
(1916) 12 MAD CK 0007
In the Madras High Court

Kailasam Pillai

APPELLANT

Vs

Nataraja Tambiran and Others

RESPONDENT

Date of Decision : 05-12-1916

Acts Referred:

Citation : (1917) 32 MLJ 271

Hon'ble Judges : John Wallis, C.J.; Napier, J

Bench : Full Bench

Judgement

John Wallis, C.J.—These are appeals in two suits originally numbered Original Suits Nos. 1 and 2 of 1905 in the District Court of Madura

brought with the consent of the Advocate-General u/s 539 of the CPC by different plaintiffs. In Original Suit No. 1, the subject of Appeal No.

317, it was sought to have it declared that there was no lawful trustee of the Tiruvannamalai Mutt and of the dependent Devasthanams or temples,

while in the second, the subject of Appeal No. 318, the declaration was only sought in respect of the Devasthanams or temples. The reason for

filing the two suits was that it was considered doubtful whether the holder of the religious office of Pandarasannadhi of the Mutt was a trustee

within the meaning of Section 539 of the Code of Civil Procedure. The case set up in the plaint was that after the death in May 1893 of Arumugam

a former Pandarasannadhi one Tandavaraya took wrongful possession of the Mutt under a will which the Sub-Registrar and the District Registrar

subsequently refused to register on the ground of forgery, and that shortly after the first defendant was appointed as his successor ""out of fraudulent

and sinister motive"" and that the appointment was void. The first issue settled in both suits was, ""whether the 1st defendant (the de facto incumbent

of the office) is a mere trustee of the Mutt and has not got an estate for life in the Adhinam properties? On the 14th March 1906 the District Judge

dismissed both suits holding, on the authority of Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami ILR (1904) Mad. 435 that the

Pandarasinadhi was not a mere trustee and that no suit lay for his removal u/s 539, either as regards the Mutt or the trusteeship of the

Devasthanams which in his opinion went with it. When the case came before Munro and Abdur Rahim, JJ. on appeal, they held that in any case

there was no reason why the properties belonging to the Devasthanams which the 1st defendant admittedly held in trust should not be protected if

it were proved that the defendant had been guilty of waste and mismanagement as alleged, or why if a proper case was made out the Court should

not make the necessary provision for a proper administration of the trust. They accordingly allowed Appeal No. 90 of 1906 in Original Suit No. 2

of 1905, and adjourned the other Appeal No. 91 of 1906 in Original Suit No. 1 of 1905 pending the answer to a reference which they made to

the Full Bench nearly in the terms of the first issue, "does the head of a Mutt hold the properties constituting its endowment as a life-tenant or as a

trustee?" The Full Bench answered that he was not a trustee except in so far as it might be shown that he held any particular properties on trust. At

the same time they refused to regard him as a life-tenant. See 19 M.L.J. 778 : 33 Mad. 265. When the case went back to Munro and Abdur

Rahim, JJ., they stated that the reply was that in the absence of evidence to the contrary the head of a Mutt is not a trustee. They accordingly

reversed the decree of the District Court in this suit also, and remanded it for disposal according to law.

2. The two cases after remand were transferred to the file of the Temporary Subordinate Judge of Ramnad and numbered in that Court 17 and 18

of 1912 and they were tried together with a third suit No. 19 of 1912 brought by one Ponnambalam for a declaration that he had been duly

elected to the vacant office of head of the Mutt by the thambirans or disciples. This suit was dismissed and the dismissal has become final as no

appeal has been filed.

3. As regards the Original Suit No. 1 of 1905 the Subordinate judge found that there was no evidence to the contrary to show that the

Pandarasannadhi was a trustee, and he accordingly held that the suit was liable to dismissal on this ground. No attempt has been made to question

his finding on the evidence; but it is contended that the decision of the Full Bench is opposed to the recent decision of the Privy Council in *Ram*

Parkash Das v. Anand Das ILR (1916) Cal. 707 : 31 M.L.J. 1. This is strongly contested on the other side, but we do not propose to go into this

question, as we consider that the point has already been decided in this suit by a Bench of this Court in the former appeal, and that the proper way

of questioning it is by appeal from that decision.

4. The third issue in both suits was ""The plaintiffs suing the 1st defendant as a trespasser, is the suit maintainable u/s 539 of the Code of Civil

Procedure?"" We agree therefore with the Subordinate Judge that as regards Original Suit No. 1 of 1905 (17 of 1912) this must be answered in the

negative and the suit must be dismissed in so far as it relates to the office of Pandarasannadhi and its endowments.

5. As regards the second suit O.S. No. 2 of 1905, now 18 of 1912, the defendant's pleader did not press this issue at the trial and it was

accordingly found for the plaintiffs, and the suit was held to be maintainable u/s 539 as relating only to the Devasthanam properties. It still involves

the question whether the 1st defendant is the lawful Pandarasannadhi as, if he is not, he has no right to the trusteeship of the Devasthanams, and

those interested in these charities have a right to sue to have proper provision made for the trust. The Subordinate Judge has accordingly gone into

the question of the validity of the 1st defendant's appointment and has found that it is not open to objection and we have now to deal with that

finding on appeal.

6. It is unnecessary to summarise the numerous descriptions of this office which are to be found in the decisions of this Court. The evidence shows

that, as in the case of other similar Mutts, the Pandarasannadhi for the time being nominates one of the disciples who have received initiation as

sanyasis or ascetics to succeed him on his death and confers upon him abishegam, a sort of ordination, which, as appears from the evidence in this

and other cases, is regarded as having the effect of deification and also empowers him to initiate disciples as sanyasis. During the life-time of the

Pandarasannadhi his successor in this Mutt is said to fill the office of Chinna-

pattam. When the nomination is made at the point of death it is not unfrequently made by will as well as by conferring abishegam where possible, the will being intended to evidence the exercise of the power of appointment.

7. In the plaint as already stated the plaintiffs attacked the 1st defendant's appointment on the ground that Tandavaraya under whom he now claims was not himself the lawful Pandarasannadhi and also on account of the circumstances under which the 1st defendant's appointment was made.

8. 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, but it was the subject of the fourth issue in the third suit which was tried with them : Whether the appointment of the 1st defendant to the Chinna-pattam by

the late Pandarasannadhi "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. At the hearing in the lower Court it was admitted that Tandavaraya was

the lawful head of the Mutt and the case must be dealt with on that basis. It is still however necessary to refer to the circumstances under which he

was appointed in so far as they affect the nomination of the 1st defendant as his successor. As already stated Arumugam the former head died

suddenly in May 1893 six months after he had been acquitted on a charge of murder. In the proceedings taken for the registration of his alleged

will evidence was given that he regarded Tandavaraya one of the Tambirans or disciples of the Mutt as responsible for his prosecution. On his

death this Tandavaraya entered on the office under an alleged appointment by the deceased both by will and abishegam shortly before his death. It

appears that some suspicion of foul play was entertained and that an investigation was held by the Sub-Magistrate, as one of the reasons given by

the District Registrar in Exhibit D for refusing to register the will was that no mention was made of it by Tandavaraya during this inquiry. The result

of the inquiry would appear to have been that there was no ground for taking action against any one. The 1st defendant was away at the time, and

when he returned to the District he did not return to the Mutt but went to live under the protection of the Zamindar of Sivaganga who also refused

to recognise Tandavaraya and joined with him in opposing the registration of the will put forward by Tandavaraya. On the 11th June 1893 the, 1st defendant presented a petition Exhibit M to the District. Court and another Exhibit U to the District Registrar, and two days later he published notices in the District Gazette and the Madura Mail and circulated a notice to the public Exhibits H, H1 and H2 in which he claimed that he had been appointed to the Chinna-pattam by the late Pandarasannadi and was entitled to succeed and that the will put forward by Tandavaraya was a forgery. In the petition to the District Judge he also accused Tandavaraya of murdering the deceased. A perusal of the District Registrar's judgment (Ex. D) delivered after an elaborate investigation in which both sides were represented by prominent practitioners shows the very serious difficulties which Tandavaraya would have had to face if he had been called upon to substantiate his claims to the succession in a Court of Law by proving the execution of the will. It was in these circumstances that certain persons intervened to bring about a compromise between the 30th April 1894 the date of the judgment and the 2nd July 1894 when Exhibit 1 was executed. The evidence shows that the compromise was mainly brought about by three persons whose respectability has not been questioned. The 1st defendant was first induced to leave the entourage of the Sivaganga Zamindar and go to Madura and after the terms had been settled he returned to the Mutt where Tandavaraya and he executed Exhibit L, The document recites that Tandavaraya had duly succeeded and was in possession, that the 1st defendant had been asserting that he himself had been appointed, and that for the past year they had both been litigating about this and incurring much expense and putting the institution to much inconvenience, and that in the interests of the institution they had both settled the matter amicably on the terms that Tandavaraya was to be the Pandarasannadhi with all the rights of the office and that the 1st defendant was to be the Chinna-pattam or junior head and heir to Tandavaraya, and that during Tanda-varaya's life-time the 1st defendant was to enjoy certain specified properties belonging to the Mutt without interference, and that during his life-time Tandavaraya was not to appoint any one as heir to the Chinna-pattam (sic). Assuming what was conceded by the appellants in the lower Court for the purposes of the case that Tandavarya had been duly appointed, but assuming nothing more we have to deal

with two questions : was this a good exercise by the holder of a public religious office of the power vested in him by the usage of the institution to

appoint a successor during his lifetime and secondly, is it now not open to question as having been one of the conditions of a bona fide settlement

of doubtful claims effected in the best interests of the institution? It will be convenient to deal with the latter question first, as it is contended that if

the answer is in the affirmative it is conclusive. In matters like this, it is important to look at the substance rather than the form and the first question

is whether this was really a compromise of doubtful claims, or an exercise by Tandavaraya of his power of appointment in the first defendant's

favour with a view of escaping the very serious difficulties with which he would be confronted if called upon to prove his own appointment in a

Court of Law at the instance of the 1st defendant. That the 1st defendant's counter-claim by virtue of a prior appointment was of a most

unsubstantial character appears from his cross-examination on which the Subordinate Judge has commented and may be gathered from his written

statement Exhibit E1 in a subsequent suit in which he excused his conduct in contesting the will of the late Pandarasannadhi as due to bad advice,

ill-feeling, and imperfect knowledge of the facts, and tacitly admitted that his own claim to the office under a prior appointment was without

foundation. This claim of itself would never have caused Tandavaraya any uneasiness or afforded a ground for compromise, and on the most

favourable view its abandonment formed a very small part of the consideration for the compromise. The substance of that compromise was that the

1st defendant was to abstain from putting Tandavaraya to the proof of his own appointment as Pandarasannadhi in consideration of being

appointed his successor with immediate enjoyment of part of the, Mutt properties. In consideration of a private advantage the first defendant was to

desist from challenging as he had been doing till then Tandavaraya's claim to have been duly appointed to a public office of a religious character.

The 1st defendant having practically no claim at all to this office and Tandavaraya having a claim which it is clear he would have had great difficulty

in proving, they agreed to compromise their differences by dividing the enjoyment of the office on the terms that Tandavaraya was to hold it for life

and the 1st defendant after him. It was in fact not a bona fide settlement of doubtful claims at all, but an arrangement of a very different character

by which Tandavaraya agreed to exercise a power of appointment incident to the office which he claimed for the purpose of obtaining an

advantage for himself. In *Girijanund Datta Jha v. Sailajanund Datta Jha* ILR (1896) Cal. 645 which is a case of the compromise of rival claims to

succeed to a religious office the sole consideration on either side was the abandonment of a bona fide claim on the other side and it is unnecessary

to consider it further. Much time has been spent on both sides in taking us through a great number of English and Irish cases to show what will and

what will not be upheld as the valid exercise of a power, but it is unnecessary to go into them. I find as a fact for the reasons already given that the

appointment of the 1st defendant was made by Tandavaraya not in a bona fide settlement of rival claims, but in furtherance of his own interests;

and that on that ground it was a bad appointment as held by their Lordships of the Judicial Committee in *Ramalingam Pillai v. Vythilingam Pillai*

ILR (1893) M. 490. In these circumstances I think it unnecessary to discuss the question how far such compromises can be supported. It is said

and truly that this arrangement did not prevent other people from questioning Tandavaraya's right to the office and that the Zamindar of Sivaganga

filed Original Suit No. 53 of 1895 in the Subordinate Judge's Court of Madura East contesting the validity of the appointment and claiming the

right to appoint as on a vacancy, Exhibit E. The fact that Tandavaraya did not obtain complete security under this arrangement does not make it

any the less objectionable. As a matter of fact the Zamindar did not prosecute the suit; possibly because his right to do so was questioned, Exhibit

XXXII. There were not the same objections to a suit by the present 1st defendant as one of the Tambirans of the Mutt, and it was no doubt

realized that it was of the first importance to buy off his opposition. Once this was done, opposition soon died down and Tandavaraya enjoyed

the office for the rest of his days.

9. If this be the true nature of the transaction, it was of a highly objectionable character and the Court cannot countenance it even at this distance of

time on the ground that it was considered to be for the benefit of the institution in the sense that it put an end to disputes between the rival

Tambirans. It has also been contended that the compromise should be supported as a family settlement; as to this I cannot but think that

agreements as to filling up a religious office of importance in the eyes of Hindu worshippers raise very different considerations and that the

decisions as to family settlements are inapplicable. The question of limitation was not argued in the lower Court, but has been raised before us, and

it has been contended that the suit is barred under Article 120 of the Indian Limitation Act. The position of the Chinna-pattam is analogous to that

of an ordinary reversioner with a mere spes successionis dependent on his surviving the Pandarasannadhi who appointed him. Until he succeeds to

the office there can be no duty to question his right to succeed and any attempt to do so by a declaratory suit would probably fail. We accordingly

modify the decree of the Temporary Subordinate Judge by declaring that the 1st defendant is not the lawful trustee of the Devasthanams and the

endowments and removing him from their management, and by directing the Temporary Subordinate Judge to appoint a fresh trustee of the

Devasthanams, and by directing that the trustee so appointed be placed in possession. Costs of the plaintiffs in Appeal No. 317 of 1913 will come

out of the Devasthanam's estate throughout. There will be no order as to costs in Appeal No. 318 of 1913.

Napier, J.—These are appeals in respect to two suits tried in the Court of the Temporary Subordinate Judge of Ramnad. They were

brought by two sets of plaintiffs and with the sanction of the Advocate-General. In Appeal No. 317 of 1913 the plaintiffs asked for a declaration

that one Nataraja Tambiran the present holder of the office of Pandarasannadhi of the Thiruvannamala Adhinam is not lawfully entitled to that

office and also not entitled to be the trustee of the Anjukovil Devasthanam and the properties appertaining thereto. They therefore pray for his

removal from these positions and the appointment of a new trustee for administration of the trust. In Appeal No. 318 of 1913 the plaintiffs confine

the relief which they asked for to a declaration and removal from the position of trustee of the Devasthanam and its properties. The suits were tried

together in the Subordinate Judge's Court and a third suit, which is unfortunately not before us, was tried with them and evidence taken in all the

three suits - a procedure that has given rise to certain difficulties which will be dealt with later on. The position taken up by the defendant Nataraja

Tambiran is stated in paragraph 13 of his written statement and is that one Thandavaraya Desikar who was the lawful Pandarasannadhi of the Mutt

nominated him as his successor to the Adhinam with appropriate initiation and ceremonies on the 9th July 1894, that the late Pandarasannadhi died on the 16th March 1902 and that he himself succeeded to the headship and trusteeship of the Devasthanam. He raises other defences also which can be dealt with later on. The plaintiffs do not deny the nomination and initiation of the defendant as Chinna-pattam and successor by the late Pandarasannadhi, but plead that it was bad in law for the following reason, namely, that the appointment was not made with a sole view to the benefit which would accrue to the Mutt and to the disciples but with the object of getting rid of an opponent who was at the time both setting up a claim to be the lawful Pandarasannadhi and challenging the truth of the appointment and initiation of Thandavaraya himself. A further contention is raised by the plaintiffs that apart from the intention with which the appointment was made, it is illegal in that no valid appointment can be made by compromise of conflicting claims. The Advocate-General who appears for the defendant has contended that as long as the person appointed belonged to the class from whom the Pandarasannadhi is chosen, it is not for the Court to look into the circumstances of his selection. For this extreme proposition, there is no authority and it is clearly negated by the decision of the Privy Council in *Ramalingam Pillai v. Vythilingam Pillai* ILR (1893) Mad. 490. I am satisfied that it is our duty to examine the surrounding circumstances, not for the purpose of ascertaining the motive influencing the appointment, but to see whether the appointment was made with the object and intention of conferring a benefit on the Mutt and the disciples. The admitted facts are as follows : one Chinna Arumuga Desikar was in the beginning of 1893 Pandarasannadhi of the Mutt. He died on the 23rd May of that year, and Thandavaraya Desikar at once claimed the succession, alleging that he had been initiated by the deceased on the day before his death and that the appointment had been confirmed by a will made on the same date by the deceased. His claim, in turn, was at once challenged by Nataraja Tambiran on two grounds, (1) that he had himself been appointed and (2) that the story of the initiation was false and the will a forgery. Thandavaraya presented the will for registration on the 23rd May 1893. The registration was opposed by Nataraja charging the forgery and making a further allegation that Thandavaraya had murdered the late Pandarasannidhi. An exhaustive enquiry was held by the Sub-

Registrar who found the will to be a forgery and his decision was confirmed by the District Registrar on the 30th April 1894. On the 9th July 1894

Thandavaraya nominated Nataraja to the post of Chinna-pattam, a position which carried with it the right to succeed to the Pandarasannadhiship,

and performed the necessary initiation ceremonies. It is argued by Mr. Krishnaswami Aiyar that the true inference to be drawn from these facts is

that Thandavaraya felt himself in a position of grave danger in that the defendant might at any moment apply to the District Registrar for sanction to

prosecute him for forgery and that the arrangement was one by which he bought off opposition to his claim, an opposition which had already

acquired a very strong position. The Advocate-General has contended that this could not have been the intention because as well as Nataraja, he

had a strong opponent in the Zamindar of Sivaganga who was of course not affected by these arrangements and he could not hope to stifle action

by the Zamindar and in fact did not do so, as the Zamindar brought a suit against him in the following year challenging his claim to be lawfully

appointed. Mr. Krishnaswami Aiyar relies on the terms of the agreement (Exhibit F.) under which Nataraja was appointed Chinna-pattam with

unusual and special rights and privileges. Now Exhibit F is signed by both parties and it recites that Thandavaraya was duly appointed

Pandarasannadhi by Arumuga Desikar, the late Pandarasannadhi and has taken possession of the office and its dignities. It further recites that

Nataraja had gone away to Madura and other places on account of ill feeling but that he had returned in obedience to the order of the

Pandarasannadhi and had been appointed Chinna-pattam and received Abishegam and now holds that office. It then provides that Thandavaraya

is to remain in full possession and enjoyment of the office, and that Nataraja shall, as long as he holds the position of Chinna-pattam, be entitled to

the possession of the Matam at Kumbakonam and the Matam at Mylapore attached to the Thiruvannamalai Adhinam and also to receive all the

income of the villages mentioned in the schedule without any interference by the said Thandavaraya and that he shall manage the said Matams and

the charities connected therewith. Thandavaraya is to conduct all the Matams attached to the said Adhinam other than those transferred to

Nataraja without any kind of interference by the said Nataraja. And lastly Thandavaraya covenants not to appoint any one else to the office of

Chinna-pattam as he has agreed that Nataraja shall succeed him to the Pandarasannadhiship. Now it must be conceded that this is an unusual arrangement. It is true that Thandavaraya remains Pandarasannadhi, but it is clear on the language of this document that there was an actual division of the temporal rights and possessions. The same language is used in the allocation of the properties to each and Thandavaraya reserves no more rights in the alienated properties than Nataraja has in the properties retained, so that it is not merely a case of grant of wide powers of management over certain selected Mutts and properties attached to them. As a matter of fact, Nataraja retired at once to Mylapore and lived there managing the properties, and the Judge has found that he actually allowed some of the Mutt properties to be sold for debts incurred by him, Another some what suspicious circumstance is the haste with which, this appointment was made. It is of course open to the Pandarasannadhi to appoint his successor at any time, but when the appointment is made little more than a year after the Pandarasannadhi succeeds to the office, that circumstance is one to be taken into consideration when the appointment is challenged to have been made with an improper object.

2. A considerable amount of oral evidence was let in on behalf of the plaintiffs to support their case and several witnesses speak to their own belief and to the rumours current that Thandavaraya was at the time in danger of prosecution. A good deal of it is, in my opinion, inadmissible. But plaintiffs' 6th witness speaks to something definite. He says that Thandavaraya asked him to compromise with Nataraja and stop the prosecution, that he went to Madura for this purpose, met Nataraja and asked him not to prosecute as it was a big matter and the prosecution would be a disgrace to both sides. He says that Nataraja agreed to drop the matter if he was appointed Chinna-pattam and an agreement was made under which he would be irremovable and have sufficient properties to maintain his position. As against this evidence there is the fact elicited from him in cross-examination that he did not himself effect the compromise and he admits that he never told anyone about this matter. Plaintiffs' 18th witness too claims to have taken part in the preliminary negotiations, but as he was a witness to the will which was attacked as-forgery, he is not perhaps a very reliable witness. Defendant's 6th witness makes an admission which is important considering that he was supporting the defendant. He states

that Nataraja was disputing the will as a forgery and that after the refusal to register it he was intending to adopt further proceedings, but that one

Ramasami Aiyar brought Nataraja from Madura and settled the disputes between him and Thandavaraya. Nataraja gives evidence himself as

defendant's 13th witness. He was in a somewhat difficult position because he could not admit that his claim was false and at the same time he had

to try and to minimise the circumstances attending the arrangement. What he does is to throw the whole blame for the position on the Zamindar of

Sivaganga and to deny any knowledge of an attempt to obtain sanction against Thandavaraya. He does, however, make one unguarded admission,

which is as follows : "My objections to the registration of the will were all founded on facts." By the term "facts", he cannot, of course, mean

anything else than that the will was a forgery. That, coupled with his persistence in the witness box in adhering to the story of his own initiation and

appointment, gives no room for doubt that if he had not been satisfied with the arrangement made, he would have persisted in his claim to the

Pandarasannadhip in his opposition to the will as a forgery and even possibly in his charge of murder against Thandavaraya. I think it right to say

here that there never was the slightest ground for suspicion of murder, but the attack on the will was very serious indeed. We are bound to

presume that the Registrars applied their minds to the case, and they had come to a conclusion which placed Thandavaraya in a very difficult

position. The will had been found against him in two exhaustive enquiries, in addition to which Nataraja was alleging an appointment in support of

which he would doubtless be able to produce some evidence though I agree with the Subordinate Judge in his view that Nataraja's story of

appointment is false. Nataraja in his written statement filed in the suit brought by the Zamindar of Sivaganga referred to above has endeavoured to

evade responsibility. In that suit (O.S. No. 53 of 1895 on the file of the Court of the Subordinate Judge of Madura East), the Zamindar of

Sivaganga claimed the right of appointment and asked for the removal both of Thandavaraya and Nataraja. Exhibit E 1 is the written statement of

Nataraja. He there relies on his appointment as Chinna-pattam and states that he yielded to the instigation of the plaintiff (the Zamindar) and that

owing to his own imperfect knowledge of facts he made certain allegations impeaching the will, but that when he understood the real facts and the

bad motives of his advisers, namely, the plaintiff and his officers, he rejoined the Mutt which he had left under evil advice and in the position of a disciple was duly appointed Chinna-pattam. It is to be noted that he says not one word about his own appointment by Arumuga Desikar and admits that he was only a disciple at the time of his appointment by Thandavaraya. These facts and a number of circumstances of less importance have been examined before us by the learned Vakils and the inference sought to be drawn therefrom has been urged at great length and with great force by both sides. 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.

3. It remains to apply the law to this finding on facts. First as to the question of the compromise : admittedly it was one and admittedly the

defendant's right to the Pandarasannadhiship owes its birth to that compromise. But is that fact alone sufficient to make the appointment bad? Mr.

Krishnaswami Aiyar relies strongly on a decision in *Sundarambal Ammal v. Yogavanagurukkal* ILR (1914) M. 850 : 26 M.L.J. 315. In that case,

as appears from the judgment of Mr. Justice Sadasiva Aiyar, the Court was dealing with a suit in which the claim in dispute was to one-half share

of the puja miras of a certain temple. The puja miras involved certain religious duties and the holder was entitled to some emoluments. A

compromise was come to, which was found by the learned Judge to amount to an alienation of a portion of a religious office by one of the parties

in favour of the other for a pecuniary benefit, and the learned judge refused to allow the compromise on the ground that it was not a lawful

agreement on which a decree could be passed. The proposition he lays down is as follows : ""There can be no lawful compromise made of a

dispute in respect of a religious office, the proper performance of the duties of which concerns not merely the parties to the compromise but

principally affects the religious trust itself and the Hindu public for whose benefit the religious trust exists,"" The chief authority relied on for this

proposition was the well-known case arising out of the dispute between the Rajah of Ramnad and certain Shanars, Rajah M. Bhaskara Sethupathi

and Irulappa Nadan v. Narayanasamy Gurukkal (1901) 12 M.L.J. 360. I do not think that this latter case supports the wide proposition laid down

by the learned judge. The view taken by the judge in that case was that the so-called compromise was a betrayal of rights successfully established

in one Court by the person who vindicated them. In another case, Ayiroor Swaroopathinkal Ayiroor Malika Kovilakath Randaman Kunhunni alias

Ravi Varma Rajah Avergal and Others Vs. Kannamkulath Madhathil Ramasubramania Pattar and Others, , the same learned judge in dealing with

a compromise with regard to property the subject of a religious trust and not with regard to the office itself, uses language some-what analogous

but I do not think that that case helps us much. Reliance is placed on a case in Muhammad Ibrahim Khan v. Ahmad Said Khan ILR (1910) A.

503, but the point decided there was much narrower, viz. that a dispute as to the right of succession to a mutawalliship could not be settled by

arbitration so as to oust the jurisdiction of the Court. The Advocate-General contends that the right to compromise matters of dispute arising in

religious and charitable trusts does exist and he relies on a decision of the Privy Council in Ramanathan Chetti v. Murugappa Chetti ILR (1906) M.

283 : 16 M.L.J. 285 but what was settled there was however merely an arrangement made by disputing parties for the due execution of the

functions belonging to the office in turns or in some settled order and sequence. The case in Giyana Sambandha Pandarasannadhi v. Kandasami

Tambiran ILR (1887) M. 375 is more in point, for there a dispute as to right to appoint between the heads of two different Mutts was

compromised by an arrangement under which the persons holding office had their title recognised but the next Chinna-pattam was to be selected

from the rival Mutt. Another case, Nilakandan v. Pudmanabha ILR (1890) M. 153 is instructive because it went to the Privy Council. In that case

disputes arose between certain parties as to the management of a temple in South Malabar which were temporarily set at rest by a compromise in

1845 and again in 1874, but the question was re-agitated 20 years later and it was urged that the compromise was not binding. It is to be noted

that although it was attacked on the ground that it created a new right and thereby varied the original trusts of the institution, it was not argued

before the Board that the compromise was unlawful as relating to a religious trust vide *Nilakandhen Nambudiripad v. Padmanabha Ravi Varma*

ILR (1894) M. 1. *Girijanund Datta Jha v. Sailajanund Datta Jha* ILR (1896) Cal. 645 is a decision directly in point, for in that case a suit was

brought on a *ekrar* executed by the priest of an idol for arrears of maintenance and the defence was raised that the agreement was without lawful

consideration as it amounted to a bargaining for the public office of high priest of a public shrine. The Court found that the *ekrar* was entered into in

consequence of attempts made both by the plaintiffs and the defendant to obtain the post of high priest on the death of the last holder of the office

and that the dispute concerning this succession was settled by that compromise, The cases on the point were elaborately considered by the Court

and the conclusion came to was"" that there was nothing contrary to public policy in the fact of the settlement of the dispute as to succession by a

compromise. And lastly we have two recent decisions of this Court to both of which the learned Chief Justice was a party, in which this question

was discussed. They are *A.L.A.R. Arunachellam Chettiar and Others Vs. Velappa Thambiran and Others*, and *Thiruvambala Desikar*

Gnanasambanda Pandaram v. Chinna Pandaram alias Manikkavasaka Desikar (1915) 30 M.L.J. 274. The result of both these cases may be

summed in the language of the Chief Justice in *A.L.A.R. Arunachellam Chettiar and Others Vs. Velappa Thambiran and Others*, . ""The better view

appears to be that compromises of suits entered into by trustees of charitable endowments are not necessarily void."" And this doctrine would seem

to have been applied both in that suit in which no question of title between disputing claimants was involved, as well as in the latter case in

Thiruvambala Desika Gnanasambanda Pandaram v. Chinna Pandaram alias Manikkavasaka Desikar (1915) 30 M.L.J. 274 where the right of a

Mutathipathi to remove the junior was in question and a compromise decree had been passed recognising the position of the junior. On a

consideration of all the authorities, I have come to the conclusion that a trustee of a religious and charitable trust has, in respect of a litigation not

affecting the office, the same right of compromise as an ordinary trustee has, and that a compromise even of conflicting claims to an office is not

necessarily unlawful or opposed to public policy but must be scrutinized by the Court before which it is pleaded for the purpose of ascertaining

whether it is in violation of the trust of the institution, or affects adversely the interests of the religious public. That disposes of the first objection

taken by Mr. Krishnaswami Aiyar.

4. The next objection is one which arises on the view of the law which I have just stated. Mr. Krishnaswami Aiyar has urged the broad proposition

that where any benefit is reserved by or accrues to a party entitled to make the appointment, the appointment is bad whether it be by compromise

or by agreement. He has relied strongly on the analogy of the exercise of the power of appointment by a donee of a power and has quoted a large

number of English cases. The Advocate-General, on the contrary, has invited our attention to a number of cases in which a reservation of rights

was not held to vitiate the appointment. In my opinion a great deal turns on the question whether the circumstances relied on to impeach the

appointment, constitute a motive for the appointment or whether the appointment was made with the intention of securing a benefit. But I do not

think it necessary to examine the cases as in my opinion, although the principles applied in these cases may be of some assistance, they have not

sufficient bearing to require detailed consideration. The Advocate-General has relied on the principles by which ""an adoption agreement made by a

Hindu widow under which she acquires a distinct benefit is not illegal and asks us to apply that rule. I think the analogy still more remote and I will

not deal with the cases. I would adopt the language of the Chief Justice in 28 M.L.J. 410 in respect of this very question of compromise by a

Pandarasannadhi. In that case the position of a Pandarasannadhi as regards alienations had been compared to that of a Hindu widow and the

learned Chief Justice in delivering the judgment of the Court said as follows : ""We agree with the observation of Sadasiva Aiyar, J. in Muthusami

Iyer (died) and Others and Annasami Iyer and Others Vs. Sree Sreemethanithi Swamiyar Avergal and Others, that it is dangerous to press these

analogies too far."" In the case of an incumbent of a religious office whose rights and duties are mainly governed by usage and whose duties extend

to a religious public that knows nothing of the arrangements under which he succeeds to the office, I would prefer to confine myself to the very

simple test laid down by their Lordships of the Privy Council in Ramalingham Pillai v. Vythilingham I.L.R. (1893) Mad. 490. This decision was on

an appeal from our own Court and the question to be determined was whether the appellant was the lawful Dharmakarthha or trusses of the

Rameswaram temple. On the 30th January 1894 the High Court removed one Ramanatha Pandaram from his office and on the same day he

appointed the appellant as his successor purporting to make the appointment on a consideration of the fact that the appellant was a man of learning

and of good character. The appointment was held to be bad, because Ramanatha Pandaram had already been removed and had therefore no

power to appoint. But their Lordships further observed as follows : ""Another objection to the appointment of the appellant is that both Courts have

found that it was not made bond fide... The Judges of the High Court, Referring to the proved facts, say; - "With these facts before us, we cannot

say that the Subordinate 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 bona fide exercise of his power, if any. This finding of both Courts invalidates the whole appointment. It

applies to the headship of the Mutt as well as the office of the Dharznakarthha"". In my opinion we have but to apply this language. The object in that

case was certainly more grossly apparent than in this case, because the Pandaram had arranged for a personal allowance to himself after his

dismissal, but the principle laid down by the Board seems to me to be of general application. On the conclusion that I have arrived at on the facts,

viz., that the appointment was not made with the intention of benefiting the institution but really to protect his own position which was in serious

danger, I am of opinion that it is one which could not be upheld if attacked in the proper manner and at the proper time.

5. It remains now to consider certain objections raised by the Advocate-General to our exercise of the power of removing the defendant. The first

objection is one of limitation. He contends that the Pandarasannadhiship to which the defendant succeeded in March 1902 was only the taking up

of an office which necessarily vested in possession and that the right to succeed to it became vested in 1894; more than six years before the suit. In

my opinion this contention cannot succeed. It is admitted that according to the usage of the Mutt, a Chinna-pattam can be removed for misconduct

and so his right of succession is not absolute. Further the position of Chinna-pattam is one of greatly inferior sanctity and importance and it might

well be that the persons interested would consent to his holding that office, although they were not willing to allow him to become

Pandarasannadhi. I am therefore of opinion on the application of Article 120 of the Indian Limitation Act that the right to sue to remove him from

the office of Pandarasannadhi vested in persons entitled to sue on the occasion of his taking that office, although the right to sue to remove him

from the office of Chinna-pattam vested at the time of the appointment to that office. In this view I do not think it necessary to consider whether the

right arises only on the sanction by the Advocate-General.

6. The next objection raised on behalf of the defendant is that by efflux of time the irregularity of the appointment is cured, and a number of English

cases were brought to our notice. In my opinion, this is not a case of irregularity of appointment. It might be that if the qualification of a person

appointed fell little short of those required by the usage and the appointment was otherwise unobjectionable and was made in the interests of the

institution, the Court would not interfere. But here we have an appointment not made in the interests of the institution and the case is entirely

different from those in which the appointment of a minister of religion not belonging to the particular sect of the founder, was upheld after it had

existed for a considerable time.

7. I will now deal with two objections raised by the Advocate-General on procedure which, he claims, stand in the way of our giving effect to the

view we take of the agreement and appointment. The first is that there was no issue raised in either of these suits as to the validity of the

appointment. That is in fact so. But the allegation of invalidity was distinctly made in both complaints (vide paragraph 13) and pleaded to in paragraph

19 and further the validity of the subsequent cancellation of the appointment was alleged in the complaint and denied in the written statement in

paragraphs 13 and 20 respectively and an issue was framed on this. (Issue 16). When these suits came on for trial they were heard with another

suit, Original Suit No. 19 of 1912, which had been filed some years later. This suit was by a person who claimed the office by virtue of

appointment by the Tambirans. The pleadings in that suit are not before us but the issues are and one of them (No. 4) is "whether the appointment

of the defendant made by the late Thandavaraya was made mala fide and to

serve his own purpose and therefore invalid." The whole of the evidence relating to the three suits was recorded by consent of parties in Original Suit No. 17, that is, Appeal No. 317 (vide Judgment of Lower Court, page 52), and the Judge finds on the question of the validity of the appointment on issues 1 and 2 in the suits before us and on issues 3 to 5 in the other suit. I am satisfied that the matter was treated as in issue in the present suits and that the non-existence of a specific issue at the trial was not considered of any importance there being the issue in the other suit. At the worst, it would only be necessary for us to frame the issue formally in these suits and that can, if necessary, be deemed to be done.

8. The next objection is more serious. It is contended that the Court has no power to remove the defendant in the present suits which are brought u/s 92 with the consent of the Advocate-General. The learned Chief Justice has dealt with the history of these suits and I entirely agree with him in holding that it is not open to us to reconsider a decision already given in Appeal No. 317 of 1913. That decision is part of the Judgment in this appeal and can only be questioned on appeal to the Privy Council. To the extent, therefore, of the relief claimed in Appeal No. 317 of 1913 to remove the defendant from the headship of the Mutt, the matter is already decided and the suit fails. I entirely agree however with the learned Chief Justice that as to the second relief in Appeal No. 317 of 1913 and the whole of the matter in issue in Appeal No. 318 of 1913, we are not prevented by the first decision or the above view from giving effect to our finding. It is our duty to remove the trustee whose appointment is bad and in my opinion the fact that the trusteeship vests ex-officio in the holder of an office which we cannot touch in this suit makes no difference whatsoever. The decrees will be as stated in the Judgment of the learned Chief Justice.