

[4 Mad. 315.]
APPELLATE CIVIL.

The 3rd November and 5th December, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Subbaraya Gurukal.....(Plaintiff), Appellant

and

Chellappa Mudali and others.....(Defendants), Respondents.*

Religious ceremonies—Idols—Property—Civil rights.

Hindu idols being property, "the right to deal with such property" is a right cognizable by Civil Courts.

[316] THE facts and arguments in this case sufficiently appear, for the purpose of this report, in the Judgment of the Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.).

Gurumurthi Ayyar for Appellant.

The Respondents did not appear.

Judgment:—The plaintiff alleges that he and other persons, residents of certain villages, are interested as worshippers in two idols, and that he is a Dharmakarta of the temple in which the idols are kept; that, on stated days, it has been customary to carry these idols in procession to those villages; that this right has been recognized by a compromise embodied in a decree of Court, but that the defendants interfered to prevent the procession. He claims a declaration of his right to have the idols carried in procession in accordance with the custom, and to recover damages for the injury he has sustained, and also the sum he expended fruitlessly in making provision for the ceremonies attendant on the procession.

The Munsif dismissed the suit on the ground that the questions raised concerned religious worship and ceremonial, and that the Courts could not take cognizance of them. The Judge held that the defendants were themselves also Dharmakartas of the temple, and that the use of the idols was a mere question of religious observance, which must be determined by the wishes of the majority of the Dharmakartas.

In the eye of the law the idols are property, and the right to deal with such property must, in the event of disputes arising, be determined by a Civil Court.

The question on which the determination of the suit turns is, With whom does the power reside to regulate the ceremonies and processions in connection with idols? We believe there is no general custom by which this question can be at once decided. It may be the Dharmakartas have no power to change existing custom; it may be that they, or a majority of them, have a discretion to do so either arbitrarily or in accordance with what they honestly believe to be the wishes of the worshippers.

The question must be determined in each case by evidence of usage, and inasmuch as no issues were framed by the Court of First Instance to raise the question, and the issues which were [317] framed have not been tried, we shall set aside the decrees of the Courts below and direct a retrial.

The costs of the proceedings had hitherto will abide and follow the result.

*Second Appeal No. 442 of 1881 against the decree of J. Hope, District Judge of Chingleput, confirming the decree of A. Narainsami Naidu, District Munsif of Poonamallee, dated 15th March 1881.

NOTES.

[JURISDICTION—CIVIL COURTS—

Removal or alteration of namams in a Vaishnavite temple was held to amount to an interference with property and as such suit in respect thereof was cognizable by a Civil Court :—(1906) 30 Mad., 153=17 M. L. J., 1.

But the claim of an individual worshipper to have the procession of an idol carried along his street was not held to be one cognizable by a Civil Court (*per* Chief Justice) :—(1900) 11 M. L. J., 215. See *Contra per* DAVIES, J. in the same case.]

[4 Mad. 317]

ORIGINAL CIVIL.

The 11th November, 1881.

PRESENT :

MR. JUSTICE KERNAN.

IN THE MATTER OF SIVA BUX SAVUNTHARAM.*

Arrest—Privilege of party morando—Civil Procedure Code, Section 642.

Where a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending, in which he was plaintiff, and, the case having been adjourned on 27th October for seven weeks, remained in Madras on account of the suit and was arrested on 10th November :

Held that he was privileged under Section 642 of the Code of Civil Procedure.

MOTION to discharge from custody Siva Bux Savuntharam, the first defendant arrested in execution of the decree in Suit 82 of 1881, on the ground of privilege under Section 642† of the Code of Civil Procedure.

The affidavit upon which this motion was grounded and the examination of Siva Bux Savuntharam showed that he was plaintiff in a suit in the High Court then pending (116 of 1878); that he was a native of Patna; that on receipt of a letter informing him that his presence was required at Madras to prosecute Suit 116 of 1878 he left Calcutta and arrived at Madras on 24th October; that on the 27th October Suit 116 of 1878 having been posted for settlement of issues was adjourned for seven weeks; that he remained in Madras awaiting the disposal of the suit and was not engaged in business at the time of his arrest which took place on the 10th November.

Mr. *Spring Branson* for the Judgment-debtor.

Mr *Grant* for the Judgment-creditor.

Mr. *Branson*.—The privilege is not the privilege of the person, but of the Court he attends—*Magnay v. Burt* (5 Q. B., 393.)

(KERNAN. J.—A party whose cause is in the list is privileged *evendo, morando et redeundo*).

* In Civil Suit No. 116 of 1878 on the Original Side of the High Court.

†[Sec. 642 :—No Judge, Magistrate or other Judicial officer shall be liable to arrest under this Code while going to, presiding in, or returning from his Court.

And, except as hereinafter provided, the parties to a suit and their pleaders and recognized agents shall be exempt from arrest under this Code while going to or attending a Civil Court for the purpose of such suit and while returning from such Court. Witnesses acting in obedience to a summons shall be similarly exempt.]