

[141] APPELLATE CIVIL.

The 16th August and 9th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE AND MR. JUSTICE INNES.

Patinharipat Krishnan Unni Nambiar.....(Fourth Defendant), Appellant
and
 Chekur Manakkal Nilakandan and Bhattathiripad.....(Plaintiff),
 Respondent.*

Malabar Law—Uralar—Karayma Samudayam.

A Karayma Samudayam of a Malabar devaswam is merely an agent or manager, with a proprietary and hereditary right in his office.

The ownership of the property of the devaswam is vested in the Uralars, who are the proper parties to sue the tenants of the devaswam lands.

THE plaintiff in this case alleging that certain land, being the jemm (property) of the *Malamal Kava* Devaswam (temple) belonging to plaintiff, was demised on Kanam by plaintiff's father, the late Karayma Samudayam (manager, with a proprietary and hereditary right in his office), to the first defendant's Karnavam, sued to recover the land on payment of the kanom amount.

The first defendant did not appear.

The second and third defendants admitting the demise to first defendant, denied plaintiff's right to sue, and claimed to hold as assignees of first defendant's rights under fourth defendant, one of the Uralars (trustees) of the temple, who also objected to plaintiff's right to sue.

The District Munsif, upon the ground that plaintiff's family had been held by decrees of Court competent to eject devaswam tenants without the co-operation of the Uralars, decreed for plaintiff.

This decision was confirmed on appeal by the District Judge.

The fourth defendant appealed.

Mr. *Wedderburn* for Appellant.—This case is governed by the case of *Kunjneri Nambiar v. Nilakanden* (I. L. R., 2 Mad., 167), which was apparently a suit with reference to property of this same temple.

[142] *Ramachandrayyar* for Respondent.—The plaintiff has a right to take demises in his own name and sue upon them; he is not a mere agent. This very demise was made by his predecessor.

The tenant is estopped from denying his landlord's title.

Mr. *Wedderburn*.—The question here is not between the lessor and lessee, but who is the proper person to sue the tenant, the trustee or the manager.

The Court (TURNER, C.J., and INNES, J.) delivered the following
Judgments :—

Innes, J.—The status of a Karayma Samudayam, put at the highest, is merely that of an agent or manager who has a proprietary and hereditary right

* Second Appeal No. 81 of 1881 against the decree of H. Wigram, Officiating District Judge of South Malabar, confirming the decree of U. Achuthan Nair, District Munsif of Betunad, dated 28th September 1880.

† Freehold or private property—(*Wilson*).

in his office. The question of whether he can conduct suits in his sole name on behalf of the devaswam is one of procedure. As a general rule, no one can be joined as a plaintiff unless some title to relief exists in him (Section 26, Civil Procedure Code). There are certain excepted cases, *viz.*, those of corporations or companies, which by law are authorized to sue and to be sued in the name of some officer or trustee (Section 435, *Civil Procedure Code*); also in some cases of contracts made by agents in which the agency has not been disclosed, or where the agent has been specially authorized by the principal to contract in his own name, he can sue to enforce the contract. The right of the agent to sue in his own name in these cases of agency depends on the assumption that the contract of the other contracting party was with the agent, who *has*, therefore, in *such* cases a title to relief.

In the present case the kanom demise was made on behalf of the devaswam. It cannot be said that a religious institution in the hands of trustees (the Uralars) is sufficiently represented by the agent or manager, for, as a matter of procedure, the devaswam could not be sufficiently represented by him unless he of himself constituted the corporation, which he does not do, or was a person specially authorized by law to conduct suits on behalf of the devaswam or its trustees, and he is not so authorized.

The other question on which we reserved judgment was whether second defendant was not estopped, by his admission of the fact of the demise by the Samudayam, from setting up the exclusive right of the Uralars to sue.

[143] This is not a case in which there is a conflict of claims to the property which is the subject of the suit. The Karayma Samudayam does not set up one title and the second defendant another. It is conceded on all hands that the property is that of the devaswam and was demised in that character. The only question is whether the plaintiff is the proper person to sue. The *Civil Procedure Code* precludes him from suing, and second defendant can set up as a defence that the law indicates another person as the person entitled to sue. On the ground that plaintiff is not entitled to sue in his own name, I would reverse the decrees of the Courts below and dismiss the suit with costs.

Turner, C.J.--I also am of opinion that the suit cannot be maintained by the Samudayam. The ownership of the trust property is vested in the Uralars, and it is in their names that proceedings should ordinarily be taken to recover possession of any portion of the estate from a person whose right to occupy it has expired.

The powers of the Samudayam are confined to the management of the estate. When occasion requires that resort should be had to the Courts, he should apply to the Uralars to lend their names. If they improperly refuse their assistance to the Samudayam to enable him to discharge his duties, they may be compelled to afford it.

It is the practice in India to implead as defendants persons who should properly be made parties as plaintiffs, but who have refused to concur in a suit, and I am not prepared to say that a suit by a Samudayam for the recovery of land from the holder of a kanam would not be maintainable if the Samudayam showed that he had applied to the Uralars to bring the suit and that they had improperly refused to do so. No such refusal has, however, been alleged nor proved in this suit, nor are the Uralars parties to the suit.

On the second point it appears to me that although the contract was made with the appellant, it was made with him as "the Samudayam," and, therefore,

as the agent of the devaswam. Consequently this circumstance will not confer on him a right to sue except in the circumstances I have mentioned.

I agree that the appeal should be decreed and the suit dismissed with costs.

NOTES.

[URALARS—REPRESENT THE DEVASWAM—

Decree obtained against the Uralars of a *Devaswam* is binding on the future representatives of the *Devaswam* in the absence of fraud or collusion :—(1886) 9 Mad. 473 where the Anandravans were held bound by the decree against the Uralars. See (1890) 1 M. L. J., 390, where the decree obtained against the Uralars of a temple cannot be set aside by a person having a reversionary Uraima right.

II. CO-SHARERS WHEN ADDED AS DEFENDANTS—

“ It is the practice in India to implead as defendants persons who should properly be made parties as plaintiffs, but who have refused to concur in the suit ” :—4 Mad. 143.

In (1889) 17 Cal. 160 residence in a distant place was held no ground to implead co-sharers as party defendants.

In (1887) 9 All. 486 it was held, reversing the lower Court's decision, that the representatives were not necessary party-plaintiffs to a suit for recovery of a debt of the partnership.]

[144] APPELLATE CRIMINAL.

The 9th September, 1881.

PRESENT:

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Virasami Mudali

against

The Queen.*

Section 177† Indian Penal Code—“ Legally bound,” meaning of.

To make a false entry in a diary kept by a Government servant and sent to his official superior in pursuance of a departmental order is an offence within the meaning of Section 177 of the Indian Penal Code.

THE facts and arguments in this case appear in the Judgment of the Court (KINDERSLEY and MUTTUSAMI AYYAR, JJ.).

Parthasaradi Ayyangar and Rangachari for Petitioner.

* Petition 348 of 1881 against the sentence of A. C. Tate, Assistant Magistrate of South Arcot, dated 21st February 1881.

†[Sec. 177:—Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false,

shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.]