APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1889. March 25. April 26.

SADAGOPACHARI AND OTHERS (PETITIONERS), APPELLANTS,

v.

KRISHNAMACHARI AND OTHERS (COUNTER-PETITIONERS), RESPONDENTS.*

Execution of decree determining rights of rival religious sects—Decree, whether executory or declaratory—Limitation—How far a sect bound by decree against some of its members.

In a suit determined in 1840, in which various members of the Vadagalai sect residing in a certain village were plaintiffs and various members of the Tengalai sect residing in the same village were defendants, it was held that an image of a priest revered by the latter sect was not entitled to a place in a certain temple of the village, or to public worship in a certain street, or to procession in the streets of the village; and it was directed that, if the defendants continued to make the image an object of public worship, it should be removed. In 1888 various members of the Vadagalai sect, asserting that the members of the Tengalai sect had acted in contravention of the decree in the above suit, filed an execution-petition therein, praying that various members of the Tengalai sect be arrested, and "that the image of their priest, which they attempt to worship publicly, be removed until they obey the terms of the decree." It appeared that, in 1868, the District Magistrate had granted an application to restrain the Tengalais from acting contrary to the above decree. The execution-petition was dismissed by the District Court:

Held, the petition was rightly dismissed, since the execution of the decree was barred by limitation, and the decree, if it was capable of execution at all, could not be executed against the parties to the present petition.

APPEAL against the order of R. S. Benson, Acting District Judge of South Arcot, dated 10th December 1888.

The order appealed against was made on a petition entitled execution-petition No. 43 of 1888 in civil suit No. 30 of 1828 in the late Court of Adalat in the Chingleput zilla. The prayer of the petition was "that counter-petitioners, Tengalai Brahmans of "the Tiruvendipuram village, may be arrested and imprisoned "in execution of the decree in the above suit, and that the image "of their priest, Manavala Mahamuni, which they attempt to "worship publicly, may be removed until they obey the terms "of the decree."

* Appeal against Order No. 160 of 1888.

The District Judge dismissed the petition, and the petitioners, who are Brahmans of the Vadagalai sect, preferred this appeal against his order.

The terms of the decree to which the petition related are set out in the following judgment of the High Court, from which the circumstances giving rise to the present case appear sufficiently for the purpose of this report. Exhibit D, which is referred to in the judgment, is an order, dated 5th September 1868, made by the District Magistrate of South Arcot under section 62 of the Code of Criminal Procedure, granting an application made by some of the Vadagalai sect that the members of the Tengalai sect be restrained from proceeding with the construction of a temple, &c., on the ground that its construction, &c., was "contrary to both the letter and spirit" of the decree referred to above.

Subramanya Ayyar, *Bhashyam Ayyangar*, *Sundara Ayyar*, and *Desikacharyar* for appellants. The decree now sought to be executed was, in fact, an injunction. The suit in which it was passed was a suit between the sects, and the decree is capable of execution against the present defendants, whose interests were represented by the defendants joined in that suit. *Srikhanti Narayanappa* v. *Indupuram Ramalingam*(1). The whole body of the community to which the defendants belonged was bound, as where in England a few parishioners appear on an indictment against all the inhabitants of a parish for non-repair of a highway. It was so held in *Regina* v. *The Inhabitants of Haughton*(2); compare also *Jenkins* v. *Robertson*(3); *Commissioners of Sewers of the City of London* v. *Gellatly*(4) a suit for an injunction in which rights of common were in question was decided on the same view of the law; *Anandrav Bhikaji Phadke* v. *Shankar Daji Charya*(5) is also an authority in favor of the appellants; and see *Parthasaradi* v. *Chinnakrishna*(6).

As to the question of limitation, the application for execution is not barred because the case would be governed by article 178 of the Limitation Act. *Raghubans Gir* v. *Sheosaran Gir*(7), *Basant Lal* v. *Batul Bibi*(8), *Thakur Das* v. *Shadi Lal*(9).

Mr. *Johnstone* and *Mahadeva Ayyar* for respondents. The counter-petitioners were not represented in the suit, only some of

(1) 3 M.H.C.R., 226. (2) 1 E. & B., 501. (3) L.R., 1 App. Ca., 117.
(4) L.R., 3 Ch. D., 610. (5) I.L.R., 7 Bom., 323. (6) I.L.R., 5 Mad., 304.
(7) I.L.R., 5 All., 243. (8) I.L.R., 6 All., 23. (9) I.L.R., 8 All., 56.

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them are the descendants of the parties to it; in any view they have not been made representatives to the persons then on the record under sections 234 and 235 of the Code of Civil Procedure. If they are representatives, obligations can only be enforced against them as such with regard to property. But here they are sought to be made liable to the decree for themselves and not as representatives. In *Parthasaradi* v. *Chinnakrishna*(1) it was a question of a real and not, as here, of a personal right. Moreover the application is barred under the Limitation Act.

Bhashyam Ayyangar in reply. Certain properties are not to be used for certain purposes, that is the decision.

The further facts and arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT:—The parties to this appeal are Vaishnava Brahmans of the Vadagalai and Tengalai sects residing in the village of Tiruvendipuram in the district of South Arcot. There is a temple in that village dedicated to the deity called Daivanayakaswami, and the image of Vedanta Desikar, the saint or religious preceptor of the Vadagalai sect, is consecrated therein and affiliated to it. The Vadagalai ritual and creed in connection with questions of sectarian interest dominated in the institution from time immemorial, and the Tengalais endeavoured so early as 1807 to change that state of things, but failed. The latter then instituted original suit No. 190 of 1807 in the late Zilla Court of Vriddhâchalam to recover from certain Vadagalai Brahmans 500 pagodas or Rs. 1,750 as damages for having prevented them from placing in the temple the image of their religious teacher and saint called Manavala Mahamuni and singing their hymn in his honor known by its initial words *Sri Saila Dayapatram*, and from celebrating monthly the annual feasts on his account as part of their worship. The suit was dismissed by the Zilla Judge in April 1810, and the Provincial Court confirmed his decision in April 1815, the *ratio decidendi* being that the claim advanced by the Tengalais was contrary to custom or the usage of the institution. The second attempt made against the Vadagalai influence in the temple consisted in the Tengalais setting up in it the idol of their priest and worshipping it in accordance with their ritual in 1808.

(1) I.L.R., 5 Mad., 304.

This led to a counter-move on the part of Vadagalai Brahmans after the disposal of the suit of 1807, and in April 1816 they moved the Zilla Court for the removal of the image of Manavala Mahamuni from the temple. The idol was accordingly removed from the temple and secured in the Tahsildar's office under process of Court. The third attempt made by the Tengalai Brahmans was in 1828, and it consisted in making a new image of their priest in substitution for the one secured in the Tahsildar's office, in setting it up in the house of a Tengalai Brahman in the village, in celebrating a festival as a form of worship for ten days in the same way in which similar festivals are performed by Vadagalais in honor of their saints and religious teachers, and in carrying the idol in procession on the night of the tenth or last day of the festival through the "Dikhandana streets included in the Navasandi," which were said by Vadagalai Vaishnavas to be attached to the temple of Daivanayakaswami in the village. This attempt differed from the attempt of 1808 in that the house of a Tengalai Brahman was selected as a place of worship, but resembled it in the worship being public. A ten days' festival, in which every Tengalai Brahman might take part, was adopted as the form of worship, and it closed with a street procession accompanied with recitation of hymns in accordance with Tengalai ritual, and the assertion of the rival sect that all the streets in which the idol of Daivanayakaswami was carried in procession were attached to the said temple was disregarded. The Vadagalai Vaishnavas of the village resented this step, and after the usual preliminary controversy before the magisterial authorities of the district, instituted original suit 30 of 1828. The relief prayed for in that suit consisted of the recovery as damages of Rs. 1,050, which they alleged to have spent in connection with their applications to magistrates for interference, of a direction that the worship and the ceremonies performed to the idol of Manavala Mahamuni newly made and set up in the house of the then first defendant situated in the Dekhandana Navasandi streets of Daivanayakaswami temple and the performance of ten days' festival on its account be discontinued, and of an order for the removal of the newly set up idol. The ground of claim was that the worship of Manavala Mahamuni, either in a house in the Dekhandana street attached to Daivanayakaswami temple, or in the streets known as

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Navasandi, was contrary to usage, and that those streets were attached to that temple. In that suit 10 Vadagalai Brahmans of the village appeared as plaintiffs and included 13 Tengalai Brahmans residing in the village as defendants. The Tengalais denied that the streets were attached to the pagoda and that the usage was against them. In December 1829 the Court of First Instance, the then Zilla Court of Chingleput, decreed "that "the practice of the defendants assembling in a private house "and there performing ceremonies to an idol of their priest and "public worship and carrying it in procession through the streets "of the village be discontinued, and that should they continue to "make the idol the subject of the cause" an object of worship, the same be removed and that the damages sued for be paid. On appeal the Provincial Court confirmed the decree in June 1837, and in second appeal the late Court of Sadr Adalat, in October 1840, modified the decision in the following terms:—

"The Sadr Adalat consider the Tengalais to have entirely "failed in proving that their public worship or their publicly "carrying in procession through the streets of the said village of "any image of the said saint is established by immemorial custom. "On the contrary, they deem both unauthorized innovations. But "there is nothing to prevent the inmates alone of any Tengalai "family resident therein from worshipping within their own "respective dwellings in a private manner the household image "of their said saint set up for family worship which in size is "invariably different from what is fixed in pagodas or carried "in procession, provided all but the inmates of such house are "excluded from such worship so as to distinguish such family "from public worship."

Thus the result of the sectarian litigation which extended from 1807 to 1840 was a judicial determination, that the image of Manavala Mahamuni was not entitled to a place in the Daivanayakaswami temple, or to public worship as contradistinguished from family worship in any private house in the Dikhandana street, or to procession in the streets of the village. It is noteworthy in connection with the suit of 1828 that the plaintiffs and defendants were not formally described as representatives of the rival sects, but that the matter litigated and determined was professedly what concerned those sects, and that no decretal order

was drawn up formally and separately as is the practice at present, but a direction was embodied in the judgment of the Zilla Court as modified by that of the Court of Sadr Adalat.

It appears from exhibit D that between 1840 and 1868, the Tengalai Brahmans attempted from time to time on different occasions to evade the decree, but that such attempts were suppressed by the magistracy. In 1868 they endeavoured to build a new temple within the limits of Tiruvendipuram agraharam and to set up in it the image of Pillalokachary, the priest of their saint Manavala Mahamuni, and thereby to evade the decree passed in the suit of 1828 and revive the public worship of the image of their priest by giving it the name of Pillalokachary instead of Manavala Mahamuni. The Vadagalai Brahmans asked the then District Magistrate to restrain their rivals from proceeding with the construction of the new temple and to prohibit them from assembling for public worship within such temple contrary to the spirit of the decree of the Sadr Court, as such proceedings on the part of Tengalai Brahmans were calculated to lead to a breach of the peace. These admitted that the building then under construction was intended for public worship, but contended that the decree of a Civil Court could only be enforced by a Civil Court, that the interference of the magistrate was illegal, that the idol set up in the building under construction was not that of their saint, and that the principle of religious freedom which obtained in 1868 was not understood in 1828, and that there was no likelihood of any breach of the peace by allowing them the freedom of worship which they desired to secure. By consent the then Collector's Sheristadar was deputed as commissioner to compare the original idol taken from the Tengalais in 1839 in consequence of the decree of the Civil Court and deposited in the taluk cutcherry with the idol set up in the new building then being erected and to report whether the object of worship was substantially the same though different in name. On the commissioner's evidence that it was substantially the same, the District Magistrate granted the injunction applied for under section 62 of the Code of Criminal Procedure then in force, observing that "the erection of the new building and the setting up of the idol of "Manavala Mahamuni within that building as an object of public "worship were acts opposed to the decree of the highest judicial "tribunal and calculated to lead to serious disturbances and a

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"breach of the peace." As far as we can gather from the papers to which our attention is drawn nothing more transpired up to 1887. In 1888 the counter-petitioners, who are Tengalai Brahmans at Tiruvendipuram, jointly purchased a house in one of the car streets near the temple, set up the idol of Manavala Mahamuni, and began to revive the public worship of their priest, alleging that they were not bound by the decree of 1840, that that decree was illegal and barred by limitation, that it was further incapable of execution, and that at the best it could only form a ground for Vadagalai Brahmans to claim damages. Thereupon the Vadagalai Brahmans applied to the District Court of South Arcot for execution of the decree in original suit No. 30 of 1828 by the arrest and imprisonment of the counter-petitioners until they obeyed the terms of that decree and by the removal of the image of their priest Manavala Mahamuni newly set up in the fourth counter-petitioner's house. The Judge dismissed the petition with costs on the ground that the counter-petitioners could not be regarded as parties to the suit of 1828 by reason merely of their being descendants of defendants in that suit, and that section 234, which provides for the execution of a decree against the legal representative of a deceased judgment-debtor, relates only to the execution of decrees for property. The Judge also observed that the decision in *Srikhanti Narayanappa* v. *Indupuram Ramalingam*(1) had no application in this case and referred to *Parthasaradi* v. *Chinnakrishna*(2) as showing that the opinion of Hindu pandits on which the decree in the suit of 1828 was based was opposed to the law of India under the British administration. From this order petitioners have preferred this appeal. The questions which we have to decide in this appeal are whether the decree in original suit No. 30 of 1828 is capable of execution, if so, whether it may be executed against counter-petitioners and whether its execution is barred by limitation. The Tengalai Brahmans are apparently endeavouring to revive a sectarian quarrel which was after protracted litigation set at rest by the late Sadr Court in 1840 and which the magistrates since prevented from reviving by interfering to preserve the public peace. This view of the facts might be material for the purpose of dealing with an application, whereby a magistrate is asked to maintain the existing state of things against

(1) 3 M.H.C.R., 226. (2) I.L.R., 5 Mad., 304.

those who seek to change it so as to risk a disturbance of the peace and otherwise than under the sanction of a fresh decree, whether the existing decree which recognized it would or would not be upheld if the sectarian question were again litigated. As to the decision in *Parthasaradi* v. *Chinnakrishna*(1), to which the Judge refers, it must be remembered that it expressly recognizes the competency of the magistrate to give such directions as he may consider necessary to prevent a breach of the peace, and that it also points out that a special right having a legal origin may at times co-exist with the right of the general public to use particular streets as thoroughfares and detract from it. During the progress of original suit No. 30 of 1828, it was asserted by the Vadagalai Brahmans, though it was denied by the Tengalai Vaishnavas, that the streets included in what is called the Navasandi of Daivanayakaswami's temple in the village were attached to that temple. Although the decree in that suit proceeded on the ground that what the Tengalais attempted to do was an innovation, and that it was not authorized by Hindu law as explained by the pandits, and although the law applicable to the use of thoroughfares under the British administration as expounded by later decisions might be different, yet it is necessary to note that a plea might possibly be set up, if any future litigation were to arise, that a special right derogating from the public right existed in this case. With these observations, which we make in view to prevent any misapprehension as to the effect of our order, we proceed to deal with the specific questions, upon the decision of which the appeal before us must stand or fall, viz., (i) whether the decree in the suit of 1828 is capable of being executed, (ii) whether its execution is barred by limitation, and (iii) whether it can be executed as against the counter-petitioners if it can be executed at all. On each of those questions we consider that this appeal cannot be supported. As to the first question, the judgment in the suit of 1828 contains no doubt the observation that the then defendants should discontinue public worship of the image of their priest Manavala Mahamuni as contradistinguished from family worship in which the inmates of a particular family alone take part and from which the general public are excluded, and that they should not take the idol in procession through the streets of the village. But the observation

(1) I.L.R., 5 Mad., 304.

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is followed by the direction that should they continue to make the idol an object of public worship, the idol be removed. This direction had reference to the particular idol set up in the then first defendant's house, and so far as that idol is concerned, it appears that the direction has either been carried out or complied with. This being so, the further question arises whether the observation might be taken to have done more than declare the obligation of the Tengalai Brahmans as to what they ought not to do in relation to their personal worship of their saint as introductory to the direction in the nature of consequential relief, that if they continued to persist in what they were bound not to do, the idol they set up be removed. We are now pressed with the contention that the observation has the force of a perpetual injunction and that it has reference not only to the idol then set up by the then defendants, but also to any similar idol which may be set up for a similar purpose at any future time by the descendants of those defendants and other residents in the village of the Tengalai sect. Judging from the conduct of the Vadagalai Brahmans since 1840, they have themselves treated this part of the decree as merely declaratory of their right. It is then urged that no occasion arose since for its execution; but this statement is clearly inconsistent with exhibit D, which shows that the Tengalais set up a new idol in 1868 under a different name, and that they from time to time attempted to act in breach of their obligation subsequent to 1840. The Vadagalais never applied to the District Court for executing the portion of the decree now under consideration, but asked for magisterial interference in the interests of public peace. This appears to indicate that the observation in the decree was regarded by them not as a perpetual injunction, but as a declaration of right ancillary to the specific relief then decreed, viz., the removal of the obnoxious idol and the award of damages. Even assuming that the observation was equivalent to a perpetual injunction, the execution of the decree is clearly barred by limitation. The right to apply for such execution arose not only more than three but also more than twelve years prior to this application, at all events in September 1868, when the Vadagalai Brahmans applied to the District Magistrate for the issue of an injunction under the Code of Criminal Procedure. We cannot regard applications made to magistrates for interference in order to maintain the public peace as steps taken in aid of execution in view to save limitation.

Again, none of the counter-petitioners were parties to the suit of 1828, and it is alleged on their behalf that some of them were strangers to that suit. The contention that a few may represent many in a suit when the matter litigated is of common interest might support a fresh suit instituted to bring those not named in a writ of injunction within its scope, but cannot in our judgment be extended to commitment for contempt consequent on the breach of the injunction in the case of those who are not named in the writ and who were not then in existence, unless and until the injunction is revived against them. Nor are we prepared to adopt the suggestion of the appellants' pleader as to the constructive extension of parties to a decree for purposes of execution so as to bring under its operation every member of a sect, not only as the sect existed when the decree was made, but also as it might exist at any time thereafter and for all time to come inclusive of persons since born and since settled in the village.

We do not think that such a theory has the sanction either of general principles or of the Code of Civil Procedure when the subject matter of the decree is neither the incident of a legal relation arising from contract nor that of a declaration of title to specific property, but is the incident of personal worship in a particular village where two rival sects live together. The general rule is that no one who is not expressly named in the writ of injunction is liable to be committed for its breach, and section 234 has, as pointed out by the Judge, no application to this case. The proper remedy consists in the revival of the injunction by suit against those not named on the record, before an application can be made for their commitment by way of execution.

For these reasons, we are of opinion that this appeal must fail and we dismiss it with costs.