

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sankaran-Nair.

MANNADA MUDALI AND ANOTHER (DEFENDANTS
Nos. 2 AND 3), APPELLANTS,

1909,
March 9, 18.

v.

NALLAYA GOUNDEN AND OTHERS (PLAINTIFFS NOS. 2 AND 4
TO 10), RESPONDENTS.*

Public street—Right to carry religious processions in.

Continued user by the public of a way raises a presumption that that way belongs to the public and that it has been dedicated by the owner for the public use.

Farquhar v. Newbury Rural Council, [(1908), 2 Ch., 586 at p. 596], referred to.

All members of the public have a right to carry religious processions through such public way in a lawful manner irrespective of the religion to which they may belong.

SECOND APPEAL against the decree of S. Gopala Chariar, District Judge of Salem in Appeal Suit No. 84 of 1904, presented against the decree of A. N. Anantarama Ayyar, District Munsif of Namakkal in Original Suit No. 79 of 1902.

Suit for a declaration that the plaintiffs who were Vellalars were the sole owners of a certain path in Rajakaundanpoliem marked A in the plan attached to the plaint and that the defendants who were Kaikolars (weavers) had no right to pass through it with their deity, Muttukumarasawmi, and with *Sakkuli melam*, at the time of their festival or at any other time and for an injunction restraining the defendants from passing along the path. The plaintiffs alleged that till 1900 the defendants did not celebrate any festival in the village in honour of Muttukumarasawmi, that when the defendant attempted in 1900 to pass in procession through the path in question the Vellalars objected; that the festival was therefore stopped; that in 1901 the defendants again wanted to celebrate the festival, and that on their application the Trichengode Magistrate issued an order, under section 144, Criminal Procedure Code, to the plaintiffs not to obstruct the celebration of the festival by the defendants and their passing through the path A

* Second Appeal No. 612 of 1906.

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It was also alleged in the plaint that on the strength of the Magistrate's order the defendants passed through the path singing songs containing expressions obnoxious to plaintiffs' caste and with *Sakkili melam* which is against the caste practices of the Vellalars and caused annoyance to them; that the path in question is not a public path and that the defendants have no right to pass through it.

The defendants denied the plaintiffs' exclusive right to the path in question and contended that the path in question was a public path in the village and not a private path as alleged in the plaint and they also had a right to use it for festival purposes.

The District Munsif dismissed the suit. On appeal his judgment was reversed and the plaintiffs' claim allowed.

The defendants Nos. 2 and 3 appealed to the High Court.

T. Subrahmania Ayyar for appellants.

H. Lubeck and *W. V. Rangaswami Ayyangar* for respondents.

JUDGMENT.—The question is whether the defendants, appellants, who belong to the Kaikolar (weaver) class are entitled to take their deity Kumaraswami in procession with *Sakkili melam* (music) along the path (marked A in the plan, Exhibit B) which passes through the middle of the Vellala quarter. The plaintiffs are Vellalars and sue for a declaration that the defendants are not so entitled, the cause of action being an order passed by the Magistrate under section 144, Criminal Procedure Code, restraining them from interfering with the defendants, Kaikolars, carrying their idol in procession.

The Munsif found that the path (A) was a public path, and does not belong exclusively to the Vellalars, as contended for by them, and he dismissed the suit. On appeal the Judge found that a portion of the path, he does not find which portion, "was formed by the plaintiffs' first witness and other persons slicing off from their sites for forming a way." He also found that the street was the property of the Vellalars. He further held that because all people walk on it without distinction and without objection, and because the union servants cleanse it, the defendants have not acquired the right they claim, and he accordingly allowed the plaintiff's claim.

It is contended before us that on the facts found the Judge should have held that this is a public path.

The Judge has found that this path has been used by all members of the public, including the Kaikolars, desiring to use it without any interruption or objection of any kind. There is no evidence as to the origin of the user, nor is there any evidence that the dedication, if made by the Vellalars as the Judge finds, was subject to any conditions. The village union clean the path. In a case where it was contended that no dedication ought to be presumed on account of the defective title of the owner who made the dedication, Warrington, J., said "The law appears to be this: that continued user by the public of a way raises a presumption that that way belongs to the public, that it has been dedicated by the owner for the public use for which it has been used and further that it is not incumbent upon the public to show by what particular owner the road has been dedicated. If dedication is possible, dedication will be assumed, *vide* *Farquhar v. Newbury Rural Council*(1). This judgment was confirmed in *Farquhar v. Newbury Rural District Council*(2). We are therefore of opinion that the path (A) is a public path.

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As it is a public path the defendants, Kaikolars, have the same rights as the plaintiffs to conduct religious processions through it in a lawful manner. See *Sadagopa Chariar v. Rama Rao*(3).

The fact that they have not been conducting such processions is immaterial. The observations of Subrahmania Aiyar and Bashyam Aiyangar, JJ., in *Vijiaraghava Chariar v. Emperor*(4), have reference probably to carrying on religious worship as distinct from a religious procession. But if they are intended to apply to religious processions also, then they are opposed to a series of decisions including Full Bench rulings: and cannot be followed after the confirmation of the decision in *Sadagopa Chariar v. Rama Rao*(3), by the Privy Council in the case of *Sadagopa Chariar v. Krishnamoorthy Rao*(5).

We therefore set aside the decree of the lower Appellate Court and restore that of the Munsif with costs in this and the lower Appellate Court.

(1) (1908) 2 Ch., 596.

(2) (1909) 1 Ch. App, 12.

(3) (1903) I.L.R., 26 Mad, 576.

(4) (1903) I.L.R., 26 Mad., 555.

(5) (1907) I.L.R., 30 Mad., p. 185.