

*Judgment of the Lords of the Judicial Committee of the Privy Council on the ex parte Appeal of Ramalingam Pillai v. Vythilingam Pillai from the High Court of Judicature at Madras, delivered 15th July 1893.*

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Present :

LORD HOBHOUSE.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this appeal is whether the Appellant is the lawful dharmakurta or trustee of the ancient temple at Ramasweram in the district of Madura. The temple is one of the class of religious institutions described in Section 4 of Act XX of 1863, and according to immemorial usage the dharmakurta should be a "Vellala Pandaram" or ascetic of the Vellala caste. The last lawful dharmakurta was one Saminada Pillai, *alias* Setu Ramanada Pandaram. In 1882 a suit was brought in the District Court of Madura against him, and three other persons who were said to be agents and managers under him, alleging an embezzlement of Rs. 15,681 of money belonging to the temple by him and his agents. By the judgment given in that suit on the 2nd March 1883 it was found that he, Ramanada Pandaram, was responsible for the whole sum found to be embezzled, viz. Rs. 14,855. 10, and a decree was given against him for that sum with interest under Section 14 of Act XX. of 1863. He was also directed to be removed from the trusteeship of the temple under the provisions of the same Section. On the

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same day an order was made by the District Court appointing a manager to be in charge of the temple until a new Pandaram was appointed according to law. The judgment of the 2nd March 1883 was confirmed on appeal by the High Court of Madras on the 30th January 1884. Subsequently to the 2nd March 1883, and before January 1884, Ramanada Pandaram was charged with criminal breach of trust, and was afterwards convicted of it and sentenced to suffer simple imprisonment.

On the 30th January 1884, the day on which the High Court confirmed the order of removal, and whilst he was under the charge of criminal breach of trust, Ramanada Pandaram executed a deed of appointment of the Appellant in the following terms:—

“ In holding the office of Durmakurta of Ramasweram Devastanum, Mutt, &c., we have had to conduct the management of the said Devastanum through other persons, being ourself quite ignorant of reading, writing, and arithmetic, and the consequence has been that some mistakes were committed which resulted in loss to the Devastanum and trouble to us. Having in view the interests of the said Devastanum, Mutt, Athinam, &c., and considering that you are a relation of ours by blood and a descendant of the same ancestry as ourself and that you are a man of learning and good character; we have this day and according to the established custom invested you with *Kashaya* (dyed cloths), imparted the *Upadesam* (spiritual instruction) appertaining to the *Asramam* (stage of life), given you the appellation of Sethu Ramanadha Pandaram and appointed you as Durmakurta of the said Devastanum, Mutt, &c. You are to be our successor from this day with the right and privilege of appointing your successor &c., and to manage and conduct all the business of the said Devastanum, Mutt, at all times and independent of us.”

It has been laid down by this Committee that the only law applicable to such an appointment as this professes to be is to be found in custom and practice which are to be proved by testimony. Both Courts have found that according to the established usage of the religious foundation each dharmakurta initiated a Vellala layman and

made him an ascetic and thereupon appointed him as his successor, whilst in office and shortly before his death. It is clear from what has been stated that the appointment of the Appellant was not in accordance with the usage. It was made by a person who had ceased to be the dharmakurta.

The contention of the learned counsel for the Appellant that the temple and the mutt are inseparable institutions, the mutt being the original institution, and that the head of the mutt must be the head of the temple, is not supported by any evidence. The headship of the mutt and of the dharmakurtaship appear to have been held by the same person, but in the case in which there is evidence in the record of an appointment it is to be the dharmakurta (Exhibit V. p. 354), and this appears to be the principal office. Priority is given to it in the statement in the plaint of the usage and in the appointment of the Appellant. The Subordinate Judge says that the trusteeship being the more important of the two offices almost absorbed the headship of the mutt, so much so that the distinct existence of the mutt was very nearly forgotten and the succession came to be regarded as for the trusteeship alone. This is in their Lordships' opinion proved by the evidence referred to in his judgment.

Another objection to the appointment of the Appellant is that both Courts have found that it was not made *boná fide*. The Subordinate Judge, referring to the circumstances which had been proved, says "All these convince me that " the appointment of the plaintiff was not made " *boná fide* in the interests of the institution but " was for the personal interests of the late " trustee." The Judges of the High Court, also referring to the proved facts, say "With these " facts before us, we cannot say that the Sub- " Judge was not warranted in finding that the

“ Appellant's appointment was made by the former Pandaram in furtherance of his own interests and that it was not a *bond fide* exercise of his power, if any.” This finding of both Courts invalidates the whole appointment. It applies to the headship of the muṭṭ as well as to the office of dharmakurta.

On both the grounds which have been stated their Lordships are of opinion that the appeal was rightly dismissed by the High Court and they will humbly advise Her Majesty to affirm its decree and to dismiss this appeal.

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