PRIVY COUNCIL.

P. C.* 1879. March 18.

KRISHNAMA AND OTHERS (PLAINTIFFS) *v.* KRISHNASÁMI AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at Madras.]

Cause of action—Money interest—Performance of religious services.

A claim to certain pecuniary benefits and payments in kind which a plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Courts of Justice are bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidentally the right to perform the services, the Courts must try and must decide that right.

THIS was an appeal brought under special leave from Her Majesty in Council, against a decretal order of the High Court of Judicature at Madras, dated the 16th February 1877, confirming an order of the District Judge of Chingleput of the 21st December 1876, whereby he rejected a plaint filed by the present appellants in a suit brought by them, on the ground that it disclosed no cause of action.

Mr. *J. D. Mayne* for the appellants, contended that the plaint disclosed a sufficient cause of action, and that the Courts below were wrong in rejecting it. He referred to one previous litigation between parties substantially the same, in the case of *Narasimma Cháryár* v. *Sri Kristna Tata Cháryár*, (1) in which a similar suit was entertained. The same view had been taken in the case of *Archakam Srinivasa Dikshatulu* v. *Udayagiri Anantha Charlu*, (2) although in that case it was held that the claim made by the plaintiff was *res judicata*. See also *Kamalam* v. *Sadagopa Sámi* (3) in which *Chinna Ummayi* v. *Tegarai Chetti* (4) was distinguished. The present case differed from that of *Striman Sadagopa* v. *Kristna Tata Charyar* (5) in so far as the plaintiff in that case was not officially connected with the temple in respect of which his claim was brought. In the Bombay cases, *Shankara bin Marabasapa* v. *Hanma bin Bhima* (6) and *Sangapa bin Baslingapa* v. *Gangapa bin Nirajapa*, (7) the claims were

* *Present*:—Sir JAMES W. COLVILE, Sir MONTAGUE E. SMITH, and Sir ROBERT P. COLLIER.

(1) 6 Mad. H. C. Rep., 449.
(2) 4 Mad. H. C. Rep., 349.
(3) I. L. R., 1 Mad., 356.
(4) I. L. R., 1 Mad., 168.
(5) 1 Mad H. C. Rep., 301.
(6) I. L. R., 2 Bom., 470.
(7) I. L. R., 2 Bom., 476.

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rejected as brought to vindicate the plaintiff's right to a mere dignity unconnected with any fees, profits or emoluments.

The respondents did not appear.

The material passages of the plaint and the order passed by the High Court will be found set forth in their Lordships' judgment which was delivered by

SIR ROBERT COLLIER:—This is an appeal from a judgment of the High Court of Judicature at Madras, rejecting a plaint under the 32nd section of the Code of Civil Procedure, as containing no cause of action—a proceeding equivalent to what in this country would be called judgment on demurrer. The only question before their Lordships is whether or not the plaint discloses any cause of action. Of course we have nothing to do with the question whether the cause of action, if any is stated, be well founded, or what may be the merits of the case. The declaration is by a large number of persons belonging to the *Tenkalai* sect, against other persons belonging to the *Vadakalai* sect. The substance of the plaint, which undoubtedly is not very clear, may be thus stated: It begins by declaring that the plaintiffs have the exclusive right to the *Adhyapaka mirass* of reciting certain religious texts, hymns, or chants in a certain pagoda and its dependencies, and deny the right of the defendants to recite them. Then comes an allegation which appears important: "The plaintiffs and the Brahmins of the plaintiffs' *Tenkalai* sect have been for a long time past and up to this day discharging all the duties appertaining to the said *Adhyapaka mirass* right, and enjoying the incomes of the *Adhyapakam*, save those mentioned in Schedules B and C." The plaint goes on to allege that the defendants, holding the office of Dharmakartas of the pagoda, in combination with other persons in rivalry with the plaintiffs, recited the *Vadakalai* invocations, chants, and other religious prayers, the exclusive right to recite which was incident to the plaintiffs' *Adhyapaka mirass;* that thereupon a complaint was preferred to the Magistrate and a report made, and for a time the defendants ceased to recite the chant and prayers in question, but that they again wrongfully recited them, and injured the exclusive right of the plaintiffs and others to recite them; but there is no allegation that the plaintiffs did not themselves perform or were prevented from performing these rites. On

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the contrary, the allegation is that they did perform them. Section 6 goes on to say, "The defendants having withheld the payment to the plaintiffs of some of the several incomes of the *Adhyapaka mirass* due to the plaintiffs in the said Devarája Swámi's Pagoda, as well as in all the *Sannidhis* attached to it, the plaintiffs instituted Suit No. 66 of 1865, on the file of the District Munsif's Court of Conjeveram, against the defendants, and this litigation went up as far as the High Court, and continued until March 1873, when a decision was passed in favor of the plaintiffs." The plaint further alleges (and this is the present cause of action), "The defendants have withheld the payment to the plaintiffs and the others of the *Tenkalai* sect of the amount of income mentioned in Schedule C for the six years from the date of the said Suit No. 66 up to this day, to which the plaintiffs and the others of the *Tenkalai* sect are entitled, as also of the incomes which are mentioned in Schedule B, and which were being enjoyed by the plaintiffs and the others of the *Tenkalai* sect from the date of the said Suit No. 66, until the final decree was passed by the High Court, save such as are now being enjoyed. They have also withheld from the plaintiffs, and the others of the *Tenkalai* sect, the honors mentioned in Schedule A from April 1873." There follows a prayer that the Court will pass a decree directing the defendants and others to abstain from reciting, and establishing the exclusive right of the plaintiffs, and also seeking to recover the value of various items stated in the schedules. Schedule C, which is to be found at the end of the schedule attached to the plaint, is in these terms: "Amount due for six years from October 1870 up to the current month at the annual rate of Rupees 57-5-9, as mentioned in the decree in the Original Suit No. 66 of 1865 on the file of the District Munsif's Court of Conjeveram, Rupees 344-2-6." On reference to the record, this suit appears to have been brought by substantially the same plaintiffs (with some changes) against substantially the same defendants. The Munsif before whom the case was originally tried, affirmed the claim of the plaintiffs to the *Adhyapaka mirass*, and decreed that the sum of Rupees 57-5-9, as wages for the duty performed, should be paid to them by the defendants, these "wages" being in fact the money-value placed by the Court on certain payments in kind chiefly in the shape of food.

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On appeal this decision of the Munsif was reversed by the District Judge, being the first Court of appeal, on the ground that no suit would lie in respect of the matter complained of. His decision was reversed by the High Court of Madras, who remanded the case, observing, "The claim is for a specific pecuniary benefit to which plaintiffs declare themselves entitled on condition of reciting certain hymns. There can exist no doubt that the right to such benefits is a question which the Courts are bound to entertain, and cannot cease to be such a question, because claimed on account of some service connected with religion. If to determine the right to such pecuniary benefit it becomes necessary to determine incidentally the right to perform certain religious services, we know of no principal which would exonerate the Court from considering and deciding the point."(1) In pursuance of this judgment, which appears to their Lordships to be perfectly correct, the cause was again tried by the Court of first appeal which somewhat increased the amount that the Munsif had given. The High Court upon further appeal affirmed the judgment of the Munsif, re-establishing the amount by way of annual payment at Rupees 57-5-9. It therefore appears that the plaintiffs in the present suit, having recovered in the former suit up to the date of the commencement of that suit the sum of Rupees 57 for certain services performed, are now seeking to recover the amount of wages that have accrued due to them for six years since the date of that suit at the same annual amount in respect of the same services which they allege themselves to have continued to perform, their performance not having been prevented, although possibly to a certain extent interfered with by the defendants. So much with respect to Schedule C.

Schedule B relates to another class of payments, as they are described in the schedule, in kind; that is, in the shape of rice and other food which are described as due to the plaintiffs. The first item in the schedule is to this effect: "One Poli (circular cake made of wheat flour, Bengal gram, sugar, and ghee) due to *Adhyapakam* at the close of the *Tiruppavai*;" most of the other items are of the same character. Their Lordships do not understand these articles as consisting of mere presents made by the devout, but as certain payments in kind of the same nature

(1) *See* 6 Mad. H. C. Rep., 449 at p. 451.

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as those comprised in Schedule C, which are now claimed by the plaintiffs from the Dharmakartas of the temple, which the defendants are, in respect of services performed. At the close, however, of this schedule their Lordships observe a statement of an approximate sum claimed for presents made annually to the *Adhyapakas* by the adjoining villagers for the *Tenkalai* people. It may be that no action will lie for the recovery of this last item or in respect of the honors mentioned in Schedule A, and alleged to have been withheld from the plaintiffs; but that circumstance would not justify the rejection of the whole plaint, if it discloses a good cause of action in respect of Schedule C and the greater part of Schedule B.

The judgment of the High Court, now appealed against, which rejects this plaint, is in these terms: "We think the plaint was properly rejected under the 32nd section of the Code of Civil Procedure. The allegations respecting the '*Mirass* of reciting prayers,' and the exclusive right of recital in a stated form and order, which the plaintiffs ask the Court to establish and to protect from infringement by the defendants, do not disclose a cause of action; nor in our judgment does that portion of the plaint which alleges the withholding payment of certain specified sums which are described as 'the value of the incomes mentioned in Schedules B and C.' A reference to the schedules discloses nothing more than a list of cakes and offerings to which a money value is assigned. Reading the plaint and schedules together they express no more than this, that presents and offerings usually given have been withheld. If, as now alleged, the plaintiffs intended to claim emoluments or legal dues of right receivable by them for services rendered, it is sufficient to say they have failed to do this."

Their Lordships are unable to concur in this judgment. For the reasons which have been stated they take a different view of the plaint and of the schedules which have been referred to. It appears to them that the schedules are more than a mere list of cakes and offerings to which a money value is assigned, that they disclose a claim, whether well founded or ill founded, as of right to certain dues for services performed. Schedule C to an annual payment for wages which has been assessed in the previous suit, and adjudicated upon as due to them. Schedule B to

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certain other payments in kind, presumably capable of a money value, which had been made to them up to the judgment in the former suit, but which had been since withheld.

This being so, the action falls within the principle of the judgment by which the former suit (1) was remanded, and of other cases to which their Lordships' attention has been called. They are therefore of opinion that the judgment should be reversed, and the case remanded for the purpose of trial, and that the appellant is entitled to the costs of this appeal; and they will humbly advise Her Majesty to this effect.

Appellants' Agents: Messrs. *Burton, Yeates and Hart.*

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P. C.* 1879. May 7 and 8.

RÁMASÁMI (DEFENDANT) *v.* THE COLLECTOR OF MADURA AS AGENT OF THE COURT OF WARDS ON BEHALF OF BHASKARASÁMI, A MINOR (PLAINTIFF).

[On appeal from the High Court of Judicature at Madras.]

Registration—Pattá—Section 2, *Act XX of* 1866—*Sections* 3, 8, 9 *and* 11, *Madras Act VIII of* 1865.

The pattás and muchalkas mentioned in Section 3, Madras Act VIII of 1865, must be understood to embrace those written agreements only which are mutually interchanged by a landlord and those of his tenants who are actually engaged in the cultivation of the lands to which they relate, since the remedies which the Act provides in Sections 8 and 9, can only be made available where the relation of landlord and tenant, or a holding of some sort, already exists upon such a basis that the landlord or the tenant, as the case may be, can come into Court and claim to have a writing granted to him.

Semble, if a lease granted by a zamindár to an intermediate holder could be considered a pattá within the meaning of Section 3 of the Madras Act VIII of 1865, it would, under the proviso to Section 11 of that Act, be liable to be set aside by the successor of the grantor if granted at a lower rate than that generally payable on such lands, and not for the purposes mentioned in the said proviso.

THIS was an appeal from a decree of the High Court of Madras, dated the 5th January 1877, which affirmed the judgment and decree of the District Judge of Madura, dated the 30th May 1876, made in favour of the respondent.

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* *Present*:—Sir JAMES W. COLVILE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, and Sir ROBERT P. COLLIER.

(1) *See* 6 Mad. H. C. Rep., 449 at p. 451.