleaded that he be given the benefit of " the second clause of Ordinance Number Eight of One thousand eight hundred and thirty four " for the benefit of the said temple. He denied that Mayasinghe Giri Iyer or Ratnasinghe Giri Iyar were the original owners of the property. He prayed that the plaintiff's action be dismissed with costs.

On the 5th September, 1851, the plaintiff filed replication and reasserted that Mayasinghe Giri Iyer was the owner of the said temple and after his death Ratnasinghe Giri Iyer was the owner thereof and performed the services of the temple as kapuwa for several years. The following judgment was delivered by the District Court on the 9th of April, 1853 :

> " The Judge and the assessors are not satisfied with the evidence adduced by the plaintiff in support of her claim to the field and the garden in question. They are of opinion that both the field and the garden are temple property and as such the kapuwa who officiates in the temple for the time being should enjoy their produce.

It is further decreed that the plaintiff's case be dismissed with costs."

The kapuwa referred to is Narayanan. An appeal was taken against this decree to the Supreme Court and the Supreme Court delivered the following judgment dated 9th April 1853 (R5).

> The proceedings in this case having been read it is considered and adjudged that the decree of the District Court of Chilaw of the 20th August, 1852, be altered into "That the defendant be absolved from the instance with costs. The evidence is of too contradictory and unsatisfactory a nature to entitle the plaintiff to recover."

Counsel for both parties presented arguments as to what was the legal effect of the Supreme Court judgment (R5) when it stated that the decree of the District Court of Chilaw was altered into "that the defendant be absolved from the instance with costs." I would only say that the controversy is academic. The defendant Narayanan had pleaded the benefit of Clause 2 of the Prescription Ordinance of 1834. The precursor to the Prescription Ordinance of 1834 was a Regulation No. 13 of 1822. In this Regulation the only provision with regard to immovable property stated "it is further enacted that ..... proof of the undisturbed possession of land or immovable property by a titled adverse to that of the claimant or the plaintiff in the action, for 10 years before the bringing of the action, shall entitle the defendant to a sentence in his favour with costs." This provision only enabled a decree to be given to a defendant in possession. It made no provision to give a decree to a plaintiff to such possession. Ordinance No. 8 of 1834 repealed regulation 13 of 1822 but it re-enacted the provisions regarding the rights already held by a defendant in respect of his possession which I have quoted earlier and added:

> "'....and in like manner, when any plaintiff shall bring' his action for the purpose of his being quieted in his possession 'of land or other immovable property to prevent encroachment' or usurpation thereof, or to recover damage for such encroachment or usurpation, or to establish his claim in any other manner 'to such land or other property, proof of such undisturbed and' uninterrupted possession shall entitle such plaintiff to a decree 'in his favour with costs.'"

Browne, A. J. in *Dabare v. Martelis Appu*, 5 N.L.R. 210 at 219, explains the meaning of the term "the defendant be absolved from the instance". He referred to the relevant statute which stated that "shall entitle the defendant to a sentence in his

favour with costs " and said " by which I understand to be meant the usual decree for a defendant, viz., that the defendant be absolved from the instance ", which is the equivalent of the English judgment that " the plaintiff take nothing by his writ and the defendants go without day ".

Read in the light of the judgment of the District Court (R4), that the field and the garden are temple property and as such the kapurala who officiated in the temple for the time being should enjoy their produce, the judgment of the Supreme Court could only mean that the defendant Narayanan kapurala had acquired prescriptive title for the temple in his capacity as kapurala, that is as trustee, kapurala or manager. It cannot be construed to mean that he acquired title to himself adverse to the temple and all others.

The respondent's contention was firstly that R1 transferred legal title to Narayanan kapurala and the judgments of the District Court (R4) and the Supreme Court (R5) vested legal title in Narayanan. Legal title from Narayanan to his successors-in-title is therefore claimed in accordance with the pedigree set out by the respondents in their affidavits. The title was therefore certain and the petitioner's application must fail.

On behalf of the petitioner, however, it was submitted that R1 is no conveyance of title. It only granted Narayanan the right to possess a 1/3rd share subject to the obligation to perform services to the temple and to pay the debt owed by the grantor for expenses incurred in connection with the temple. It was therefore submitted that Narayanan kapurala having entered these properties in his capacity as trustee, kapurala or manager could not divest himself of that character and acquire prescriptive title thereto. The legal title was originally in Mayasinghe Giri Iyer and on his death it passed to his son Ratnasinghe Giri Iyer. Ratnasinghe Giri Iyer left a widow. He had a daughter Valli Amma who in turn had a daughter Kali Amma. After the death of Narayanan kapurala the legal title to the property is uncertain. In any event, Narayanan kapurala being an adopted son, the Roman Dutch law being applicable, he could not have succeeded to the rights of Ratnasinghe Giri Iyer to any of these properties. In the result the title from that point was uncertain. This is the finding of the learned District Judge.

The learned District Judge has held that what was adjudicated in the District Court of Chilaw Case No. 13846 was not a question of title but the right to remain in possession. The last known legal owner of these properties was Ratnasinghe Giri Iyer, a Brahmin, when Narayanan had only *de facto* possession of the

temple and its temporalities. He rejected the contention of the respondents that Narayanan had acquired full title and that it thereafter devolved " directly or indirectly on all the male progeny of Narayanan ". He was of the view that title beyond a certain point was uncertain by which he meant title from the point when Ratnasinghe Giri Iyer died leaving a widow and a grand daughter. The title beyond that is unknown and therefore uncertain. The respondents' case was that Narayanan had acquired prescriptive title to the property. On behalf of the respondents before us, reliance was placed on the case of *Ranasinghe v. Dhammananda,* 37 N.L.R. 19, where it was held that where the incumbent of a vihare, of which trustees have not been appointed, possessed lands not expressly gifted or dedicated to the vihara, he was in the position of a *de facto* trustee of the vihara and as such he could acquire title by prescription for the benefit of the vihara. On the strength of this judgment it was argued that Narayanan kapurala had acquired prescriptive title to the trust property. I must say that far from supporting the contention urged by the respondents this decision is against them. In this case, the lands had come to the vihara not on some original gift by pious users or on an admitted dedication, but at a known time and on a document that made no mention of the dedication.

It was argued that an incumbent possessing such properties prescribes for himself and not for the vihara. The argument proceeded thus. Title by prescription can only be acquired by a *persona* and a temple is not a *persona* actual or fictitious. So if an incumbent acquires he acquires for himself. After such an incumbent dies the possession of the lands passes to his natural heirs and not to his pupils. The evidence in the case as accepted by the District Judge revealed that the incumbent throughout his incumbency used these lands for the use and benefit of the vihara and that he had at no time claimed to possess them adversely to the vihara or to his own use and benefit. In regard to the claim that the incumbent had acquired prescriptive title for himself Macdonell, C.J. said at page 24 :

> 'Authority then is against the argument raised to us on appeal and reason no less. How do certain lands come to be in possession of an incumbent ? Because he is the incumbent of the vihare claiming them. If he were not its incumbent he would never come to the possession of those lands at all. No doubt if he took all the profits of the land to himself for his private benefit, if he openly refused to allow the other inmates of vihare to participate and manifested by words or conduct or both that he claimed these lands as his own private property, and if he was allowed to persist in this course of

successful assertion for ten years, then at the end of that time the lands might have become his as his private property. If however, as here, he uses the lands as and for temple purposes, then his possession enures to the benefit of the vihare and he is prescribing, if a prescriptive title is needed, for the vihare."

Applying the principles of this decision to the facts in this case Narayanan kapurala entered these premises only as trustee and possessed them in that capacity for the benefit of the Badrakali Kovil. If he acquired prescriptive title he did this for the Kovil, but a kovil is not a personality known to the law and is incapable of being vested with legal title to the property unlike in India. Legal title remains with the legal owners.

In my view, the respondents are attributing to Narayanan kapurala an independent legal title to the trust property which he himself never claimed in his life time. In the answer R3, he filed in the District Court Case No. 13846 on 28.11.1850 Narayanan kapurala stated at page 85 :

"But the defendant on fact says that the said paddy field and garden as the plaintiff hath in her *viva voce* examination in this case admitted are of the property of the temple of Patrakali situated at Munesparam and that the defendant was placed in charge of the said premises about twenty years ago as Cappowa of the said temple and that he has accordingly been in possession of the said paddy field and garden from thence up to the present time without any interruption or dispute and the defendant hath accordingly plead the second clause of the Ordinance number eight of One thousand eight hundred and thirty four for the benefit of the said temple".

That case came up before a distinguished judge, Mr. Simon Casi Chetty. In answer to questions elicited by him from the witnesses who gave evidence for Kali Amma, the plaintiff, the grand daughter of Ratnasinghe Giri Iyer, at least two of the witnesses called on behalf of the plaintiff stated that the garden and field were temple property and they were not private property. The kapurala or the officiating priest of the temple was allowed to enjoy their produce. The defendant was the kapuwa of the temple.

Ratnasinghe Giri Iyer and thereafter Narayanan and his successors-in-title as set out in the pedigree of the respondents, R18, ending with the petitioner and his brothers, and the respondents always acknowledged that the properties were the properties belonging to the Badrakali Kovil. There is no evidence that any of them manifested by word or by conduct that they claimed these lands as their own and private lands.

I, therefore reject the contention urged by the Counsel for the respondents firstly, that R1 conveyed legal title or dominium to Narayanan ; secondly, that the decree of the District Court of Chilaw (R4) and the judgment of the Supreme Court (R5) in any way vested legal title in Narayanan and thirdly, that Narayanan acquired prescriptive title to the said properties. In the result I hold that title beyond Ratnasinghe Giri Iyer is uncertain, in the sense that there is an element of doubt how the title devolved thereafter. The devolution of title beyond this point is equally uncertain. The legal rights in regard to the females in the family are uncertain and vague. They are supposed to have renounced their rights or are alleged to be excluded by custom. There is no clear evidence of this. The submission that the parties or this family have prescribed to this property is also untenable. As I have stated earlier, the persons vested with legal title held the property in trust for the temple and one trustee possessing the property for the temple cannot prescribe against another trustee also holding the property for the temple. Further, the issue of prescription cannot be decided without due inquiry and without notice to all persons having an interest in the property. It would also appear that there has been some uncertainty in the law as to ownership of property by Hindu temples and foundations until the matter was settled in a series of classic judgments by Chief Justice Anton Bertram in the mid-twenties. This uncertainty appears to be reflected in the devolution of title to the temple and is appurtenances.

I therefore, agree with the conclusion of the learned District Judge that title to the property is uncertain within the meaning of section 112 of the Trusts Ordinance. It is precisely for such a situation like this, where title to trust property is uncertain that the legislature advisedly by section 112 of the Trusts Ordinance has provided the machinery to vest the trust property in a suitable person for the protection of the temple and its temporalities.

I shall next examine which of the two modes of succession to the office of trustee, kapurala or manager of the Kovil is established by usage or custom. This kovil is situated not in the Jaffna district but in Chilaw. The contention urged by Counsel appearing for the respondents in that the term " kapurala " must be given its local connotation, namely, " priest " or " poosari " and that it should not be given a significance it did not possess and should not therefore be equated to the office of trustee or manager of the kovil. I am, however, satisfied that even the petitioner and the respondents and the witnesses who gave evidence in this case have understood the term " kapurala " of the kovil to mean the trustee or manager in contradiction to

the word "poosari", which in its ordinary connotation means nothing other than the priest of the temple who officiates or assists at the poojas or ceremonies at the kovil. In fact, Sirimane J. in the Court of Appeal judgment in the case of *Balasunderam v. Raman,* 76 N.L.R. 289 at 290, has referred to this question thus :

> "In view of certain submissions made at the argument regarding devolution of trusteeship to Hindu temples in the Jaffna district, it is useful, as Counsel for the petitioner pointed out, to remember that this temple is situated in Chilaw, and the trustee referred to even by the respondents by the term "kapurala" as well. However, it was conceded that trusteeship to Hindu temples in any part of Ceylon was not governed by any hard and fast rule, and depended on custom and usage appertaining to each particular temple."

It is common ground that there is no formal instrument providing for the devolution of the trusteeship. We have therefore to find out what is custom or usage of this kovil in regard to the devolution of trusteeship, and in this case more particularly what the custom or usage of the family which for generations at least from 1830 performed the sacradotal duties of this Kovil. The question is therefore whether the mode of succession is that which is put forward by the petitioner that the office was held by the eldest male descendant of each succeeding trustee (as it was compendiously put by a system of primogeniture) or whether on death of Narayanan Kapurala the male issues along with their male issues "as and when they were born became joint trustees, kapuralas or managers of the kovil". There appears no controversy that females are excluded from the devolution in respect of the trusteeship.

Mr. Ranganathan who appeared for some of the respondents submitted that there was no general custom as far as Hindu temples in this country are concerned that the eldest male descendant succeeds to the office of trustee. Bertram, C. J. in the case of *Velupillai Arumogam v. Saravanamuttu Ponnasamy,* 27 N.L.R. 173 at 174, however, refers to the system of the eldest male descendant succeeding to the office of trustee :

> "But as in most cases it is not convenient that they should all be managers, a system has grown up under which one person, generally the eldest male descendant of the last person who has acted in the office, with the consent of the other members of the family, acts as manager and trustee. This person, again with the presumed consent of the other heirs, often appoints some descendant of his own to succeed him in the managership, and in some cases to be associated

with him in the managership until his death. I think that there can be no question that this is the religious law and custom with regard to such temples in the peninsula of Jaffna, and that the temple now under consideration was a temple of this character."

Dalton, J. in *Thamotherampillai v. Sellappah*, 34 N.L.R. 300 at 302, also refers to the system of the eldest male descendant succeeding to the office of trustee :—

"So far from the descendants of the founder ever acting as a body for any purpose, a system appears to have sprung up of the right of succession to the management passing to the eldest male descendant of the last person who has acted in the office on the fiction that all the other heirs have consented to the appoinment."

Although this temple is not situated in the Jaffna peninsula, this is a Hindu temple owned and managed by Hindus and administered in no way different from a Hindu temple in the peninsula. The religious law and custom relating to Hindu temples already recognised by our law appears *prima facie* to be applicable to this temple and this is amply corroborated by the evidence that has been placed before us.

Inveterate and invariable observance of a particular mode of devolution in course of time hardens into a usage and acquires legal title to recognition. The learned District Judge in answering the issues has referred to the office of trustee and manager of this temple in contradistinction to the office of priesthood of the temple (the priests being referred to as poosaris). The contention of the respondents is that all those poosaris, that is, all those who performed the poojas in the temple and who belong to the family of Narayanan kapurala were trustees and managers according to custom and usage. The evidence is that on attaining the age of 15 all males in the family were qualified to perform poojas at the kovil. On behalf of the respondents it was therefore urged that this was not a kovil where one finds persons separately functioning as trustees while other persons separately function as priests who perform poojas. The priests are the trustees and the trustees are the priests. This is not a kovil where the trustees employ priests. One of the essential functions of the trustees or kapuralas is that of performing poojas. On behalf of the petitioner, however, it was submitted that the kapurala or trustee while he too may perform poojas is a person who has general control and administers the affairs of the kovil, and allocates the work, duties and income. The others who perform or assist in performing poojas are called priests or poosaris. They have no authority or right to administer the affairs of the kovil.

In order to appreciate the arguments urged in this connection and for the proper evaluation of the evidence in the case, an account of the poojas or ceremonies performed at this kovil and the persons who officiate at these poojas and ceremonies is relevant and useful.

This kovil is dedicated to the Goddess Kali one of the deities in the Hindu Pantheon. She is a consort and shakthi (manifestations of creative energy) of Shiva. She has both a benign and a fierce aspect. Badrakali, as she is called " the blessed dark one, " is said to have developed a taste for blood when she was called upon to kill the Demon Raktavija who produced 1000 more like himself each time a drop of blood fell on Earth. In order to vanquish him she pierced him with a spear and holding him high drank his blood before it reached the ground. Goats are sacrificed to her daily at her temples. This accounts for the sacrifice of goats and fowls which takes place at this kovil too at Munneswaram, the sacrificial ceremony being called " velvi ".

Originaly only one pooja was held in this kovil on Tuesdays and Fridays. After 1958 two poojas were held daily. The main poojas which were the daily ministrations to the Goddess were held whether there are worshippers or not. " Arichchanam " is on the other hand the invoking of her blessings in regard to an offering made by an individual worshipper to the deity. Any priest who is present in the temple may perform " Arichchanam ".

Annually there are two festivals, viz., the August festival and the " Navarathri " festival in November. The August festival partly coincides with the latter part of the more famous " Sivan Kovil festival " at Munneswaram.

Large crowds come from all parts of the island for the festivals and the daily offerings include the sacrifice of fowls and goats. Due to the large number of worshippers that visit the kovil during the festivals poosaris from Udappuwa, a neighbouring village are engaged to perform poojas at this kovil during this period. At the end of the festivals also there is the ritual called " velvi " where goats and fowls by the hundreds are sacrificed to appease the deity. The carcasses of the slaughtered goats and fowls are so many that they are auctioned at times. The August festival is held for ten successive days while the November festival was also held for ten successive days.

Considering the thousands of devotees who come to this kovil both during the festival seasons and the non-festival days this is therefore a temple that needs to mobilise the help and assistance of as many poosaris or priests as possible. The fact that a priest performs poojas or assists in the performance of poojas may not necessarily therefore be the criteria for determining

whether he is the trustee, kapurala or manager of the kovil. Performance of poojas is therefore not the same thing as exercising the office of kapurala, manager or trustee of the temple. This distinction has been referred to by the learned District Judge in his judgment.

I shall first deal with the petitioner's case that the succession to the office of the trusteeship has always been on the basis that the eldest male descendant succeeded as the sole hereditary trustee. It is common ground that the original trustee was Mayasinghe Giri Iyer and on his death his son Ratnasinghe Giri Iyer became the sole trustee. It is also not disputed that at least after 1830 Narayan kapurala functioned as the sole kapurala or trustee of this kovil. It is common ground that Narayanan kapurala had two sons Sinnetamby the elder and Appukutty the younger. On the death of Narayanan kapurala the petitioner's case is that Sinnetamby succeeded as the sole kapurala or trustee. Sinnetamby kapurala died in 1885 and his only son Kalimuttu, whom I shall refer to hereafter as Kalimuttu (1) succeeded as the sole hereditary trustee. Kalimuttu (1) was only three years old when his father Sinnetamby died. As he was an infant, during his minority and until he was able to function as kapurala or trustee his father's brother Appukutti who had in the mean time married his father's widow, officiated as kapurala and looked after and administered the affairs of the kovil on his behalf. Appukutti died in 1922. In support of his contention that Kalimuttu (1) was the sole kapurala or trustee of this kovil the document (P1), a deed of transfer has been produced. This deed is dated 31.10.1940. Kalimuttu kapurala referring to himself as the kapurala and chief trustee of this kovil has sold a property belonging to the temple to Reverand Medankara, a Buddhist priest who occupies the Buddhist temple immediately adjoining the kovil. Rev. Medankara is a witness in this case for the petitioner. He is the chief incumbent of the Buddhist temple which is situated adjoining the kovil.

The petitioner has also prouced a deed of lease (P2) dated 13th October, 1941, by which Kalimuttu (1) had leased to the same Rev. Medankara a land belonging to the kovil for 10 years. He has described himself as the trustee of this kovil. His son Lechiraman has signed as a witness to both deeds.

Kalimuttu (1) had two sons, the elder of whom was Lechiraman *alias* Muttiah and the younger Sinnetmby *alias* Rasiah. He had a daughter Visalachchi who has to be kept out of the claim for the office. Kalimuttu (1)'s second son Sinnetamby died in 1938 at the age of 27. Kalimuttu (1) died in 1942. He was succeeded by his only surviving son Lechiraman *alias* Muttiah

who officiated as the sole trustee or kapurala. The petitioner has produced the deed of lease (P3) dated 31.10.1955 by which Lechiraman kapurala describing himself as the trustee of the kovil has leased to Rev. Medankara and another priest a property belonging to the temple for 99 years. Lechiraman had 9 children of whom the eldest was Kalimuttu (whom I shall refer to as Kalimuttu (2) hereafter). The other children were Balasunderam, the 1st respondent, Sivamani the 2nd respondent, Sabaratnam, Sinnetamby the 4th respondent, Jeganathan the 5th res- Pasupathanthan the 6th respondent, Pathmanathan the 7th respondent and Yogamangalam the 8th respondent. Sabaratnam had died in 1965 and his widow Maheswari is the 3rd respondent. In 1957, Lechiraman who was old and incapable of looking after and managing and controlling the affairs of the kovil by a notarially executed deed of gift dated 8th June, 1957 granted, conveyed, assigned and transferred as a gift to his eldest son Kalimuttu (2) " and his heirs " etc., the kovil and its temporalities absolutely for ever. In this document (P6) the donor Lechiraman states that " by virtue of a system of primogeniture " he as the elder son of his late father Kalimuttu had succeeded to the right, title and interests of the land and premises and the controlling power of the kovil and its appurtenances. The petitioner's contention is that P6 which has been executed long before any dispute to this temple had arisen, contains the statement by Lechiraman who admittedly functioned as the sole hereditary kapurala or trustee of this temple, that the mode of devolution to the kapuralaship or trusteeship of this temple was by the system of primogeniture, that is, where the eldest male succeeds. The deed is strongly relied upon by the petitioner to prove his case that according to usage and custom, the eldest male descendant succeeded to the office in question. Kalimuttu (2) however died in 1958 during the life time of his father Lechiramon. Kalimuttu (2) had five children the eldest of whom was the petitioner also called Lechiraman. He had two daughters, Parameshwari and Lechchemi and two other sons, Sivapathasunderam and Krishnamoorthy. Lechiraman, the father of Kalimuttu (2) and grandfather of the petitioner died in 1962. The petitioner who was born in 1947 was therefore 11 years old when his father Kalimuttu (2) died in 1958 and was 15 years old when his grandfather died in 1962. It is the petitioner's case that during his minority his uncles, that is his father's brothers, i.e., Balasunderam the 1st respondent, Sabaratnam, Sinnetamby the 4th respondent, Jeganathan the 5th respondent, Pasupathinathan the 6th respondent and Pathmanthan the 7th respondent, looked after the affairs of the temple on his behalf. When he became a major he demanded his right as the sole hereditary trustee or kapurala of the said kovil from his uncles, who, however, disput-

ed his rights. This necessitated the petitioner instituting the present proceedings. I might say that the petitioner's brothers Sivapathasunderam and Krishnamoorthy are not disputing the petitioner's claim to be the sole hereditary trustee or kapurala of this temple.

The respondents denied the petitioner's claim. They rely firstly on certain documentary evidence which according to them would demolish or destroy the petitioner's claim. According to them on the death of Narayanan kapurala his two sons Sinnetamby and Appukutti functioned as joint trustees or kapuralas. When Sinnetamby died in 1885 his son Kalimuttu (1) along with Appukutti functioned as joint trustees. Thereafter Kalimuttu (1) and his two sons Lechiraman and Sinnetamby functioned as joint trustees. When Lechiraman died in 1963 his sons and the children of Kalimuttu (2) namely, the petitioner and his brothers succeeded as joint trustees on the basis that each son of Lechiraman was entitled to a 1/7th share of the trusteeship.

The respondents have produced documents R10, R6 and R7 not only to establish their case that all males and their male issues from Narayanan downwards were joint trustees, managers or kapuralas but also to demolish the petitioner's case that the eldest male child succeeded to the offices. R10 is a deed dated 1.10.1914 by which Narayanan kapurala's son Appukutti and Sinnetamby kapurala's son Kalimutta (1) had leased a land called Kopitottam for a period of 50 years to one Sinnetamby Chettiar. In this deed Appukutti is referred to as Appukutti kapurala. The lessors are referred to as Managers of Kaliammal Kovil. The deed states that the land Kopitottam belonged to the temple "and was managed and possessed by us". R6 purports to be a certified copy of the original which was not produced of an agreement dated 2.6.1931 which was entered into between three persons who described themselves as Kalimuttu kapurala, Kalimuttu Lechiraman and Kalimuttu Sinnetamby trustees and kapuralas of Kaliammal Kovil and a person called Rajaratnam, the other party to the agreement. It related to the purchase of goats and fowls slaughtered and sacrificed at the Kovil. D7 is an agreement dated 16.9.1931 between three persons who described themselves as Kalimuttu kapurala, Kalimuttu Lechiraman and Kalimuttu Sinnetamby, trustees of the Badrakali Kovil *and* one H. Victor de Zoysa of Mutwal, Colombo. This too relates to the delivery of fowls and goats sacrificed at the Kovil in liquidation of a debt of Rs. 250 owed to de Zoysa.

It was sought by the respondents to establish by R10 that the two sons of Narayanan kapurala, Sinnetamby and Appukutti were joint trustees and on the death of Sinnetamby in 1885 his

brother Appukutti became the joint trustee with Sinnetamby's son Kalimuttu (1). Likewise, by R6 and R7 it was sought to establish that after the death of Appukutti in 1922 without any male heirs his brother's son Kalimuttu (1) along with his children Lechiraman and Sinnetamby were joint trustees. The intended purpose of the documents was to demolish the petitioner's claim that there was an uniform, invariable and definite usage or custom that the eldest male succeeds to the office.

Before I deal with the legal effect of these documents in regard to the petitioner's claim I have to decide on the admissibility of R6 and R7 which purport to be certified copies of the originals of the agreements. Before us Mr. Jayewardene for the petitioner, who also appeared for the petitioner in the original Court objected to the admissibility of these documents R6 and R7 in the absence of the originals. The learned District Judge has in his judgment not given a definite ruling on the admissibility of the certified copies R6 and R7 but has merely stated that the use of the words trustee and kapurala in R6, R7, R8 and R10 *per se* cannot establish " the fractional system of devolution contended for by the respondents ". I can only construe this to mean that even if these documents were admissible in evidence, they fail to establish the purpose for which they were sought to be made use of.

It is therefore necessary for me to consider the admissibility of these documents in view of the objection taken to them by Mr. Jayewardene. The first reference to R6 and R7 was in the supplementary affidavit to which they were annexed, filed by the 1st, 4th, 6th and 7th respondents on 18.12.1973 after the decision of the Court of Appeal on 11.6.1973. The originals of R6 and R7 were not produced. The purpose of R6 and R7 was to establish that Kalimuttu (2) and his sons Lechiraman and Sinnetamby functioned as joint trustees and managers. Annexed to this affidavit was also another affidavit R8 purporting to be made by the only living witness to R6, a person called Thambawila Lekamalage Wijedasa. This affidavit is dated 17.12.1973 and states that the deponent who was 65 years old on the date he affirmed to the affidavit remember the execution of R6 by Kalimuttu and his sons Lechiraman and Sinnetamby with one Rajaratnam for the sale of fowls and goats sacrificed at the kovil. He affirmed in the affidavit that at the time of the execution of the agreement the three persons were looking after and managing the Kovil and its affairs as kapuralas of the said kovil. R6 and R7 were certified copies prepared by Mr. Randeny, one of the Attorneys who appeared for the respondent in the District Court and purports to be certified by him on 17.12.1973.

On 3.6.1974 Counsel for the respondents in the District Court in reply to the opening of the petitioner's case, read the affidavit and the documents including R6 and R7 annexed to the affidavit under section 384 of the Civil Procedure Code. At this stage, Counsel for the petitioner pointed out that these documents R6 and R7 filed with the affidavit being certified copies may be read subject to proof as their originals were not produecd. Despite this objection even at this stage the originals of R6 and R7 were not produced although according to Mr. Thajudeen, one of the Attorneys for the respondents who gave evidence at the inquiry stated that these documents were only found missing in May 1975. On 3.6.1974 therefore these documents would have been with the respondents or their counsel, otherwise the Court would have been informed that the originals were missing. As to why the originals of R6 and R7 were not produced at this stage is a big question for which no answer was forthcoming at that time or even now. On the same occasion Counsel for the petitioner objected to a certified copy of the deed No. 9033 of 1.12.1914, i.e. R10 being produced. The Court ruled that although the document R10 was presumed to be over ten years old, the presumption of genuiness did not apply to it as it was only a certified copy. He ruled that it was inadmissible. At this stage, Counsel for the respondent moved to summon the Registrar of Lands to produce the original of that document, but this application was disallowed by Court. What strikes me is why Counsel for the respondents did not show the same enthusiasm, which he displayed in regard to that deed, in regard to the originals of R6 and R7. R6 and R7 certainly on the evidence in this case, were in the custody of the respondents or their Counsel. Even the photostat copies of the originals of these documents which were available to them, having obtained them on 5.12.73 were not produced on this occasion. No satisfactory explanation was or is forthcoming for this omission. I find from the proceedings that the Court adjourned on this day, namely on 3.6.1974, at 3.30 p.m. Before the Court adjourned the last recorded statement refers to an objection taken by Mr. Jayewardene who also appeared for the petitioner in the original Court to the admissibility of R6 and R7 who said that they must be duly proved. The next date of inquiry was 24.6.74. On this date, Counsel for the defendant made further submission and produced two more death certificates R14 and R15. The originals of R6 and R7 were not produced on this occasion nor were the photostat copies of the originals of these documents produced.

On 24.6.74 Counsel for the petitioner framed the issues and on an objection taken an appeal was lodged to this Court. The judgment dismissing the appeal of the respondents was delivered

by this Court on 28.2.1975. Proceedings next commenced in the District Court on 30.6.75. Between 24.6.74 and May, 1975 (the date on which the originals of documents R6 and R7 were found missing) the originals of R6 and R7 were not listed by the respondents.

The petitioner gave evidence on 3.7.75. R6 and R7 (as certified copies) were not put to the petitioner by the respondents in cross-examination although documents R1—R5 and R10 were put to him. On 3.7.75 petitioner's case was closed. On 16.7.75 the 1st respondent commenced to give evidence. When he made reference to the certified copies R6 and R7 and produced R6 (*b*) which purported to be a photostat copy of the original of R7, and R6 (*c*) which purported to be a photostat copy of the counterpart document of the original of R6 which was marked as R6 (*a*), objection was taken to the production of these documents but they were admitted subject to proof. The 1st respondent proceeded to identify the signatures in R6. He said that he identified the signatures of his grandfather Lechiraman and his father Kalimuttu, but he was unable to identify the signature of Sinnetamby. Kalimuttu (1) died in 1942. The 1st respondent when he gave evidence in 1975 said he was 43 years old so that he would have been born in 1932. When his grandfather Kalimuttu died in 1942 he would have been 10 years old. I doubt very much that he would have been so acquainted with his grandfather's signature for the purpose of identifying his signature, when he was only 10 years old, when his grandfather died in 1942. R6 was witnessed by the person called Wijedasa. His affidavit R8 has been annexed to the supplementary affidavit filed by some of the respondents on 18.12.73. This Wijedasa was cited as a witness by the respondents but was not called by them as a witness to prove R6. The petitioners have produced marked P16 the birth certificate of the person called Wijedasa, whose ge-name is " Thambawila Lekamalage " the same as the ge-name of Wijedasa who affirmed to the affidavit R8, which states that his date of birth was 3.9.1918. Petitioner therefore argued that if this is the same Wijedasa then in 1931 when he was a witness to R6 he would have been only 13 years old. I admit that there is nothing to establish the identity of Wijedasa in P16 that he was the same person referred to in the affidavit R8 although they bear the identical names and ge-names. However, the fact remains that Wijedasa who was a witness available and cited was not called to give evidence to prove R6. This is another matter that in my mind casts a great deal of suspicion regarding the authenticity of R6.

R7 too was objected to. The 1st respondent only identified the signature of his father Lechiraman. He said he was unable to identify the other signatures as they were smudged but he said

that at the time he had the original with him he was able to identify the other signature as that of Kalimuttu Kapurala. In R7 Victor de Zoysa, the other party to the agreement has not signed the agreement. The 1st respondent also admitted that no such agreements like R6 and R7 are entered into at present. The kovil is over 150 years old and these are the only two documents that have been produced. These documents were supposed to be in their father's almirah. At the inquiry Mr. Thajudeen, one of the Attorneys for the respondents gave evidence. He said that the 1st respondent handed to him a number of documents among which were R6, the counterpart of the original and the originals of R6 and R7. His Counsel advised him to take photostat copies of these documents. He therefore asked the 1st respondent to obtain the photostat copies and bring back the originals to him. He, thereafter had the originals of R6 and R7 with him. He handed the originals of R6 and R7 to the other Attorney Mr. Randeny who appeared in the case to prepare certified copies. These are the certified copies, R6 and R7, prepared by Mr. Randeny. R6 and R7 were later filed with the supplementary affidavit on 18.12.1973. He had the originals of R6 and R7 with him and he discovered them missing in May 1975. He informed his client about it. Mr. Randeny, Attorney-at-law has given evidence and stated how he obtained certified copies R6 and R7 from their originals. The evidence does not reveal that any complaints have been made to the Police about these missing documents. It seems strange that the only two documents of which photostat copies have been obtained were found missing. These are the only two documents that are missing among the documents of the respondents in this case. The 1st respondent also has given evidence and stated that the originals of R6 and R7 were in his father's almirah. He had given them to Mr. Thajudeen and got them back for the purpose of obtaining photostat copies of the originals and thereafter handed over the originals to Mr. Thajudeen.

I also find that in the first list of documents filed on 5.3.1974 by 1st, 2nd, 4th, 5th and 6th respondents while deed R10 of 1.2.14 is listed, the originals of R6 and R7 which would have been available with them, were not listed. Nor were the photostat copies of the originals of R6 and R7 which according to the 1st respondent were obtained on 5.12.1973, listed. However, I find that in the subsequent list of documents filed by the respondents on 18.6.75 the photostat copies of the alleged originals of R6 and R7 were listed. This is another circumstance that adds to the suspicion regarding the genuiness of R6 and R7.

The contents of the documents R6 and R7 are of a decisive nature and would destroy completely the petitioner's claim that there were no joint trustees or kapuralas but only a sole heredi-

tary trustee. In a case of this nature, therefore the authenticity of the documents must be examined and scrutinized by Court with the greatest caution and if there is any doubt or suspicion as to its authenticity in the absence of the original or a satisfactory explanation as to how they came to be missing, it would be unsafe to act on such documents. As I pointed out even when the originals of these documents were available with the respondents when objection was taken to the admissibility of certified copies, no attempt was made to produce the originals. The least I can say without being critical of anybody is that it would be unsafe to act on R6 and R7 in a case like the present one where the contents of such documents are of a decisive nature in the case. I, therefore, refuse to consider and act on R6 and R7.

I shall now consider R10. According to the respondents by this deed which has been executed in 1944 long before the deeds relied upon by the petitioner, namely, P1, P2 and P3 the lessors describing themselves as Appukutti Kapurala, son of Narayanan Kapurala and Kalimuttu Kapurala, son of Sinnetamby Kapurala, managers of Kaliammal Kovil had leased for 50 years the land called "Kopitottam" to Sinnetamby Chettiar. The respondents contend that this document supports the respondents' case that the trusteeship or kapuralaship of this kovil was held by the male issues and their male issues as and when they were born as joint trustees or kapuralas. The petitioner, however, has explained the circumstances under which Appukutti came to function as kapurala of this kovil. The question is whether in the light of the explanation put forward by the petitioner, the contention urged by the respondents can prevail.

Narayanan Kapurala had two sons, Sinnetamby and Appukutti. It is possible to fix approximately the date of birth of these two sons. According to the Marriage Certificate of Sinnetamby kapurala, P10, on the date of marriage (2.3.1877) he has given his age as 45. He may therefore have been born in 1832. Appukutti's first marriage was on 29.1.1877. According to his first marriage certificate (P11) he has given his age as 25. When he married the second time on 18.7.1892—according to his second marriage certificate (P9) he has given his age as 40. So if one takes P9 and P11 into consideration Appukutti would have been born in 1852. He was therefore born 20 years after his elder brother Sinnetamby who was born in 1832. Narayanan kapurala must have died shortly after 1853 as we find that the decree of the Supreme Court in D.C. Chilaw 13846 in which Narayanan kapurala was the defendant is dated 9.4.1853. So that when Appukutti was born in 1852 Sinnathamby, his elder brother, who would have been about 20 years old would have been functioning as trustee or kapurala. However, it was Appukutti who first married one Maria

Fernando on 29.1.1877 at the age of 25. If as the respondents contend that Appukutti at this time functioned as trustee or kapurala of this kovil, on an important occasion like his marriage one would have expected him to refer to himself as Appukutti kapurala. The marriage certificate merely refers to him as "Narayanan Appukutti". Sinnetamby, the elder brother, however, married shortly afterwards on 2.3.1877 (vide marriage certificate P10) to Achchipulle. The marriage certificate, P10, refers to Sinnetamby as Sinnetamby kapurala, clearly indicating therefore that Sinnetamby was officiating as kapurala in 1877. Sinnetamby kapurala died on 11.10.1885 (vide death certificate P8). He left his only son Kalimuttu (1) who was born on 2.7.1882 (vide birth certificate P7). The name of the father is given as Sinnetamby kapurala. When Sinnetamby kapurala died in 1885 his son Kalimuttu (1) was only 3 years of age. The petitioner's case is that during the minority of Kalimuttu (1) his uncle Appukutti looked after the affairs of the kovil and officiated as kapurala for and on his behalf. On 18.7.1892 Appukutti married Sinnetamby's widow Achchipulle who was the mother of Kalimuttu (1). (Vide marrige certificate P9). In this marriage certificate Appukutti calls himself Appukutti kapurala. During the minority of Kalimuttu (1) his stepfather and uncle Appukutti looked after the kovil till he came of age.

The petitioner's contention is borne out by the documentary evidence that during the life time of Sinnetamby his brother Appukutti never functioned as kapurala or trustee and never described himself as such. It was only after Sinnetamby died and after he married his brother's widow that he called himself "kapurala". Appukutti died on 21.7.1922 (vide death certificate R9). Although the death certificate says that he died when he was 94 years old that would be incorrect. He would have been approximtely 70 years at that time. Kalimuttu (1) would have been 42 years old and would have been functioning as kapurala or trustee of the kovil. The informant in the death certificate is Kalimuttu (1). In the death certificate R9 of Appukutti he is not referred to as "Appukutti kapurala" but simply as "Appukutti". This would again show that after Kalimuttu came of age and took on the duties as kapurala, Appukutti ceased to function as kapurala of the kovil. Appukutti died leaving only a daughter and no male issues. The daughter Muthulechchemi therefore has to claim to the trusteeship. The respondents did not dispute that Kalimutu (1) officiated as kapurala or trustee of this kovil. They only dispute the fact that he did so as the sole hereditary trustee. No doubt when R10 was executed by Appukutti and Kalimuttu (1) the latter was 32 years old and according to the

petitioner was functioning as the sole trustee or kapurala. The question arises why in 1914 Appukutti is referred to in R10 as the "manager" of the kovil along with Kalimuttu (1). R10 is a lease for 50 years in favour of one Sinnetamby Chettiar. It may well be that the parties thought that the legal ownership or domnium of the property had devolved on Kalimuttu (1) and Appukutti and therefore in the absence of an instrument of trust the safer course would have been to join Appukutti also as a lessor. Appukutti himself was during the minority of Kalimuttu (1) functioning as kapurala. He would have been well known therefore as Appukutti kapurala. It is well known that the members of the Chetty community carefully scrutinize the title of property they purchase. Sinnetamby Chettiar the lessee as an added precaution in order to ensure that title to the property would not be in dispute, may have insisted on Appukutti also joining as a lessor in R10. Considering the totality of the evidence and in particular the circumstances in which Appukutti functioned as kapurala, I do not think R10 can be given the construction and effect sought to be placed on it by the respondents. The appointment by P6 by Lechiraman of his son Kalimuttu (2) to look after and manage the kovil and the reference to the system of primogeniture in P6 in my view gives further support to the petitioner's contention that Kalimuttu (1) functioned as the sole hereditary trustee.

This brings me to a consideration of P6, the deed by which Lechiraman grants and assigns the right to manage and control the kovil and its temporalities to his elder son Kalimuttu (2) and the reference in P6 to the system of devolution of trusteeship as the system of primogeniture. P6 was listed by the petitioner on 27.12.73. The 1st respondent when he gave evidence on 16.7.75, said in examination-in-chief that his uncle told him on the same day the deed was executed, that is, 8.6.57 about the execution of the deed and when his father came home at about 9 p.m. he questioned his father as to why he executed this deed. In the course of the examination-in-chief nothing was suggested that this deed was executed either under undue influence or when his father was under the influence of liquor. Cross-examination commenced on the same day and it was continued on 18.7.71. In answer to a question put in cross-examination as to why his father executed this deed P6 in favour of his eldest son Kalimuttu (2) the 1st respondent stated that the father was taken and given liquor and under threat he was made to execute the deed. However, no complaint was made to any person in authority nor did he get his father to cancel the deed and execute another deed. He further stated in cross-examination that his father was harassed and persuaded by Kalimuttu

(2) to execute the deed in his favour. He did not however obtain a copy of the deed to find out what it was at that time. It was after the action was filed that he obtained a copy of it and prior to that he had not seen it.

The attesting witness to this deed Davith Singho had been called earlier by the petitioner on 2.7.75 in order to prove the execution of the deed and to give evidence. No questions were put to this witness to suggest that Lechiraman executed the deed while under the influence of liquor or under undue influence. In my view the allegation that P6 was executed under undue pressure or while Lechiraman was after liquor was belatedly put forward for the first time at the inquiry in the District Court. I am, therefore, of the view that there is no evidence to establish that P6 was executed under the influence of liquor or any undue pressure.

P6 was granted by Lechiraman the father of the respondents in regard to the managership. Lechiraman who gave it was also at that time, admittedly the sole manager in charge of the temple. Counsel for the petitioner stressed these aspects and relied on the statements relating to primogeniture both as an admission against the appellants and also as constituting an act of appointment. The appellants objected strongly to the use of P6 as an appointment on the basis that this document was introduced at a later stage in the course of the trial and was not reflected in the respondents' pleadings. We are of the view that it is unnecessary to go into this matter in view of our finding upon the relevant material that the rule of primogeniture would apply to the succession to this temple.

The reason that probably prompted Lechiraman to execute P6 was that he was at that time old and ill. He had nine children. There was always the likelihood of squabbles and acrimony over the succession after his death. He wanted to ensure that the succession took place according to the recognized usage and custom, viz., by the system of primogeniture and thereby put the succession out of any controversy. Subsequent events have, however, belied those sanguine expectations.

At the time P6 was executed in 1957 therefore it would appear from the evidence that Lechiraman was living with all his children in one house and there is nothing to indicate that the relations between the father and his children were anything but cordial. The evidence in the case rather points to the other children having acquiesced in this appointment by Lechiraman of his son Kalimuttu to succeed him in accordance with the rule of primogeniture. That the 1st respondent Balasunderam had no interests in the management of the kovil after 1957 is borne

out by the fact that in 1958 he married a daughter of a P.W.D. contractor in Kandy. Although he says that after he married he continued his residence at Munneswaram, he has admitted that he transferred his rice ration book to Kandy in 1959 and right throughout his rice ration book and that of his wife were in Kandy till 1969. The householders' list for the year 1962 (P14) does not contain his name or that of his wife as occupants of the house at Munneswaram. He also admitted that he was assisting his father-in-law in his work as contractor. From 1965 to 1970 he admitted that he did building contracts for the village committee.

If the contention of the 1st respondent is true that he has been functioning as joint trustee with his other brothers and the sons of Kalimuttu (2) who on the death of their father were minors, one would have expected him as the eldest of the surviving sons of Lechiraman in order to function as one of the trustees of the kovil to have lived at Munneswaram. His departure to Kandy, the transfer of his rice ration book and the fact that he was more keen on doing building contracts clearly establish that he had acquiesced in the appointment by Lechiraman that Kalimuttu (2) should succeed him and thereafter the eldest male child of Kalimuttu on the basis of primogeniture. The 1st respondent also submitted that his other brothers, 5th, 6th and 7th respondents were gainfully occupied in various occupations like dairy farming, running a boutique, tapping sweet toddy and cultivating vegetables and tobacco. Sabaratnam the other brother was dead. It seems very probably therefore that when Lechiraman died in 1962 Kalimuttu (2) having predeceased him in 1958, the petitioner being only a boy of about 11 years, the 1st respondent and his brothers have looked after the temple but when the petitioner came of age and demanded his rights they refused to give him back the kovil because they found the income from the kovil was very lucrative. In cross-examination the 1st respondent admitted that after 1962 houses had been built by the members of the family of Lechiraman roughly worth between Rs. 70,000 to Rs. 75,000. Three lands worth between 15 to 20 thousand rupees have been purchased by the members of the Lechiraman family. He himself had bought a second-hand car for Rs. 5,000 and his brother also bought another car. I, therefore, agree with the finding of the learned District Judge that the document P6 is consistent with the petitioner's case that the trusteeship or kapuralaship of this kovil devolved on the eldest male child to the exclusion of the others.

The respondents' position is that all the male children functioned as joint trustees or kapuralas. This again is not the position taken up by Sabaratnam, the deceased brother of the 1st respondent. In December 1962 Sabaratnam the brother of the 1st respondent filed answer in a case in which he was sued for ejectment by one Mrs. Kadiravelu from a madam on a land given to be looked after by Sabaratnam who was the 1st defendant in the case. On 12th December, 1962 Sabaratnam filed answer. By this date his father Lechiraman had died on 10.08.62. The petitioner's father also died in 1958. This was the time during which the petitioner's uncles were looking after the temple according to him on his behalf. In this answer Sabaratnam has taken up the position that the land belongs to the Munneswaram Badrakali Kovil of which he was the kapurala and as kapurala he possessed it on behalf of the kovil. Here it would appear that Sabaratnam is claiming as the sole trustee. This claim is certainly in conflict with the claim of the 1st respondent that the brothers were joint trustees.

The preponderance of evidence is therefore in favour of the conclusion that by custom and usage the succession to the office of trustee or kapurala of this kovil is as claimed by the petitioner, namely, the eldest male descendant succeeding to the office.

There remains for consideration the oral testimony led in this case by both parties. The learned District Judge has not dealt with or analysed the voluminous oral testimony led in this case. This has been subject to much criticism by Counsel who appeared for the respondents before us, and I shall deal with this matter more fully at the appropriate stage. I can also understand the reluctance of the learned District Judge to examine the oral evidence in this case as the evidence of most of the witnesses was to the effect that the persons whom the respondents claimed to have been joint trustees or kapuralas had either officiated as priests, or poosaris at the kovil or assisted in the poojas, ceremonies and rituals, etc., at the kovil. This evidence, however, is not directly relevant to the question in issue in this case, namely, as to who the trustee, kapurala or manager of this kovil was, that is the person who was responsible for the administration of the kovil and the collection and disbursement of the income and the mode of devolution of the trusteeship. As I pointed out considering the thousands of worshippers who come to this kovil from all parts of the island and at all times, the trustee or kapurala himself cannot alone perform all the sacerdotal duties

connected with this kovil. He must have the assistance of other priests or poosaris and it would be natural for him to utilize the services of his own kith and kin for this purpose. In fact, the evidence is that during the festival season poosaris from the neighbouring village of Udappuwa also officiated as priests at this kovil. The evidence of these witnesses would hardly serve any decisive purpose. As I remarked earlier the learned District Judge has himself drawn a distinction between the person who officiates as the kapuralla or trustee and those who perform the functions of priests or poosaris at this kovil.

Except for one witness Rev. Medankara, none of the other witnesses called by both parties has had any direct dealings or transactions with this kovil. Rev. Medankara is the Chief incumbent of Pushparamaviharaya, a temple which adjoins the kovil. He was 70 years old at the time he gave evidence and knew about the affairs of the kovil from the time of Kalimuttu (1). He had obtained on lease two lands belonging to the kovil on P1 of 1940 and P2 of 1941 from Kalimuttu (1) kapurala. The witness to these two deeds was his son Lechiraman. Rev. Medankara has given evidence of a positive nature and he has said that kalimuttu (1) officiated as kapurala and thereafter his son Lechiraman officiated as kapuralla. He had taken a lease of a land belonging to the kovil from Lechiraman on P3 of 1955 to which the witness was Kalimuttu (2). He said that they were all living in the same house at that time. He said that Lechiraman kapurala towards the latter part of his life was ill and during this time his eldest son Kalimuttu (2) functioned as kapurala but when he predeceased his father Lechiraman again officiated as kapurala. He said that the others like Sinnethamby assisted Kalimuttu and Lechiraman in the performance of poojas. He spoke of Kalimuttu (1) kapurala and Lechiraman looking after the properties and taking the income. He also said that the other children of Kalimuttu (1) also assisted at the performance of the poojas in the kovil. He said that when Lechiraman died the petitioner was a boy of 14 years and during his minority the 1st respondent carried out the work at the temple. Nothing has been urged by the respondents as to why the evidence of this witness should be rejected.

The cross-examination of this witness was directed merely to elicit that others also participated in the ceremonies and poojas at the kovil. Rev. Medankara's evidence is in accord with the documentary evidence in the case.

I will now deal with the criticism that had been urged by Counsel appearing for the respondents before us that the learned District Judge in his judgment had failed to analyse the

oral and documentary evidence in this case, or draw any inference from such evidence. Not one of the witnesses' evidence has been considered, belief or disbelief of witnesses has not been adjudicated upon. I must admit that considering the volume of oral and documentary evidence led in the case and the long drawn out submissions of Counsel, the judgment is skeletal and it is certainly not one in respect of which the stricture of prolixity can ever be levelled. While the criticism may superfically appear to be justifiable, I however find that the learned District Judge has dealt with all the points in issue and pronounced definite findings on them. Reasons, though in brief, have also been given for his findings On an examination of the judgement it would appear that the learned District Judge has preferred to act on the documentary evidence in this case. The judgment reveals an absence of any consideration, examination and scrunity of the oral testimony in the case. This may perhaps be because almost all witnesses spoke of the members of the family performing poojas at the kovil while the main issue in the case was as to who as trustee or kapurala administered the affairs of the kovil.

I find that in dealing with the question whether there was uncertainty of title to the trust property the learned District Judge has rightly considered documents (R1), that is the agreement of 1819, R2, R3, R4 and P5, the proceedings and judgments in the District Court of Chilaw Case No. 13846. He has rejected the case of the respondents that Narayanan had acquired prescriptive title to the property and held that the last known owner was Ratnasinghe Giri Iyer, a Brahmin, beyond which title was uncertain. Quite properly he gets to the next question as to how in regard to this kovil, which is a charitable trust, the trusteeship has devolved during the last 100 years. He then traces the pattern of devolution from the time of the founder to Narayanan who functioned as the sole trustee and thereafter till 10.8.1962 when the last trustee Lechiraman died. He then considers the pedigree from Narayanan to his present day descendants which is not disputed but is accepted by all the parties. He gives the reason why Appukutti functioned as " temporary trustee ". This was because of the minority of Kalimuttu (1) who was 3 years old when his father Sinnethamby died and who could not officiate as kapurala till he was 15 years old. He goes on to hold that when Kalimuttu (2) died the respondents were merely the " functioning priests " at the kovil. He concludes thus :

> " This examination of the pedigree reveals a pattern of devolution more consistent with the petitioner's claim than the respondents. It is a vertical descent from father to eldest son, or, if the son be yet a minor and the father should not

survive the period of minority—then the vertical devolution is *delayed* by a horizontal movement creating a temporary "trusteeship" until the defect of minority is cured, and devolution takes place again on this system of primogeniture. To say as do the respondents that trusteeship accrues to all the male issues of a surviving trustee seems wrong for one does not equate the priestly function with the functions of a trustee. This is the one and only pattern deducible from the evidence regarding the devolution of trusteeship from father (the senior) to the son. The existence, nurture and training of a priesthood required for the furtherance of the purposes of the trust is a completely different matter irrelevant to the matter under examination".

This shows that he has rejected as irrelevant the mass of evidence that was led regarding the performance of priestly functions at the kovil for the purpose of determining who the trustee or kapurala of the kovil was or how the devolution took place. He has rejected the contention of the respondents that P6 was executed by Lechiraman on 18.6.1957 while under the influence of liquor. He has referred to R6, R7 and R10 and concluded that these documents "cannot *per se* establish the fractional system of devolution contended for by the respondents". Finally he has held that the "succession was by a system of primogeniture to the office of trustee, or manager and generally and directly to the priesthood of the temple."

A judgment of a court must be a judicial pronouncement in which at least the trial judge should deal with all the points in issue in the case and pronounce definite findings on the issues. Even though the judgment may not on a reading on the face of it disclose that the trial judge has considered and subjected to examination and critical analysis the evidence of witnesses, but has chosen to act only on the documentary evidence, an Appellate Court can still uphold such a judgment if it is satisfied that the reasons, however brief, and conclusions reached have been on the hypothesis that there had been a rational examination and analysis in his mind of relevant evidence and the rejection of what is irrelevant. Adopting this test I am satisfied that although the judgment in the present case does not disclose a recital even of the main points of the evidence of the witnesses, an analysis of the evidence, an adjudication on the belief and the disbelief of the witnesses, nevertheless implicit in the logical conclusions reached by the trial Judge, the reasons and answers he has given to the main points in issue and his findings generally is that this can only be on the hypothesis that he has done so after a rational examination and analysis of the

main points of the relevant evidence in the case although he has chosen not to give expression to them explicitly in his judgment, which he might have done.

For these reasons I agree with the learned District Judge that the devolution of the trusteeship in respect of this kovil is as set out by the petitioner, namely, that by usage and custom the eldest male descendant succeeds as the trustee, kapurala or manager and that the petitioner as the sole hereditary trustee, kapurala or manager is entitled to be vested with the properties in question under section 112 (1) of the Trusts Ordinance.

Before I conclude I must say that I cannot ignore the finding of the learned District Judge that the other male descendants of Lechiraman had also by usage and custom performed functions as priests or poosaris at the kovil in connection with the poojas, ceremonies and rituals. They may therefore be entitled on that account to certain perquisites, emoluments, etc., by usage and custom. Section 112 (1) of the Trusts Ordinance empowers the Court to make a vesting order vesting the property "in any such manner in any such person or to any such extent as the Court may direct". While affirming the vesting order made by the learned District Judge, I would hold that this would be without prejudice to the rights of the male descendants of Lechiraman who by custom and usage have been performing or assisting in the performance of poojas, ceremonies or rituals at this kovil, and to the emoluments and perquisites, etc., that they may by usage and customs be entitled to arising out of the performance of these functions. The petitioner is therefore bound to respect these rights and allow these persons to officiate as priests or poosaris in the temple and enjoy the perquisites and emoluments, etc., which they may be entitled to by usage and custom subject, however, to his powers, control and directions as trusts, kapurala and manager of the temple.

The appeals are dismissed with costs.

RATWATTE, J.—I agree.

WANASUNDERA, J.—I agree.

Appeals dismissed.