1911. *Present*: Lascelles C.J. and Grenier J.

RAMANATHAN *v.* KURUKKAL.

273—D. C. Colombo, 32,154.

Hindu temple—Trustee's power to dismiss officiating priest—Customary law—Indian usages.

A trustee of a Hindu temple was held to be entitled to dismiss the officiating priest of the temple.

GRENIER J.—Hindu temples in Ceylon are under the control and management of persons in whom the fabric is vested (1) by right of private ownership; (2) by grant or assignment of the owners of the land on which the temple is built; (3) by appointment by the congregation; (4) by deed of trust.

In India and Ceylon certain customary laws are recognized and observed as applying to the manager or trustee, not only in his capacity as such, but in his fiduciary relation to the congregation, in matters affecting the temporalities of the temple and their proper appropriation.

It is not right to say that there is no law in this country which recognizes the status of the managar or trustee of a Hindu temple. There is the Hindu customary law. . . . Whether these customs and usages have been imported from India, or have grown up amongst the Hindus of the country and possess the sanctity of age, their existence cannot be overlooked.

LASCELLES C.J.—I do not understand the decision in *Sivapragasam v. Swaminathar Aiyar* [1] to go to the length of deciding that Indian customary law cannot be resorted to for the purpose of ascertaining the powers and duties of an essentially Indian institution.

THE facts appear from the judgment.

Elliott, for defendant, appellant.

H. A. Jayewardene, for the plaintiff, respondent.

The following authorities were cited at the argument: *Sivapragasam v. Swaminathar Aiyar*,[1] *Saravanamuttu v. Sinnappu Aiyar*,[2] *Kurrukal v. Kurrukal*.[3]

Cur. adv. vult.

September 29, 1911. LASCELLES C.J.—

This appeal raises a question with regard to the powers of a trustee of a Hindu temple to dismiss the kurukkal or officiating

[1] (1905) 2 *Bal.* 49. [2] (1906) 10 *N. L. R.* 52.
[3] (1892) 1 *S. C. R.* 354.

priest of the temple. The plaintiff contends that he, as trustee, had the right to appoint, and did in fact appoint, the defendant to be the kurukkal of the Siva Supramania Swamy temple, and that the defendant was lawfully dismissed by him. The defendant, on the other hand, contends that the right of appointing the kurukkal was vested in the congregation, and that he was in fact appointed by the congregation, and that the representative of the plaintiff, as regards his appointment, did no more than invite him to assume duty acting for and on behalf of the congregation. I do not understand the decision in *Sivapragasam v. Swaminathar Aiyar* [1] to go to the length of deciding that Indian customary law cannot be resorted to for the purpose of ascertaining the powers and duties of an essentially Indian institution. If, indeed, this is the effect of the decision, I confess that I am unable to see on what principle it can be supported. I mention this consideration, as a reference to the custom which prevails in India with regard to the management of Sivite temples would probably have readily disposed of the matter in dispute. There is very little local authority on the question, but in *Sivapragasam v. Swaminathar Aiyar* [1] the Court was satisfied on the evidence that the priests were merely the monthly paid servants of the temple, and it must be within the experience of all who have had experience of such matters in Ceylon that this is frequently, if not generally, the position of the priests of Sivite temples. The evidence as to the appointment of the defendant is fairly clear. I think the appellant has made too much of the discrepancy between the plaintiff's statement that he appointed the defendant and the fact that the appointment was made by one of the plaintiff's sons during the plaintiff's absence from Ceylon, for it was admitted by the defendant himself in action No. 52,781 that he was appointed by the plaintiff, and it was proved in that action that the plaintiff's two sons, Mr. Rajendra and Mr. Mahesa, habitually acted on behalf of their father during his absence from Ceylon in the management of the temple.

I entirely agree with the District Judge that there is no reason to distrust the evidence of the plaintiff, which is corroborated by the defendant's admissions in action No. 52,781 as to the manner of his appointment and the subordinate position which he occupied with regard to the trustee in the management of the temple ceremonies. On the other hand, the evidence of the defendant that he took office as kurukkal on the invitation of Mr. Mahesa and the congregation of the temple is not conviucing, and even if true is consistent with the view that the substantive appointment was made by the plaintiff's son, on behalf of the trustee, at the instance or on the recommendation of a section of the congregation. But the District Judge has rejected the defendant's evidence as to his appointment for reasons with which I agree.

[1] *(1905) 2 Bal. 49.*

1911.

LASCELLES C.J.

Ramanathan v. Kurukkal

In my opinion the District Judge, on the evidence before him, could not have come to any other conclusion than that the defendant was appointed and was liable to be dismissed by the trustee. The appeal must be dismissed with costs.

GRENIER J.—

I agree with my Lord that the District Judge came to a right conclusion on the facts, and that as the defendant's appointment was made by the plaintiff, according to the defendant's own admission in action No. 52,781, the plaintiff was entitled to dismiss him. I should like, however, to add a few words with reference to the decision in *Sivapragasam v. Swaminathar Aiyar.*[1] It is a well-known fact that Hindu temples in Ceylon are under the control and management of persons in whom the fabric is vested (1) by right of private ownership; (2) by grant or assignment by the owners of the land on which the temple is built; (3) by appointment by the congregation; (4) by deed of trust, a term well understood among Hindus. I have not exhausted all the means by which managers or trustees are appointed, but I think there can be no doubt that the plaintiff was the trustee of the temple in question, and had the right to appoint kurukkals or priests without consulting the congregation. The congregation might offer him advice, but he was at liberty to disregard it if he thought fit. In India as well as here certain customary laws are recognized and observed as applying to the manager or trustee, not only in his capacity as such, but in his fiduciary relation to the congregation, in matters affecting the temporalities of the temple and their proper appropriation. It is not right to say, if the judgment in *Sivapragasam v. Swaminathar Aiyar* [1] was intended to go so far, that there is no law in this country which recognizes the status of the manager or trustee of a Hindu temple. There is the Hindu customary law, which is capable of proof in the way in which customs and usages 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. I have myself been engaged in the early part of my career at the Bar in cases in the District Court of Jaffna, where questions of Hindu customary law with reference to the management of Hindu temples and other connected subjects had been expressly raised and decided. I think it is too late in the day now to ignore the existence of such laws and customs.

I agree to dismiss the appeal with costs.

Appeal dismissed.

[1] *(1905) 2 Bal. 49.*