

1963 *Present*: H. N. G. Fernando, J., and L. B. de Silva, J.

RAMANATHA KURUKKAL and 2 others, Appellants, and
S. RAMALINGAM and 4 others, Respondents

S. C. 595/59—D. C. Jaffna, 15/Trust

Hindu temple—Hereditary priest—Right of entry into temple.

The trial Court, while upholding the claim of the plaintiffs to be Trustees and Managers of a Hindu temple, held also that the defendants were the hereditary priests of that temple. The decree, however, provided for the ejection of the defendants from the temple.

Held, that the provision for the ejection of the defendants should be deleted because it was a denial of their rights as hereditary priests.

APPPEAL from a judgment of the District Court, Jaffna.

H. V. Perera, Q.C., with *S. Sharvananda* and *K. Palakidnar*, for the Defendants-Appellants.

H. W. Jayewardene, Q.C., with *V. Ratnasabapathy*, for the Plaintiffs-Respondents.

Cur. adv. vult.

October 1, 1963. H. N. G. FERNANDO, J.—

This appeal is from a decree of the District Court of Jaffna declaring the Plaintiffs to be the Trustees and Managers of a Hindu Temple. A dispute arose prior to 1943 as to the rights of management and as to the ownership of the temporalities and it is much to be regretted that the dispute cannot even at this stage be satisfactorily settled. After hearing argument, we decided that the decree should be affirmed, subject to one modification to which I shall later refer.

The learned District Judge, while upholding the claim of the Plaintiffs to be Trustees and Managers, held also (and so pronounced in the decree) that the Defendants are the hereditary priests of the Temple, and we see no reason to interfere with these findings. But it appeared desirable that an attempt be made to define with some degree of precision what rights of entry and/or residence should be accorded to the Defendants for the performance of their functions. We accordingly requested the Additional District Judge to inquire and report upon this matter. When that report was subsequently discussed in Court, it became apparent

that the recommendations of the Additional District Judge are unacceptable to the parties, mainly because of the mutual distrust and animosity which prevails between them. The recommendations would involve a voluntary surrender by the Plaintiffs of some degree of the control which they have the right to exercise in their capacity as Trustees and Managers, and their reluctance to make such a surrender is not inexplicable. For myself, I can only hope that the parties will be able to resolve their differences in the interests of the Temple and its worshippers. There is one matter, however, which is beyond dispute, namely that access to the *Katpakirakam*, the *Artha Mandapam*, and the *Mana Mandapam*, is permissible only to the Defendants. These precincts of the Temple are marked Nos. 1, 2 and 3 in the sketch which the Additional District Judge has referred to as the sketch marked 'Y'. As there is no such mark on the sketch filed of record, it will now be marked 'Y', by the Registrar of this Court. Access to these special precincts is gained only through one door of the room No. 3, to which there is a key. There can be no objection to the Defendants retaining custody of that key.

The decree under appeal provides for the ejection of the Defendants from the Temple. The Plaintiffs could not press for their physical ejection, since that would be in denial of their rights as hereditary priests; and the provision must be deleted.

I would affirm the decree of the District Court subject to the following modifications:—

- (1) The provision for the ejection of the Defendants will be deleted.
- (2) Provision will be added to the decree requiring the Defendants to hand over to the Plaintiffs in the District Court all keys of the Temple premises except the key of the door to the room No. 3 in the sketch marked 'Y'.

In view of certain observations made by counsel, I would place on record the fact that at the stage when we made order referring certain matters for report by the Additional District Judge, counsel for the Defendants did *NOT* consent to the appeal being dismissed.

Subject to the modifications of the decree which are set out above, the appeal is dismissed with costs. There will be no order as to the costs of the further proceedings which were taken by the Additional District Judge at the request of this Court.

L. B. DE SILVA, J.—I agree.

Decree modified.