APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Patanjali Sastri.

HIS HOLINESS PERIA KOIL KELVI APPAN TIRUVENGADA RAMANUJA PEDDA JIYANGARLU VARLU (SECOND APPELLANT IN APPEAL SUIT NO. 466 OF 1925 AND FOURTEENTH RESPONDENT IN APPEAL NO. 119 OF 1926 ON THE FILE OF THE HIGH COURT), PETITIONER,

1939, April 19.

v.

PRATHIVADI BAYANKARAM VENKATACHARLU AND EIGHTEEN OTHERS (RESPONDENTS IN APPEAL NO. 466 OF 1925 AND RESPONDENTS AND APPELLANTS IN APPEAL NO. 119 OF 1926), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 109 (c)—Temple of national importance—Religious rights and ceremonies at —Case relating to, and questions in issue being of great public and private importance—Falls within sec. 109 (c), if.

The plaintiff, who was a Vaishnavite of the Thengalai sect and had as the head of a mutt the right of conducting public worship at the Tirupathi temple, sued to establish his right to conduct public worship at the said temple according to the Thengalai ritual, his case being that only the Thengalai mantras should be sung at the worship in the temple. The case of the contesting defendants was that the Vadagalai sect had the right of singing its own mantras at the same time as the Thengalai mantras were being sung. The High Court on appeal held, differing from the trial Court, that the Vadagalais had the same rights as the Thengalais both before and after the recitation of the scriptures. The legal representative of the plaintiff, who had died during the pendency of the appeal to the High Court, applied for leave to appeal to His Majesty in Council against the judgment of the High Court, resting his case on the provisions of section 109 (c) of the Code of Civil Procedure.

* Civil Miscellaneous Petition No. 2237 of 1938.

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Held that, as the case related to religious rights and ceremonies at a temple of national importance and the questions in issue were in themselves of great public and private importance, the case fell within section 109 (*c*).

Radhakrishna Ayyar v. *Swaminatha Ayyar*(1) followed.

Venkata Varatha Thatha Chariar v. *Anantha Chariar*(2) distinguished.

PETITION under section 109, clause (*c*), and section 110 and Order XLV, rules 2 and 3, of the Code of Civil Procedure praying that in the circumstances stated in the affidavit filed therewith, the High Court will be pleased to grant leave to the petitioner therein to appeal to His Majesty in Council against the judgment of the High Court in Appeals Nos. 466 of 1925 and 119 of 1926 preferred against the decree of the Court of the Subordinate Judge of Chittoor in Original Suit No. 23 of 1919.

T. M. Krishnaswami Ayyar and *V. N. Venkatavaradachari* for petitioner.

D. Ramaswami Ayyangar for *C. S. Venkatachari* and *C. Narasimhachari* for respondents.

The ORDER of the Court was pronounced by

LEACH C.J. LEACH C.J.—This is an application for a certificate permitting an appeal to His Majesty in Council. The petitioner is the legal representative of the plaintiff who died during the pendency of the appeal. The plaintiff was the head of an important mutt and as such had the right of conducting public worship at the Tirupathi temple in the Chittoor District. Both sides are agreed that the Tirupathi temple is the most important Vaishnavite temple in the whole of India and pilgrims in large numbers visit it every year in order to worship there. The Vaishnavite community

(1) (1920) I.L.R. 44 Mad. 293 (P.C.). (2) (1893) I.L.R. 16 Mad. 299 (P.C.).

is divided into two sects, the Thengalais (Southerners) and Vadagalais (Northerners). It is also common ground that the adherents of each sect are counted by millions. The suit was filed by the plaintiff in order to establish his right to conduct public worship at the temple according to the Thengalai ritual. Before the recitation of the Tamil scriptures (Prabandham), mantras are sung. The mantras sung by the Thengalais are different from those sung by the Vadagalais. After the recitation of the scriptures, mantras are again sung. Here also the mantras sung by the Thengalais differ from the mantras sung by the Vadagalais. There are other points of difference in the worship, but it is unnecessary to pause to state them. The plaintiff's case was that the Thengalai mantras should only be sung at the worship in this temple. The contesting respondents say that the Vadagalai sect has the right of singing its own mantras at the same time as the Thengalai mantras are being sung. The trial Judge held that the plaintiff was right in his contention that only the Thengalai mantras should be sung before the recitation of the scriptures, but he considered that after the recitation of the scriptures the Vadagalais on certain occasions had the right of singing their mantras at the same time as the Thengalais sang theirs. On appeal to this Court it was held that the trial Court was wrong in holding that the Thengalai sect had the right to have their mantras sung at the commencement of the service. The Vadagalais had the same rights as the Thengalais both before and after the recitation of the scriptures.

The plaintiff valued the relief claimed in the plaint at Rs. 10,500 and in the appeal to this Court the relief was valued at a like amount. It is, however, obvious that no monetary value can be attached to the

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relief and the petitioner rests his case on the provisions of section 109 (*c*) of the Code of Civil Procedure. It is said that the questions involved in the appeal are questions of great public and private importance, but the contesting respondents deny this, and maintain that on a previous occasion this Court refused leave and the Privy Council refused special leave to appeal. The case referred to by the learned Advocate for the contesting respondents is *Venkata Varatha Thatha Chariar* v. *Anantha Chariar*(1). An examination of the judgment there shows that the question in issue was entirely different. The question was whether the Thengalais or the Vadagalais were entitled to an office in a certain temple. The decision therefore does not help the contesting respondents in any way. There can be no doubt that the form of ritual at the Tirupathi temple is a matter of both public and private importance and consequently we are of opinion that the case does fall within section 109 (*c*). If there were any doubt, the doubt would be removed by the decision of the Privy Council in *Radhakrishna Ayyar* v. *Swaminatha Ayyar*(2) where Lord BUCKMASTER in delivering the judgment of the Board said :

> " . . . It is plain that there may be certain cases in which it is impossible to define in money value the exact character of the dispute ; there are questions, as for example, those relating to religious rights and ceremonies, to caste and family rights, or such matters as the reduction of the capital of companies as well as questions of wide public importance in which the subject-matter in dispute cannot be reduced into actual terms of money. Sub-section (*c*) of section 109 of the Civil Procedure Code contemplates that such a state of things exists, and rule 3 of Order XLV regulates the procedure."

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(1) (1893) I.L.R. 16 Mad. 299 (P.C.). (2) (1920) I.L.R. 44 Mad. 293 (P.C.).

As this case relates to religious rights and ceremonies at a temple of national importance and the questions in issue are in themselves of great public and private importance, the application will be granted on the usual conditions. Costs of the applicant will be made costs in the appeal.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Somayya.

ALASYAM RAMAPPA (FIRST DEFENDANT), APPELLANT,

v.

PANYAM THIRUMALAPPA AND FOURTEEN OTHERS (PLAINTIFF AND DEFENDANTS 2 TO 8 AND 10 TO 16), RESPONDENTS.*

1939, March 14.

Indian Registration Act (XVI of 1908), ss. 17 and 49—Partnership—Dissolution—Immovable properties purchased out of partnership assets—Partners' rights after dissolution in—Document declaring—What amounts to—Registration of—Necessity—Deed not registered—Admissibility in evidence of.

On the dissolution of a partnership it was agreed that immovable properties which had been purchased by the firm out of the partnership assets should not be divided among the three partners of the firm, but should be held by them as joint tenants with equal rights. The terms of the dissolution were set out in full in the firm's day book and the statement (Exhibit A) was signed by all the partners. Exhibit A provided, in so far as it related to the said properties, that "P, A and V, these three individuals," (the three partners) "have rights for equal shares to the lands" (the said properties). On the

* Letters Patent Appeal No. 81 of 1937.