

(1976) 09 MAD CK 0046
In the Madras High Court

R. Thathadesika Thathachariar and Another	APPELLANT
Vs	
K.V. Alagia Manavala Jeevaswamy died and Others	RESPONDENT

Date of Decision : 09-09-1976

Acts Referred:

Citation : (1977) 2 MLJ 247

Hon'ble Judges : P.S. Kailasam, C.J

Bench : Division Bench

Judgement

P.S. Kailasam, C.J.—Defendants 2 and 3 in the suit are the appellants in the Letters Patent Appeal. The suit was filed by plaintiffs 1 to 4. They are residents of Kancheepuram and are Thengalai Vaishnavites holding Offices in Sri Devaraja Swami Temple. The suit was filed for themselves and as representatives of the entire body of Thengalai Vaishnavites of Kancheepuram, who are office holders and mirasdars of Sri Devaraja Swami Temple. The dispute mainly relates to the namam which the temple elephant should bear. The elephant died on 28th March, 1965. According to the plaintiff, the trustees were making an attempt to get an elephant themselves and introduce it with Vadakalai namam According to the plaintiffs, the established usage of the temple is that the elephant should have only a Thengalai namam. As the plaintiffs apprehended that the trustees would induct an elephant with a Vadagalainamam, they offered to present an elephant provided it bore the Thengalai namam. They also apprehended that the trustees, who belonged to the Vadagalai sect, might introduce an elephant with a Vadagalai namam and therefore sought to prevent it. The reliefs they sought in this suit were a direction to the defendants to accept the gift of an elephant to the suit temple by the plaintiffs or their nominees and have it painted with Thengalai namam on all occasions-inside and outside the temple and in temple processions with Deities or when connected with the worship and other ceremonies of the temple as per the decree in A.S. No. 13 of 1854 and a permanent injunction restraining the defendants or their agents or servants from putting Vadagalai namam to the living elephant donated, maintained or possessed by the temple and using the same for any festivals, processions,

functions or occasions of the temple.

2. The Executive Trustee and two other trustees were made defendants in the suit and they raised various contentions opposing the grant of the reliefs prayed for in the suit. The Executive Trustee filed a written statement and the other two defendants, who are Honorary Trustees, also filed separate written statements.

3. The plaint was filed on 23rd November, 1965. The plaintiffs offered an elephant to the temple, but that offer was declined by the trustee. The suit, though filed in July, 1965, was numbered only by the end of November, 1965. In the meantime, on 17th November, 1965 an elephant with a Vadagalai namam was introduced in the temple. The plaintiffs filed I.A. No. 1976 of 1965 on 14th December, 1965 for an injunction complaining against the surreptitious introduction of the elephant. In January, 1966 the defendants admitted the presentation of the elephant with a Vadagalai namam and contended that as a Vadagalai namam had already been put on, the elephant, no temporary injunction need be granted. The plaintiffs filed I.A. No. 439 of 1968 praying for an amendment of the plaint on the ground that after the filing of the plaint, an elephant with a Vadagalai namam had been introduced. They sought for a direction to the defendants to erase the Vadagalai namam put on the face of the elephant and for placing instead a Thengalai namam.

4. Various contentions were raised in the trial Court. The trial Court framed six issues on 2nd February, 1966 and subsequently on 3rd April, 1968 framed an additional issue. Again on 25th April, 1966, it deleted issues 1 and 5 framed on 2nd February, 1966, but framed 19 additional issues.

5. The trial Court held that the established usage of the temple was to paint the temple elephant with Thengalai namam, that it was only in the year 1941 the temple trustees for the first time began parading the temple elephant with Vadagalai mark on the pretext that the elephant was one which was presented by the donor with a condition that it should bear Vadagalai namam, that the painting of Vadagalai namam on the temple elephant was contrary to the established usage of the temple which had been found and recognised in A.S.No. 13 of 1854, that the said decision was binding on the trustee, that the elephant which was painted with Vadagalai namam after 1941 was gifted to the temple with the condition that only Vadagalai namam had to be painted, that the decision in O.A. No. 466 of 1940 was based on the fact that the elephant maintained at that time by the temple had been gifted with a condition that it should bear only the Vadagalai namam and that therefore the decision in O.A. No. 466 of 1940 could not be said to be conclusive on the question of the established usage of the temple, that the suit was not barred, by the provisions of the Hindu Religious and Charitable Endowments Act and that the plaintiffs were entitled to maintain the suit for giving effect to the usage which had been found in A.S. No. 13 of 1854. In the result, the trial Court decreed the suit directing the defendants to paint the living elephant in the temple with Thengalai namam on all occasions, inside and outside the temple and in temple processions

as per the decree in A.S. No. 13 of 1854 and restraining the defendants from putting Vadagalai namam to the living elephant maintained by the temple and using the same for any festivals, processions, functions or occasions of the temple.

6. On appeal by defendants 2 and 3, the-lower appellate Court also agreed with, the view taken by the trial Court and confirmed the decree.

7. In the second appeal, Ramanujam, J., confirmed the findings of the Courts below, holding that the established usage in the temple was that the elephant should have only a Thengalai namam and rejecting all the contentions advanced by the defendants, he dismissed the second appeal, but granted leave. Hence this Letters Patent Appeal.

8. It would not be out of place to give a short history of this 150 years wars of the names. A short account of the temple, the worship of Vishnu in Southern India and of the rituals and ceremonies in Vaishnavite temples are found in the decision of the Privy Council in AIR 1947 53 (Privy Council) . The earliest scriptures, dating from 2,500 years ago, are the Sanskrit Vedas of hymns, held sacred by all Hindus. Very much later, Prabandhams consisting of 4,000 compositions in the Tamil language were compiled by Alwars who were Vaishnava devotees in Southern India. Subsequently, the Acharyas or learned Brahmins acted as religious preceptors. Of course, the most famous were Ramanuja, who flourished between 1017 and 1137 A.D., Vedanta Desikar who flourished between 1268 and 1369 A.D., and Manavaia Mahamuri who lived between 1370 and 1443 A.D. These Acharyas composed a number of Sanskrit verses in praise of the Deity called Sthotra Patams. The Prabandhams being earlier in origin became part of the ritual of the Vaishnavite temple services and later the Sthotra Patams were also recited on special occasions.

9. Differences arose among Vaishnavites by about the fourteenth century as to the form of worship. One section followed Vedanta Desikar and they specialised in the study and exposition of the Sanskrit Vedas and regarded the Alwars and their Prabandhams as entitled to less reverence. They became known as Vadagalais or followers of the Northern cult. The other section, the followers of Manavala Mahamuni, specialised in the study and exposition of the Tamil Prabhandams of the Alwars, and become known as Tengalais or the followers of the Southern cult. There are several Vaishnavite temples in which the Vadagalai cult prevails, while in others, the Thengalai cult prevails. While generally the services are the same in both classes of temples, there are certain features which distinguish Vadagalai and Thengalai rituals.

It is unnecessary to go into the details except to say that the first stanza according to the Thengalai cult begins with the words "Sri Sailesa Dayapathram" and invokes the Thengalai Guru Manavala Mahamuni, whereas, according to the Vadagalai cult, the first stanza begins with the words "Ramanuja Dayapathrarri" and invokes the Vadagalai Guru Vedanta Desikar. At the conclusion of the

recitation of the Prabandhams benedictory verses called Vazhi Tirunamam are recited consisting of nine stanzas of which the first four are common to both sects, while the last five differ. While both the Vadagalais and Thengalais share a common religious origin and faith and also adhere to their own school of thought, neither of them condemns or rejects the sacred character of the other cult. While so, the divergence between the two rituals outlined above has given rise to the most bitter, unreasonable and vicious fight between the two groups for nearly two hundred years.

10. In this litigation, the dispute centres on the question as to the namam which should adorn the temple elephant. The namams of Vadagalai and Thengalai differ from each other. It is unnecessary to go into the origin or the difference between the two namams. It is sufficient to state that the namam is considered as a very important religious symbol and any violation of the practice of using a particular namam is looked upon as a serious inroad into the religious practice of the other. The dispute as regards the namam in this temple started as early as 1792. The nature of the dispute is revealed in the several decisions of this Court and certain documents relied on by the plaintiffs. The particulars of the dispute as revealed by the documents and the decisions show that the Thengalai community had the right of painting the Thengalai namam on the temple elephant from the year 1823. The documents that are filed by the plaintiffs in this suit and accepted by all the Courts and which related to this aspect, are Exhibits A-1, A-2, A-3, A-4, A-8 and A-12. Exhibit A-1 is a copy of the list of the Thengalai namams prepared by the temple Superintendent Narahari Rap on 17th January, 1823. Exhibit A-1 shows that there were constant disputes between Vadagalai and Thengalai sects as regards the nature of the namam put on the various places in the temple and that for resolving the dispute, he had been asked to take out a list of the namams found in the temple precincts, deities etc. He submitted a report and according to the report, the temple elephant had only a Thengalai namam. Exhibit A-2 is a document marked in A.S. No. 14 of 1854 on the file of the civil Judge, Ghingleput. The document is a copy of the Urzee, which was sent with the list by Rama-swami Maistry, Superintendent to the Collector. Exhibit A-2 is found in pages 158 to 1.60 of Exhibit A-12. The order of the Collector reveals that by his own inspection he ascertained that Exhibit A-2 was correct. The inventory of four amins (Exhibit A-3) and the report of the peon Kasiram, which is found, in pages 170 to 173 of Exhibit A-12, were compared and, the conclusion was arrived at that Mana-vala Mahamuni was purely a Thengalai priest and that the Vadagalai people changed the Thengalai namam of Manavala Mahamuni. The learned Appellate Judge in A.S. No. 14 of 1954 came to the conclusion that the namams were changed on the living elephant, the northern wall of Gangaikondan Mandapam, the Yali Vahanam and, the elephant suspended thereto. The learned District Munsif in this suit had considered all these documents and accepting Ramaswairi Maistry's report found that it was established beyond doubt that prior to August, 1827 the living elephant in the suit temple was wearing only Thengalai namam. This finding has been accepted by all the Courts and it cannot

be question in second appeal or the Letters Patent Appeal.

11. In the year 1850, O.S. No. 14 of 1850 was filed in the civil Court by the Theertham and Aroopadaoo and Adhyapaka Mirasdar, as the principal man of Thengalai for the removal of Vadagalai namams in the Mandapam and on the living elephant. Another suit, O.S. No. 15 of 1850 was filed complaining of further mutilations of Thengalai namams after the filing of the earlier suit. The suits were dismissed. But the two appeals preferred in A.S. Nos. 13 and 14 of 1854 before the civil Judge, Chingleput, were allowed with a direction that the Thengalai namam should be restored on the temple elephant. The civil Court considered all the oral and documentary evidence and after personal inspection held that an attempt had been made by the Vadagalais to mutilate the Thengalai namam and to make it a Vadagalainan: am and therefore the plaintiffs were entitled to the restoration of the Thengalai namam not only in the mandapam, Vahanairs etc., but also on the living elephant. Clause 21 of the decree in A.S. No. 13 of 1854 directed the trustees to restore the Thengalai namams on the living elephant. The judgments in the appeals are marked as Exhibits A-4 and A-5. These judgments reveal that the established usage prior to 1854 was to paint Thengalai namam on the temple elephant. These judgments became final as a further appeal to the Sadar Adalat Court against the judgment in A.S. No. 13 of 1854 was dismissed on 28th April, 1857. Exhibit A-8 dated 10th April, 1858 reveals that a Hukurr Nama was issued by the civil judge to the Amin for the restoration of the Thengalai namam on the living elephant. The Court Amin complained that on 30th April, 1858 he was obstructed by the trustees when the Thengalai namam was put on the elephant. He reported that the elephant was refused to be taken by the trustees for the uthsavams. On receipt of the report, the civil Judge passed an order on 8th May, 1858 directing the removal of the obstruction and stating that if any further obstruction was given by anyone, they would be dealt with for disobedience and for disregarding the process of Court. Subsequently the direction of the Court was carried out and a Thengalai namam 1 foot in length and 3/4 foot in breadth was painted on the living elephant. A proclamation was issued by the civil Judge on 2nd June, 1858 that the Thengalai namam according to the mamul had been caused to be put on the living elephant and on other things and that any one who disfigured, or removed the namams would become liable to serious punishment and for damages according to law. Still the Vadagalais would not accept defeat and the temple trustees covered the head of the elephant having the Thengalai namam with a cloth on which Vadagalai namam had been put. A complaint was made in 1858 in Miscellaneous Petition No. 166 of 1858 by the Thengalais against the trustee that they were purposely covering the head of the elephant with a cloth so that the Thengalai namam could not be seen. The Court imposed a fine of Rs. 50 on the trustees for contempt of its order. But subsequently the order was set aside by the appellate Judge on the ground that evidence was not sufficient to show that the trustees themselves infringed the orders of the Court, though the direction to restore the namams was affirmed.

12. The disputes between the parties had come up before this Court on various occasions. Apart from the documents referred to above, the details of the dispute can be found in *Krishnaswami Thathackariar v. Krishnamackariar* I.L.R.(1882) Mad. 313 and *K.A. Veeraraghava Thatha Chariar and Others Vs. T. Srinivasa Thatha Chariar and Others*, . In the latter decision, the rights of the Thengalais have been declared. It was found that the Thengalais owned the rights to a good, proportion of the thirteen offices. Many of the namams in the temple are Thengalai namams. The Thengalais have also the right of Asirvathams and a Thengalai is entitled to the office of Mulji Dharmakartha. The various documents filed in the above two cases and in *Krishnaswami Ayyangar v. Samram Singarachariar* (1916) 30 M.L.J. 158, show that the Thengalais had various rights and held the important office of Mulji Dharmakartha. The irreconcilable dispute and, the bitter enmity between the Thengalais and the Vadagalais in the temple is recorded in the above decisions.

13. The temple elephant which was having the Thengalai namam died in the year 1894. One of the points at issue between the parties is as to whether the temple owned any elephant between 1894 and 1940 and if so, what namam the elephant bore. According to the plaintiffs, the temple did not own any elephant during that time. But the trustees paraded an elephant with Vadagalai namam and when objected to by the Thengalai sect, the elephant was withdrawn. According to the defendants, the temple owned an elephant during that time and it was painted with Vadagalai namam as usual. The finding on this point is that it has not been shown that the temple owned an elephant between 1894 and 1904. The Courts below as well as the learned Judge in second appeal have found that there is absolutely no evidence to prove that the temple acquired any elephant between 1894 and 1940. The trustees have not produced any accounts to show that the temple owned and maintained any elephant during that period at the temple expense. The learned Judge accepted the concurrent finding of the trial Court as well as the first appellate Court that the temple did not own any elephant between 1894 and 1940. The finding is one of fact and one sees no reason for not accepting the concurrent finding of all the three Courts. We have therefore to proceed on the basis that the temple did not own any elephant till 1940.

14. In the year 1942, the Maharaja of Travancore presented an elephant to the temple with a condition that the elephant should bear only a Vadagalai namam. That elephant was painted with Vadagalai namam and was taken out during temple festivals and processions. Two members of the Thengalai sect filed O.A. No. 466 of 1940 under sections 18 and 79 of the Madras Hindu Religious Endowments Act, 1927 for a direction to the trustees to put only Thengalai namam on the living elephant. That application was resisted by the trustees. The Hindu Religious endowments Board by an order dated 3rd February, 1942 held that the temple elephant should bear only Vadagalai namam. Various reasons were given for coming to this conclusion. The Board of Commissioners were of the view that the decision in A.S. No. 13 of 1854 would apply only to the

elephant then living and would not apply to the subsequent elephants that might be owned by the temple. They also found that the main deity bore Vadagalai namam and that therefore the temple elephant also should bear Vadagalai namam. In any event as the elephant was donated by the Maharaja of Travancore and the donor's wish was that the elephant should have Vadagalai namam, it was ordered that the elephant should bear only Vadagalai namam. A direction was issued to the trustees to continue to paint the living elephant with Vadagalai namam subject to the result of any suit which any aggrieved party might file. Thereafter five of the members of the Thengalai sect filed. O.S. No. 7 of 1945. In that suit the plaintiffs questioned the correctness of the order of the Board of Commissioners and sought a direction to the trustees to paint the living elephant with Thengalai namam in accordance with the long established usage. That suit was dismissed by the District Court of Chingleput on the ground that it had no jurisdiction to entertain the suit as it should have been filed before the Court of the Subordinate Judge. The plaint was returned for presentation to the proper Court. The Plaintiffs filed C.M. A.No. 111 of 1948 to this Court. But ultimately, the appeal was dismissed as it was reported that the matter had been settled out of Court and permission was sought for to withdraw the appeal. A representation was also made that the appellants would not proceed with the suit. The appeal was dismissed as withdrawn.

15. The temple is governed by a scheme which was framed by this Court in A.S. No. 175 of 1934. The scheme provides that an Executive Trustee shall be appointed, who is a smartha or a madhwa was Brahmin, aged not less than 30 and not more than 62 on the date of appointment and who is willing to reside permanently in Kancheepuram for the period of his office. Clause 5 provides that the person appointed as Executive Trustee shall hold office for a period of five years subject to good conduct. The functions and powers of the trustee under the Madras Hindu Religious Endowments Act shall ordinarily be exercised by the Executive Trustee alone. But provision was made for two honorary trustees of whom one shall be the member of the Eastern Branch and the other of the Western Branch of the family of Koti Kannikadanar Shri Thathadesikar. The Honorary Trustees were to hold office for five years. Clause 12 of the scheme provided for consultation with the Honorary Trustees by the Executive Trustees in the administration of the affairs of the temple. It is the contention of the plaintiffs that the two Honorary Trustees whose function is merely advisory are unduly influencing the Executive Trustee and giving the administration a tilt in favour of the Vadagalai sect, that the present litigation itself is at the instigation of the two Honorary Trustees and that in fact the second appeal to the High Court and this Letters Patents Appeal are not strictly competent as the Executive Trustee has not preferred the appeals.

16. On the above facts several contentions were raised by the learned Counsel for the Honorary Trustees before the learned Judge in second appeal and before us. The first contention of Mr. K. Parasaran, the learned Counsel for the appellants is that the trial Court was in error in granting a decree directing the

defendants to paint the living elephant in the suit temple with Thengalai namam and permanently restraining the defendants from putting the Vadagalai namam on the living elephant maintained or possessed by the temple. The contention is that the decree granted is not in accordance with the reliefs claimed. The reliefs claimed in the plaint are a direction to the defendants to accept the gift of an elephant to the suit temple by the plaintiffs and a permanent injunction restraining the defendants from putting Vadagalai namam-to the living elephant. As after the filing of the plaint, an elephant was donated and accepted by the temple with Vadagalai namam put on it, the relief claimed cannot include a direction to paint the living elephant which had already been painted with Vadagalai namam, with Thengalai namam and the defendants cannot be restrained from putting Vadagalai namam which had already been put on the elephant. It may be stated that after the filing of the plaint an elephant was accepted and Vadagalai namam was put on it and the plaintiffs came forward with I.A. No. 439 of 1968 for amending the plaint to include the relief of perpetual injunction against putting Vadagalai namam on the elephant which was surreptitiously brought into the temple on 17th November, 1965 and for a direction to the defendants to remove the Vadagalai namam and paint the Thengalai namam. They also prayed for a mandatory injunction directing the defendants to remove the Vadagalai namam put on the elephant and to put Thengalai namam instead. This application for amendment of the plaint was dismissed. As the amendment was refused, it is contended by Mr. Parasaran that the relief which was ultimately given should not have been given. This contention does not take note of the fact that the learned District Munsif held that it was unnecessary to consider this application as the orders on the application and in the suit were passed simultaneously. The learned District Munsif delivered the order on this application on 8th May, 1968 the date on which the judgment in the suit was delivered. The learned District Munsif stated that he did not agree with the defendants' contention that if the amendment was allowed it would change the cause of action and introduce a new cause of action. The real and substantial question was that namam should be put on the living elephant in the suit temple and that would be the question even if the amendment was allowed. The trial Court therefore held that the amendment had to be allowed to determine the real question in the controversy between the parties. But it dismissed the petition on the ground that it was filed after a long time. The learned District Munsif concluded his order with the following words:

I am pronouncing judgment in the suit to day. In the circumstances this petition had to be dismissed.

It is seen that the amendment petition was dismissed only or, the found that the judgment in the suit was being delivered on that day. The Judge considered what it called the real and "substantial question, that is, what namam should be put on the living elephant in the suit temple, and gave a decision on that point. The plea of the learned Counsel for the appellants that the trial Court having dismissed the amendment petition ought not to have given a decree in the terms

in which it is, is therefore without substance.

17. The next contention of the learned Counsel is that the suit is barred by res judicata. The contention of the learned Counsel is that the decision of the Hindu Religious Endowments Board in O.A. No. 466 of 1940 dated 3rd February, 1942 that the temple elephant should bear Vadagalai namam has become final. The application was filed by two persons under sections 18 and, 79 of Madras Act II of 1927 for a direction to the trustees to preserve Thengalai namam. The Board dismissed the petition on various grounds. The main ground was that the decision in A.S. No. 13 of 1854 applied only to the then living elephant and therefore after the death of the elephant in question in 1854, the judgment in A.S. No. 13 of 1854 was no longer applicable. This is clearly beyond the scope of the powers of the Commissioners of the Hindu Religious Endowments Board as they cannot question the correctness of a civil Court's decree. It is no doubt true that the Board ordered that Vadagalai namam should be painted on the elephant. But it appears that the decision was mainly based on the ground that it was the donor's wish that the elephant should be painted with Vadagalai namam. The learned Judge dealing with this question held that the two reasons given by the Board as to why the then living elephant should bear the Vadagalai namam are (1) that the elephant formed part of the paraphernalia of the chief deity and the chief deity in the temple admittedly bears Vadagalai namam and (2) that the elephant having been gifted by the Maharaja of Travancore with a condition that the elephant should have Vadagalai namam, the donor's wishes should be respected and complied with. As rightly pointed out by the learned Judge both the reasons given by the Board, do not relate to any question of usage in the temple. Further, it has to be noted that the application was made in an individual capacity by two persons under Sections 18 and 78 of Madras Act II of 1927 for direction from the Board to the Trustees to preserve the Thenkalainamam. The question of the established usage regarding the namam to be painted on the elephant was not in question. The order of the Board has made it clear that the decision was subject to any decision by the civil Court in a suit that may be filed by the aggrieved party. Section 18 of the Madras Hindu Religious Endowments Act, 1927, conferred powers of general superintendence of all religious endowment on the Board and empowered the Board to do all things which are reasonable and necessary to properly maintain the institution. Section 79 of the Act preserved the established usage of a math or temple or the rights, de hors, emoluments and perquisites to which any person may by customs or otherwise be entitled in such math or temple. Section 18 of the Madras Act II of 1927 while conferring on the Board the right of general superintendence over the temple, does not confer any right on the Board to decide or adjudicate the rights of parties. In the subsequent Act, namely, Madras Hindu Religious Endowments Act, 1946, Section 79-A conferred the power on the Board to decide disputes arising u/s 79-A(3) provided that the order of the Board shall be final in all cases where the disputes related to mere ritual or religious observances or honours and shall not be liable to be modified or set aside in a Court of law. In other cases

provision was made for the aggrieved person to apply to the Court for notification or for setting aside of the order, but subject to the result of such application, the order of the Board was made final. As there was no such provision in the 1927 Act, the order of the Board is not final. In *Venkaiah v. Raghavacharyulu* (1956) An.W.R. 1 : AIR 1956 A.P. 74, Viswanatha Sastri, J., has held that u/s 18 the rights of parties cannot be decided by the Board. See also the decisions in *Sri Kothandaramaswami Temple and Another Vs. Veezhinatha Ayyar and Another*, and *Amirthalinga Padayachi and Another Vs. Chandrasekhara Padayachi*, . Apart from the fact that Madras Act II of 1927, has not made the order of the Board final even on merits we agree with the view of the learned Judge that the order cannot be construed as deciding the usage of the temple. It can only be taken as an order relating to the living elephant presented by the Maharaja of Travancore. In this view, we reject the contention that the order passed by the Board would constitute *res judicata*.

18. It was next contended that the judgment of this Court in A.A.O. No. 111 of 1948 finally decided the rights of the parties and, therefore the present suit is not maintainable. It was an appeal against the order of the District Judge of Chingleput in O.S. No. 7 of 1845. "O.S. No. 7 of 1845 was filed in the Court of the District Judge of Chingleput by five persons for a direction against the hereditary trustees of the Sri Devaraja Swami Temple that the Alwars and the Acharyas and the living elephant of the temple and the big bell should only bear Thengalai namam. Issue No. 6 framed in the suit related to the mark that has to be put on the then temple elephant. The written statement filed by defendants 1 and 2 are Exhibits B-3 and B-4 respectively. The District Judge returned the plaint for presentation to the Sub-Court on the preliminary question of jurisdiction. The District Court held that it had no jurisdiction and that u/s 15 of the Code of Civil Procedure, the suit should have been instituted in the Sub-Court. Against that decision, the plaintiffs filed A.A.O. No. 111 of 1945. When the appeal was taken up, it was reported that the matter had been settled out of Court and permission was requested to withdraw the appeal. It was represented that the appellants should not proceed with the suit. The Court ordered that the appeal be dismissed as withdrawn. It is clear that the appeal was not disposed of on merits. The suit was dismissed, as having been filed in a Court which had no jurisdiction. The plaint was returned. The appeal was not disposed of on merits. The only contention raised by the learned Counsel for the appellants is that the Court had recorded an under-taking that the appellants should not proceed with the suit. We fail to see how this statement would affect the rights of the present plaintiffs. The plaint was returned on the ground that the District Court had no jurisdiction. It is therefore clear that there was no trial of the issue at any stage and the dismissal of the appeal would not improve matters. In the circumstances, we agree with the view of the learned Judge that the judgment A.A.O. No. 111 of 1948 cannot operate as *res judicata*.

19. It was next contended that the suit is barred by limitation. According to the learned Counsel for the appellants ever since 1894 only Vadagalai namam was

painted on the temple elephant and the Thengalai Vaishnavites have acquiesced in such a usage, and such conduct would amount to waiver or abandonment of their claim. But this plea cannot stand a moment's scrutiny for, the appellants' assertion that the temple elephants bore only Vadagalai namam from 1824 has not been established. The finding of the Courts is that there is absolutely no evidence to prove that the temple "owned any elephant between 1884 and 1940. The learned Judge has referred to the fact that the trustees have not produced any account to show that the temple owned and maintained any elephant between 1884 and 1940, at the cost of the temple. The finding is that during that time, the Thathachari trustees paraded an elephant with Vadagalai namam, but that was not a temple elephant. The learned Judge had accepted the finding of the two Courts below that the temple did not own any elephant between 1884 and 1940. On such a finding which cannot be challenged, no question, of acquiescence or waiver or abandonment of the rights of Thengalai Vaishnavites arises. After 1940 an elephant presented by the Maharaja of Travancore was accepted and Vadagalai namam was painted on that. It was submitted that relief by way of an injunction is not the proper remedy and that as the Vadagalai namam was painted on the elephant at any rate from 1940, the plaintiffs to succeed ought to have filed a suit for a declaration of the established usage in the temple and for restoration of the earlier practice. This contention was rightly rejected by the learned Judge and we do not see any substance in it. The right of the plaintiffs has been satisfactorily established in A.S. No. 18 of 1854 and the suit for injunction is clearly maintainable. It was submitted that relief by way of injunction ought to have been negatived as the plaintiffs are guilty of laches in that they did not pursue the remedies from the year 1940, when the elephant presented by the Maharaja of Travancore was painted with Vadagalai namam. This plea is also unsustainable as the Thengalai sect whom the plaintiffs represent has all along been protesting. They took the matter upto the Board and subsequently filed a suit. The learned Judge therefore rightly came to the conclusion that this is a fit case in which remedy by way of an injunction should be granted.

20. Elaborate arguments were advanced by the learned Counsel for the appellants that the right even if it was declared in favour of the Thengalai sect in 1884, it was lost by non-user. We see no basis at all for this contention. As already found, from 1884 to 1940 there was no temple elephant and after that there were disputes between the parties and the question, of the plaintiffs losing their established right by non-user does not arise at all on the facts.

21. It was finally contended that the suit is barred by limitation. The contention is that the period of limitation starts running from the date on which the declared right of the plaintiffs to have Thengalai namam was infringed, and on that basis, the suit is barred. This plea is again unsustainable as the cause of action arises on every occasion when the right is infringed. It is not open for the defendants to contend that the trustees by their acting contrary to the rights of the parties started prescribing a title or extinguished the existing title. It has been

repeatedly held that the trustees cannot prescribe any right as against a beneficiary. As rightly observed by the learned Judge, it would be anomalous to hold that the defendants in their capacity as trustees can prescribe a right to destroy the long established usage of the temple. On a careful consideration of the elaborate arguments of the learned Counsel for the appellants, we see no reason to differ from the conclusion arrived at by the learned judge in disposing of the second appeal. The learned Judge has dealt with all the points that were raised by the defendants fully, and we have no hesitation in confirming the decision of the learned Judge.

22. Before leaving this appeal, we are constrained to take note of a submission that was put forward by the learned Counsel for the plaintiffs-respondent. The suit was filed on behalf of the Thengalai Vaishnavites by the plaintiffs against the executive trustee as well as against the two Thathachariars who are honorary trustees. The suit was decreed by the trial Court. An appeal was preferred, not by the executive trustees, but by defendants 2 and 3, the two Thathachari Honorary Trustees. The second Appeal and the Letters Patent Appeal before us are also preferred by the Thatachari Honorary Trustees, and not by the executive trustee. While Mr. Vehkata-varadachariar the learned Counsel for the respondents before us informed us that he was reluctant to challenge the maintainability of the appeal by the Honorary trustees in the place of the executive trustees, as he would like to have a decision on the merits, he submitted that the course of this litigation would show that it is the unreasonable attitude of the Honorary Thathacbari Trustees which is the cause of the unfortunate litigation and ever giving trouble in the temple administration.... This submission we must say is not without foundation. In the narration of the history of the litigation subsequent to A.S. No. 13 of 1854, we have seen that the Vadagalai sect was most reluctant to accept the decision of the Courts. The attempt of the Court Amin for the restoration of the Thengalai namam on the living elephant was obstructed. The Court directed the arrest of the persons who opposed the execution of the Court orders and the Dharmakartha who happened to be the Thathachariars managed to collect a body of persons and resisted enforcement of the civil Court decree. The order was enforced and a proclamation was made by the civil Court. But the Vadagalai Vaishnavites sought to get over the decree by covering the head of the elephant with a cloth painted with Vadagalai namam to cover the Thengalai namam that was painted on the elephant. Contempt proceedings had to be taken for this action. We find sufficient basis for Mr. Venkatavaradachariar's grievance that the trouble is mainly due to the unreasonable attitude of the Thathachari Trustees. It is sufficient to quote a passage from *Srinivasachariar v. Thatha Desika Thathackariar* (1970) 83 L.W. 407 in which the Bench has quoted the remarks of Sadasiva Aiyar, J., in *Thathachariar v. Thiruvengadachariar* (1915) M.W.N. 916 : 2 L.W. 992 : 31 Ind.Cas. 46.

Mr. Venkatayaradachariar, appearing for the defendants 4 and 5 urged with some amount of justification that this attitude of the Vadagalais in putting forward

some innovation or other in one form or another from time to time has been responsible for the series of litigations pertaining to this temple going on for the last two centuries. In *Thatkachariar v. Thiruvengkatachariar* (1915) M.W.N. 916 : 2 L.W. 992 : 31 Ind.Cas. 46, Sadasiva Aiyar, J., had occasion to make some adverse remarks against the attitude the Vadagalai s wherein the learned Judge has pointed out that the litigation in that case was the result of the action of a small, though influential faction of Vadagalai sectarians residing in Kancheepuram by introducing innovations in customary practices during the period of regular official worship in the temple.

We fully agree with the views expressed by the learned Judge in both these decisions. It is unfortunate that even though the remarks were made over sixty years ago, the Honorary Trustees do not seem to have realised their responsibilities. It is the ineffectiveness of the Executive Trustee and his playing into the hands of the Honorary Trustees that has led to this deplorable litigation. A scheme was framed for the administration of the temple in A.S.No. 175 of 1934. The relevant provisions of the scheme are that the Devasthanam shall be administered by a paid executive trustee who shall be appointed by the Beard and by two honorary trustees who shall be elected in the manner laid down in the Scheme. The executive trustee shall be a Smartha or Madhwa Brahmin not less than thirty years and not more than 62 years of age of on the date of first appointment and willing to reside permanently in Conjeevaram for the period of his office. The executive trustee is to hold office for five years and he is required to give security for Rs. 2,000. He should be paid an honorarium, which shall not exceed Rs. 100 per mensem. Clause (6) of the scheme significantly provides that the functions and powers of the trustee under the Madras Hindu Religious Endowments Act shall ordinarily be exercised by the executive trustee alone. Clause (12) provides the rights of the honorary trustees. They are entitled to receive any information which they may require regarding the affairs of the Devasthanam. The executive trustee shall call a trustee meeting once a month and shall place before that meeting all matters of importance relating to the administration of the temple and in case of difference of opinion between the trustees when the majority consists of the executive trustee and one honorary trustee, its decision shall prevail. But when the majority consists of the two honorary trustees, the matter shall be referred to the Board whose decision shall be final. The executive trustee shall perform the functions of the landholder with respect to the villages belonging to the Devasthanam, and all the income of the Devasthanam shall be received by the treasurer and paid by him into a bank to be approved by the Beard. Under Clause (15) the Board is empowered to make rules for carrying into effect the purposes of the scheme. The scheme makes it clear that the temple should be administered by the Board by appointing an executive trustee. All functions and powers of the trustee under the Madras Hindu Religious Endowments Act shall ordinarily be exercised by the executive trustee alone.

The function of the honorary trustees is restricted to receiving information which

they may require regarding the affairs of the Devasthanam and to take part in the monthly meetings. It is significant that if the executive trustee differed from the honorary trustees, the matter will have to be decided by the Board. These precautions were put in the scheme to see that the Board and the executive trustee function without undue hindrance by the honorary trustees. We find in this litigation that the honorary trustees have taken and were allowed to take undue and unhealthy interest in this litigation. The honorary trustees have taken a partisan attitude which has interfered with the smooth functioning of the religious institution. The Vadagalai sect as such is not parties to this litigation and we have no material to come to the conclusion that the Vadagalai sect is supporting the honorary trustees in their improper acts. Sri Devarajaswami Temple at Conjeevaram is one of the most famous Vaishnavite temples like Thirupathi and Srirangam. It is the bounden duty of the Government and the Endowments Board to see that this famous pilgrim center of all India importance functions without let or hindrance by a small influential faction of Vadagalai Vaishnavites. We hope the Government and the Endowment Board will take immediate and adequate steps to see that a competent executive trustee is appointed to the temple for effectively administering the affairs of the temple and to safeguard the interest of the various decisions of the devotees. It is the bounden duty of the Endowments Board and the executive trustee to see that this influential minority does not over-step their limits and disturb the peace and solemnity of the holy temple. A copy of the judgment would be sent to the Government for appropriate action.

23. In the result, agreeing with the reasoning and conclusion arrived at by the learned Judge of this Court, we dismiss the appeal with costs. Rs. 1,000 payable by the appellant.