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direct that the decree be executed against the sureties in accordance with law.

The respondents will pay the appellant's costs throughout.

WILKINSON, J.—I also am of opinion that the decree can be executed against the surety, the provisions of section 253 being made applicable by section 583.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1889. August 14, Sep. 29.

SIVASANKARA (DEFENDANT), APPELLANT,

v.

VADAGIRI (PLAINTIFF), RESPONDENT.*

Temple management—Dismissal of dharmakarta, grounds for—Dharmakarta guilty of misfeasance retained in office on terms.

A suit to remove a dharmakarta, though he is held to have been guilty of misconduct in the discharge of his duties as such may, in the absence of any proved and deliberate dishonesty on the defendant's part, be dismissed on conditions to be complied with by him.

APPEAL against the decree of S. T. McCarthy, District Judge of Chingleput, in original suit No. 22 of 1885.

Mr. *Gover*, *Rama Rau*, and *Mahadeva Ayyar* for appellant.

Ramasami Mudaliar, *Sadagopa Charyar* and *Ranga Charyar* for respondent.

The facts of the case and the arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT.—The appellant and the respondent are the joint dharmakartas of Kandasami temple at Tiruporur, in the District of Chingleput. The respondent charged the appellant with various acts of misfeasance and sues for his dismissal from the office of dharmakarta. The District Judge has found against the appellant with regard to three of the charges made against him. He has found that the appellant has been guilty of malversation in respect of casuarina trees at Kalavakam and of improperly maintaining his mother and sister out of temple funds, and he has also found,

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* Appeal No. 128 of 1887.

though this is not a charge specifically made in the plaint, that appellant has been persistently setting the respondent's authority at naught. Concerning the charge of consorting with dancing girls and using temple money for their use, while the District Judge believes that appellant has been guilty of immorality, he does not find that the immorality was accompanied by malversation of property. On the strength of the three charges above mentioned, the District Judge has decreed the appellant's removal from office. With regard to the last of the three charges we are disposed to agree with the District Judge in thinking that the appellant was 'endeavouring to ignore and disregard the respondent's position as a co-trustee.' It is in evidence that, when the Government severed its direct connection with the management of the temple in 1842, the respondent's father and the appellant's predecessor in office were appointed as joint trustees, and that from that time they acted as such. In 1874 an agreement was made between the respondent and the appellant's predecessor, the purport of which was to abridge the functions of the respondent and restrict him to looking into the accounts of the temple once a month, and acting in all matters with the consent of his co-trustee. This agreement, we are of opinion, can only be regarded as made for mutual convenience as long as mutual confidence subsisted. Any other construction of it would involve the recognition of a right in a trustee to abdicate or delegate his duty.

We must, therefore, hold that the appellant is not justified by the arrangement with his predecessor in conducting himself as he has done with regard to the respondent. He has taken a wrong view of his position and his duties; but, unless it appears that in the conduct he has pursued he has been actuated by dishonest motives, we do not think he should be dismissed from the office of trustee. As regards the maintenance by the appellant of his mother and widowed sister out of temple funds, the evidence on both sides shows that they lived together in the mutt and under his protection. The admission in the written statement that he has no means lends weight to the evidence for the respondent that temple funds have been spent upon their support and the evidence of the two witnesses who say that the appellant's sister had property of her own is vague and inconsistent. We therefore agree with the District Judge in thinking that this charge is well founded. Whatever may be the moral obligation on the appel-

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lant's part to support his mother and sister, we must hold that an expenditure of temple funds for that purpose is not justified and constitutes a breach of trust. It is, however, of a comparatively venial character and would not by itself merit the extreme penalty of dismissal from office.

The more serious charge is that relating to the misappropriation of casuarina trees. The fact that two hundred trees in a garden at Kalavakam, belonging to the devastanam, were some two or three years ago cut down and sold by the defendant is spoken to by several witnesses. Two of the respondent's witnesses depose to the purchase of the wood by Ruthnavalu Mudali for Rs. 110. The first witness says that the money was paid to the appellant in the temple and taken charge of by the accountant. The appellant's witnesses, other than the appellant himself, admit the existence of the plantation, and the fact that some two or three years ago some trees, but not two hundred, were cut down. These trees, they say, were used for making pandals for the temple. The defendant, in his written statement, says:—"There never was a casuarina garden belonging to Tiruporur Kandasami," meaning apparently to deny in terms what is alleged in the eighth head of charge. This denial he repeats in his evidence adding "there is a tope in Kalavakam; it is my own property; the late dharmakarta purchased it from his own money." He says further that no account was kept with regard to the casuarina plantation and that such account was not handed to the amin, but when the Commissioner came on the second occasion, appellant says he showed him an account. From the list of accounts taken charge of by the amin as to which he speaks in a general way, it appears that there was a casuarina account, but no particulars are given and it is not shown to what garden it refers, by whom it was kept, or in whose custody. In a later report of another amin, the account is said to be "not found," but again no particulars are given, and the amin, who is examined, merely says he made a list and a report. The District Judge, without any examination of the evidence, has simply recorded a finding of guilty on the charge of misappropriating casuarina trees. Apparently he gave credit to the plaintiff's witnesses, and, if they are believed, it is clear that the appellant has not accounted for the proceeds of the trees. The District Judge says nothing concerning the appellant's assertion of a claim to the casuarina garden

in his own right, although the circumstance of his making such a claim would, if the claim were made deliberately and with the knowledge that he was seeking to appropriate temple property, have constituted important evidence against the appellant. We observe that the appellant did not in his written statement lay any claim to the garden; his denial seems to have strict reference to the charge as laid in the plaint and, in a paragraph, it is admitted that the devastanam has some casuarina plantation. The same admission, moreover, is made throughout the evidence of the witnesses and even the appellant declares that the trees admitted to have been cut down were used for devastanam purposes. Having regard to all the circumstances, we are not prepared to take a more serious view of the appellant's conduct with regard to the casuarina than has been taken by the District Judge. We accept the finding that the appellant has not accounted for the proceeds of trees sold, but acquit the appellant on the graver charge of attempting to appropriate the garden to himself as his private property.

It is contended on behalf of the appellant that the misconduct proved against him is not sufficient to warrant his dismissal from office, and reliance is placed on the observations made in the case of *Chinna Jiyar* v. *Darma Dossji*(1). Having regard to the considerations of expediency suggested in that case and to the absence of any proved and deliberate dishonesty on the appellant's part, we are of opinion that the interests of the temple do not absolutely demand the dismissal of the appellant. At the same time we do not altogether acquit him of misconduct. In the attitude he has assumed to the co-trustee, in using temple funds for the support of his mother and sister and not accounting for the money realized by sale of wood, he has acted wrongly and improperly. We shall not, therefore, dismiss the suit unconditionally. But we direct that, if within one month from the date of the decree the appellant do file in the District Court an undertaking signed by him to the effect that henceforth he will loyally co-operate with the respondent, allowing him to take an equal part in the management of the temple and its property, and to have access to the accounts, and liberty to examine the jewels and other things in the temple, and also that henceforth he will not

(1) 5 Mad. Jurist, 214.

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expend any part of the temple moneys on the maintenance of his mother and sister or for any other purposes than those of the temple, and further that, if within one month from the same date, the appellant do pay the sum of Rs. 110 into the District Court, this appeal be allowed and the decree of the District Court be reversed except as to costs, and the suit dismissed. On the appellant's making default in filing the abovementioned undertaking or paying the money into Court as required, the appeal will stand dismissed. In either event, the appellant must pay the costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Wilkinson and Mr. Justice Shephard.

1889. April 25. May 2.

NARASIMMA (DEFENDANT), APPELLANT,

v.

MANGAMMAL (PLAINTIFF), RESPONDENT.*

Hindu law—Inheritance—Mother's brother—Father's sister.

According to the Hindu law current in the Madras Presidency, the father's sister is not entitled to inherit in preference to the mother's brother.

Semble: per Wilkinson, J.—The father's sister is a bandhu.

APPEAL against the decree of G. D. Irvine, Acting District Judge of Coimbatore, in original suit No. 25 of 1887.

Suit to establish the plaintiff's right as heir to one Ellama Naik (deceased) and to recover from the defendant the amount collected by him under an heirship certificate. The plaintiff was paternal aunt and the defendant was maternal uncle of the deceased. The Acting District Judge held that the plaintiff was a nearer heir than the defendant, on the ground that she was a bandhu *ex parte paterna*, and accordingly passed a decree in favor of the plaintiff.

The defendant preferred this second appeal.

Bhashyam Ayyangar and *Ramachandra Ayyar* for appellant:—

The plaintiff has obtained a decree on the ground that she is a bandhu *ex parte paterna*. If she could be entitled to inherit, it would be as a sapinda and not a bandhu; but, in the right view of the law, she is not an heir at all, and in any case she cannot come

* Appeal No. 169 of 1888.