GOVINDA-SAMI NAIDU v. ALAGIRI-SAMI NAIDU.

suppression of a material fact from the mediators and the plaintiffs by the first defendant, the managing member of the family.

We wish to point out that in sanctioning a compromise on behalf of an infant the order granting the sanction should in terms state that the question whether the compromise was for the benefit of the infant was considered. The Court should also ascertain and record that in the opinion of the pleaders, if any, representing the infant, the compromise was one entered into in the interests of the minor and fit and proper to be sanctioned. See *Kalavati* v. *Chedi Lal*(1), *Virupakshappa* v. *Shidappa and Basappa*(2) and *In re Birchall, Wilson* v. *Birchall*(3).

The order passed in this case on the 9th January sanctioning the compromise does not satisfy these conditions.

We set aside the decree of the Subordinate Judge and remand the suit for disposal according to law. Costs will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.

1905 October 24, 25, 26, 30, 31.

CHIDAMBARAM CHETTIAR AND OTHERS (DEFENDANTS), NOS. 2, 4 AND 5 AND 59), APPELLANTS IN APPEAL SUIT No. 188 OF 1902 AND RESPONDENTS IN APPEAL SUIT No. 19 OF 1903.

v.

SRI RANGACHARIAR AND OTHERS (PLAINTIFFS), RESPONDENTS IN APPEAL SUIT No. 188 OF 1902 AND APPELLANTS IN APPEAL SUIT No. 19 OF 1903.*

Right of suit—Religious endowment suit concerning—Person interested as worshipper can be added as party.

Persons interested as worshippers in a public religious institution may be added as parties to a suit instituted by a trustee on behalf of the institution against third parties, if such joinder is considered by the Court as desirable in the interests of the trust.

Narayanasami Gurukkal v. *Irulappa*, (12 M.L.J., 355), followed.

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(1) I.L.R., 17 All., 531. (2) I.L.R., 26 Bom., 100 at p. 115.
(3) L.R., 16 Ch.D. 41.

* Appeals Nos. 188 of 1902 and 19 of 1903, presented against the decree of R. D. Broadfoot, Esq., District Judge of South Arcot, in Original Suit No. 10 of 1899.

THIS was a suit between the trustees of the Vishnu shrine and the trustees of the Siva shrine at Chithambaram, which are both situated within a general enclosure, regarding the right to a mantapam and open space situate therein.

The seventh plaintiff and defendants Nos. 12 to 17 and the fortieth defendant were impleaded as parties as the trustees of the Vishnu temple added them to their own number as co-trustees. They were worshippers. One of the objections raised was that they were improperly made parties. The District Judge found on the evidence that the disputed portions belonged to the Vishnu shrine and passed a decree in favour of the plaintiffs, the trustees of the Vishnu shrine, granting, substantially, all the reliefs claimed, and damages.

Both parties preferred these appeals.

V. Krishnaswami Ayyar and *S. Srinivasa Ayyar* for appellants in Appeal Suit No. 188 of 1902 and for respondents in Appeal Suit No. 19 of 1903.

T. Rangachariyar, *S. Srinivasa Ayyangar* and *T. Narasimha Ayyangar* for respondents in Appeal Suit No. 188 of 1902 and for appellants in Appeal Suit No. 19 of 1903.

JUDGMENT.—These appeals arise out of a suit instituted in the District Court of South Arcot in consequence of disputes between the trustees of the Siva temple of Chidambaram, and the trustees of the Vishnu temple there. The two shrines are situated in the same general enclosure, but the Siva temple is the larger and more important institution. The Vishnu shrine is situated in close proximity to the Siva shrine.

There is no satisfactory evidence as to the respective periods of time when the shrines were established. There is some evidence that the style of architecture indicates that the Sivite shrine is the older. Nevertheless there is no certainty that both may not have been part and parcel of the original design of the founders, inasmuch as there is evidence that Siva and Vishnu shrines exist side by side in many other temples.* In these circumstances the

* BY SUBRAHMANIA AYYAR.—As to the existence of Govindaraja's shrine in the Chidambaram temple even prior to the 11th century, the removal of the idol from the shrine by the Chola Sovereign Kulothunga II, and the consequent foundation of the Govindaraja shrine at Tirupati under the auspices of Ramanuja the Vishnavite Guru, see the paper on 'Ramanuja, Apostle and Reformer' by Mr. S. Krishnaswami Aiyangar, M.A., citing the well-known Tiruchithambala Kovai of Manickavasagar and Kulothunga Cholan Ula of Ottaikoothan I., Wednesday Review, Trichinopoly, 20th June 1905.

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questions in dispute have to be decided upon usage and general probabilities, rather than upon the supposition that any presumption of original right exists in favour of either institution. The main dispute in the appeal (No. 188) by the Sivites is with reference to a mantapam (marked C in the plan exhibit W) to the east of the enclosure containing the Vishnu idol; and also with regard to the "Alwar Sannadhi" marked C2 in the plan.

The bulk of the oral evidence in the case has been directed to the latter. The District Judge has upheld the claim of the trustees of the Vishnu temple to both these places and in our opinion his decision is right The general lie of the mantapam with its double row of pillars leading direct from the Vishnu shrine to the Vishnu flagstaff is strongly in favour of the view that the mantapam is part of the building of the temple.

The elevated position of the floor compared with the surrounding open spaces points to the same conclusion.

There was a dispute about the right to the mantapam and the Alwar sannadi so far back as 1849. A careful local enquiry was held by the European Head Assistant Magistrate and a number of witnesses were examined, and his conclusion was decidedly in favour of the Vishnu trustees. He then found that the mantapam and sannadi were in their possession, and he left the trustees of the Siva temple to establish their alleged right by suit, a course which they never thought proper to adopt, though they brought suits against some of the local officers for damages, on the ground that their action was partial and illegal, a claim which they failed to establish. This circumstance, in our opinion, lends great strength to the evidence now adduced by the Vishnavites to show that their possession was undisturbed until the year 1895, when they say that the three Vishnu idols in the Alwar sannadi were illegally and secretly removed by the Sivites on the night of the 7th December. We are unable to accept the testimony on behalf of the defendants that the idols there have always been Sivite. This plea is directly opposed to the finding of the Magistrate in 1849, a finding which would certainly have been directly challenged by a suit against the Vishnavite trustees themselves if it was incorrect. There is no question but that since the 7th December 1895 the idols in the sannadi have been Sivite, and we cannot doubt that there was a substitution of Sivite for Vishnavite idols on that night as alleged by the Vishnavites, a matter which might easily have been accomplished, as the Sivites admittedly had

possession of the keys of all the premises, and were much the stronger party. Even in this view it was contended for the Sivites that the District Judge should not have restricted the use of the mantapam by the Sivite party to the extent laid down in para. 23 of his judgment. It was argued that Chandrasekhara and four other idols were equally entitled to be taken through, or to be exposed to view at stated times in the mantapam. The evidence to which our attention was drawn in detail does not satisfy us that the use of the mantapam by these idols is not of quite recent origin as found by the District Judge.

As regards the question of damages we are unable to accept the contention that the suit is barred by limitation. Damages are claimed on account of the unlawful pulling down of parts of the mantapam in May and June 1896. The suit was brought in March 1899. We agree with the District Judge that the suit is one for compensation for trespass on immoveable property within the meaning of article 39 of schedule 2 of the Limitation Act.

As to the amount of damages awarded by the District Judge it is not much more than what the thirty-fifth witness for defendants admitted would be required to restore the buildings, and we regard it as reasonable compensation for the injury done.

Passing now to the appeal (No. 19) by the Vishnavites, the only point of any importance urged before us is with regard to the open courtyard, marked L. in the plan which the Vishnavites claim as part of the premises of their shrine. The description of the boundaries in the decree of 1875 is not altogether free from ambiguity, and it does not, in our opinion, warrant the conclusion that it is part of the premises. It appears rather to be part of the adjacent open space which does not belong to the Vishnu temple. The rights of the Vishnavites to use this courtyard for certain purposes has been upheld by the District Judge.

As regards the contention that the idol of Manikavasagar should not be allowed to pass under the Kodavarai, but should be required to go through the opening marked AA on the plan, we are unable to say that the decision of the District Judge is erroneous. We also agree with the District Judge in regard to the room marked DD 1 in the plan.

In the result we accept the findings of the District Judge.

It remains to notice the objection taken to the joinder of the seventh plaintiff and of defendants Nos. 12 to 17 and 40. The

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footing on which these were impleaded was as trustees by virtue of the agreement (exhibit B). Assuming the recitals in this document to be true, still, the existing trustees of the Vishnu temple had no power to add to their number as they purported to do. We, however, do not think it necessary to strike out the names of these persons from the list of parties to the suit. The District Judge has found that these persons are interested in the institution as worshippers. There is evidence to the effect that they have contributed materially towards the expenses which had to be incurred in connection with litigation necessitated by the trespasses committed by the Sivites. The Kamudi case [*Narayanasami Gurukkal* v. *Irulappa*(1)] is a direct authority that persons interested as worshippers in a public religious institution such as the present Vishnu temple, may be added as parties to a suit instituted by a trustee on behalf of the institution against third parties acting to the injury of the institution, if, in the opinion of the Court, such joinder is called for in the interests of the trust. In the case of *Jeyangarulavaru* v. *Sri Hati Durma Dossji*(2) there is also an authority to the same effect, and the fact that in that case the defendant was himself a trustee does not affect the principle. Though upholding the joinder of these persons on the footing that they are interested as worshippers, we direct that the decree be modified by substituting the plaintiffs other than the seventh plaintiff for plaintiffs in that part of the decree which orders possession of C2 to be given to them, and which awards them damages. In other respects both the appeals are dismissed with costs.

(1) 12 M.L.J., 355. (2) M.H.C R., 2.