

Privy Council Appeal No. 110 of 1918.

Nataraja Tambiran	-	-	-	-	-	-	-	<i>Appellant</i>
								<i>v.</i>
Kailasam Pillai	-	-	-	-	-	-	-	<i>Respondent</i>
Same	-	-	-	-	-	-	-	<i>Appellant</i>
								<i>v.</i>
Suppiah Gurukul	-	-	-	-	-	-	-	<i>Respondent</i>
Kailasam Pillai	-	-	-	-	-	-	-	<i>Appellant</i>
								<i>v.</i>
Nataraja Tambiran	-	-	-	-	-	-	-	<i>Respondent</i>
								<i>(Consolidated Appeals)</i>

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 7TH JUNE, 1920.

Present at the Hearing :

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

These are three consolidated appeals. One of the appeals is from a decree of the High Court of Madras made in a suit (No. 1 of 1905) in which Shunmugam Pillai and Kailasam Pillai were the plaintiffs and Nataraja Tambiran, Ramalinga Tambiran and Sankaralinga Tambiran were the defendants. That suit was instituted in the District Court of Madura on the 1st May, 1905, and by it the plaintiffs sought a declaration that none of the defendants was a lawful trustee of the Tiruvannamalai Mutt and of certain dependent Devasthanams or temples and other reliefs. Another of the consolidated appeals is a cross-appeal

from the decree of the High Court in that suit. The other of the consolidated appeals is an appeal from a decree of the High Court made in a suit (No. 2 of 1905), in which Kaliswara Gurukal, Vaduganantha Gurukal, and Suppiah Gurukal were the plaintiffs, and Nataraja Tambiran and Sankaralinga Tambiran were the defendants. The latter suit was instituted in the District Court of Madura on the 2nd July, 1905, and by it the plaintiffs sought a declaration that neither of the defendants was the lawful trustee of the same Devasthanams or the endowments of those temples and other reliefs. The consent in writing of the Advocate-General for Madras was obtained under Section 539 of the Code of Civil Procedure, 1882, for the institution of each of those suits. The main contention in each suit was as to the position of Nataraja ; that is, as to whether he was a trustee or held in some other capacity. On the 14th March, 1906, the District Judge found that Nataraja was not a trustee of the Mutt or of the Devasthanams, and that no suit lay under Section 539 of the Code of Civil Procedure, 1882, in respect of the Mutt or of the Devasthanams, which in his opinion went with the Mutt, and by his decree dismissed the suits. From those decrees there were appeals to the High Court. In each of the appeals the High Court set aside the decree of the District Judge and remanded the suit for trial.

On the remand the suits came on for trial before the Temporary Subordinate Judge of Ramnad, who will hereafter be referred to as the Trial Judge, by whom they were by consent tried together with a suit which was instituted in 1912 by one Ponnambola Desika against Nataraja, alleging that he and not Nataraja was the lawfully appointed head of the Mutt. Separate issues were framed in each of the three suits, and evidence was recorded. The Trial Judge by his decree dismissed the suit of 1912 ; that decree was not appealed and became final.

The Trial Judge found in suit No. 1 of 1905 that there was no evidence to show that the head of the Mutt was a trustee of the Mutt or of its properties, and by his decree dismissed that suit. The Trial Judge apparently considered that, so far as that suit was concerned, it was not necessary to find whether Nataraja was a trustee of the Devasthanams and the properties with which they were endowed. That decree in suit No. 1 of 1905 was appealed to the High Court and neither on that appeal, nor in these consolidated appeals was any attempt made to challenge the correctness of the finding of the Trial Judge in suit No. 1 of 1905 that there was no evidence to show that the head of the Mutt was a trustee of the Mutt or its properties. The Devasthanams and their endowments were not property of the Mutt, but admittedly they are held as trust property by the person who is for the time lawfully the Pandara Sannidhi or head of the Mutt, and the Pandara Sannidhi holds them as a trustee of religious and charitable trust properties, to which Section 539 of the Code of Civil Procedure, 1882, would apply. The Trial Judge also by his decree dismissed the suit No. 2 of 1905. That decree was appealed to the High Court.

The appeal to the High Court in suit No. 1 of 1905 was numbered 317 of 1913 in the High Court File, and the appeal in suit No. 2 of 1905 was numbered 318 in that File. The appeals were heard together by the High Court, and all the evidence which had been recorded in those suits and in the suit of 1912 was before the learned Judges before whom the appeals in the suits of 1905 came for hearing. The High Court by its decree in suit No. 1 of 1905 confirmed the decree of the Trial Judge in so far as it dismissed the plaintiffs' suit in respect of the office of Pandara Sannidhi of the Mutt and its endowments, and reversed that decree in other respects, and by its decree in suit No. 2 of 1905 reversed the decree of the Trial Judge, and declared that Nataraja was not the lawful trustee of the Devasthanams and the endowments thereof, and directed the Lower Court to appoint a fresh trustee of the said Devasthanams, and to place the trustee so appointed in possession of the said Devasthanams and endowments.

In 1894 Thandavarayan Desikar, who was the then Pandara Sannidhi or head of the Mutt, and had as such head of the Mutt the right to appoint his successor, appointed Nataraja, a defendant to the suits, as his successor, and Chinna Pattam or junior head of the Mutt. The only question which their Lordships consider necessary to decide in these appeals is whether that appointment was a valid appointment. Admittedly the head of the Mutt holds the Devasthanams and the properties with which they were endowed as a trustee whether he is to be considered as a trustee of the Mutt itself or not. Thandavarayan Desikar died in 1902.

The validity of the appointment of Nataraja was questioned in the suits of 1905, mainly on the allegations in the plaints in those suits that Thandavarayan was a trespasser, and had not been appointed head of the Mutt by Arumuga Desikar who had died in 1893 and was the head of the Mutt. The validity of the appointment of Thandavarayan as head of the Mutt has been established, and cannot now be questioned. It was, however, alleged in the plaint in each of the suits that Thandavarayan in 1893 appointed Nataraja as his successor "out of fraudulent and sinister motives." The meaning of that allegation is that the appointment of Nataraja was an invalid appointment as not made *bona fide* in the interests of the Mutt, and was made by Thandavarayan in furtherance of his own interests, and an appointment so made would not be an appointment made in the *bona fide* exercise of the powers of the head of the Mutt, and would be invalid. See *Ramalingam Pillai v. Vithilingam Pillai*, 20 I.A. 150. Inferentially, but not expressly, the allegation that the appointment of Nataraja had been made from fraudulent and sinister motives by Thandavarayan was denied by Nataraja in his written statement. In the later of the suits of 1905 Nataraja in his written statement alleged that the appointment "was made with the best motives and in the best interests of the institution," that is, of the Mutt. A direct issue as to the validity of the appointment of Nataraja should have been framed in each of the suits of 1905, but was not. The omission of such a framed

issue did not, however, take any of the parties by surprise. Documentary evidence from which it might be inferred that the appointment of Nataraja had been made by Thandavarayan not *bona fide* in the interests of the Mutt but for his own protection was filed, and subsequently witnesses were called to speak to facts whose evidence if reliable led to the conclusion that the appointment was not made in a *bona fide* exercise of the power to appoint a successor. Briefly stated, the motive which influenced Thandavarayan to appoint Nataraja as his successor was alleged to have been Thandavarayan's desire to avoid the risk of being prosecuted on a charge of murder and a charge of forgery of a will, charges which Nataraja was making, and to avoid the question raised by Nataraja that Thandavarayan himself had not been appointed the head of the Mutt. It is not necessary to consider whether those charges were or were not well founded.

The Subordinate Judge considered that the witnesses who gave evidence in support of the case that the appointment of Nataraja was not made *bona fide* in the exercise by Thandavarayan of his power of appointment were interested witnesses, and found that the appointment was not the result of a corrupt bargain between Thandavarayan and Nataraja, but was made in *bona fide* settlement of disputes of doubtful claims in respect of a certain place.

On appeal to the High Court, the learned Chief Justice in his judgment said :—

“ In the plaint, as already stated, the plaintiffs attacked the 1st defendant's (Nataraja's) appointment on the ground that Thandavaraya under whom he now claims was not himself the lawful Pandara Sannidhi and also on account of the circumstances under which the 1st defendant's appointment was made.

“ This last question, though distinctly raised in the pleadings, was not, to say the least, very clearly taken in the issues in these two suits (the suits of 1905), but it was the subject of the fourth issue in the third suit (the suit of 1912) which was tried with them.—Whether the appointment of the 1st defendant to the Chinna Pattam by the late Pandara Sannidhi was made *mala fide* to serve his own purpose, and therefore invalid ? ’ It is, I think, clear that the parties in these two suits also went to trial on this issue, and that we are bound to deal with it.”

Napier J., in his judgment in the appeals to the High Court, said on the same subject : “ I am satisfied that the matter was treated as an issue in the present suits (the suits of 1905), and that the non-existence of a specific issue at the trial was not considered of any importance, than being the issue in the other suit,” that is, in the suit of 1912. It appears to their Lordships that the learned Judges of the High Court were justified in treating the question as to whether Nataraja's appointment as head of the Mutt was or was not a valid appointment was an issue upon which the parties to the suits of 1905 went to trial, and that for determining that issue the learned Judges were entitled to look at the evidence which was recorded in the suit of 1912 and was before them.

The Chief Justice found that the appointment of Nataraja by Thandavarayan was not in *bona fide* settlement of doubtful

claims, and was in pursuance of an arrangement between them of a very different character by which Thandavarayan agreed to exercise his powers of appointment for the purpose of obtaining an advantage to himself and in furtherance of his own interests.

Napier J., after a careful review of the evidence, found :—

“In the result I am satisfied that Thandavaraya would not have appointed Nataraja his opponent, as his successor, were it not for his desire to secure himself from further opposition. In my opinion, he did not appoint him in the true interests of the Mutt. He consented to an arrangement of an unusual character under which he parted with a considerable portion of his temporal rights with an eye solely to his own security, and under pressure of great danger to himself.”

Their Lordships find as facts that Arumuga Desikar, who was in 1893 Pandara Sannidhi, or head of the Mutt, died on the 23rd May, 1893, and that Thandavarayan at once claimed the succession to the headship of the Mutt, alleging that he had been appointed on the 22nd May, 1893, by Arumuga as his successor, and also alleging that his appointment had been confirmed by Arumuga by his will of that date. That claim was at once challenged by Nataraja, who alleged that he himself had been appointed by Arumuga as his successor, that Thandavarayan had not been appointed, and that the will was a forgery. Thandavarayan presented the alleged will for registration. The registration of the will was successfully opposed by Nataraja on the ground that it was a forgery; Nataraja also alleging that Thandavarayan had murdered Arumuga. The Registrar found that the will was not genuine. Nataraja threatened to prosecute Thandavarayan. Thandavarayan asked the witness Narayanasami Desikar to get Nataraja to compromise and not prosecute. This witness met Nataraja and asked him not to prosecute, as prosecution was a big matter, and would bring disgrace to both sides. Nataraja insisted that if a compromise was to be effected he should be made Chinna Pattan, that is, junior head of the Mutt, with a right to succeed to the position of Pandara Sannidhi or head of the Mutt, and be given sufficient properties to maintain his position. This witness said that he advised Thandavarayan to comply with Nataraja's demands. Chockalinga Tambiran, who was one of Nataraja's witnesses, admitted in cross-examination that Nataraja “was arranging to take further proceedings after the registration of the will was refused.” Those further proceedings must have been criminal proceedings. There is abundant other evidence from which it is to be inferred that Nataraja was threatening to institute criminal proceedings against Thandavarayan. Chockalinga also admitted in cross-examination that one Ramasami Ayyar brought Nataraja to Thandavarayan and settled the disputes between them.

Their Lordships entertain no doubt that the appointment of Nataraja as his successor in the office of Pandara Sannidhi, or head of the Mutt, was not made in the interests of the Mutt by Thandavarayan, but was made by him solely in his own interests

as the result of a compromise by which he avoided the risks of a criminal prosecution for a forgery of the alleged will of Arunuga. of which he had unsuccessfully attempted to procure registration. Their Lordships consequently hold that Nataraja never was validly appointed head of the Mutt, and never having been the lawful head of the Mutt, the trusteeship of the Devasthanams and their endowed properties did not vest in him, and that the decrees of the High Court, the subjects of these two consolidated appeals, are right.

Their Lordships will humbly advise His Majesty that the appeals should be dismissed with costs, and that the cross-appeal should be dismissed without costs.

In the Privy Council.

NATARAJA TAMBIRAN

^{r.}

KAILASAM PILLAI.

SAME

^{v.}

SUPPIAH GURUKAL.

KAILASAM PILLAI

^{r.}

NATARAJA TAMBIRAN.

(Consolidated Appeals.)

DELIVERED BY SIR JOHN EDGE.

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