APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1906. *March* 23.

BHAVANISHANKAR RAMRAO AND OTHERS (ORIGINAL DEFENDANTS 2—5 AND 7—9), APPELLANTS, *v.* TIMMANNA RAM BHATTA (ORIGINAL PLAINTIFF), RESPONDENT.*

Devasthan Committee—Powers of appointment and dismissal of Moktesars—Powers exercisable in the interests of the Devasthan—Dismissal of Moktesar—Good and sufficient cause—Burden of proof.

The powers of appointment and dismissal of Moktesars with which a Devasthan Committee are vested are exercisable not in their own interests, but in the interests and on behalf of the Devasthan, of which they are trustees. They are not at liberty to appoint or dismiss arbitrarily, capriciously or for private reasons of their own, but only on grounds justified by the interests of the institution.

When a Moktesar is dismissed by a Devasthan Committee, the burden of proof is on him to show that the Committee did not act on a *bonâ fide* belief that the dismissal was necessary in the interests of the Devasthan, but had been actuated by some other improper motive.

SECOND appeal from the decision of C. Roper, District Judge of Kánara, reversing the decree of B. R. Mehendale, Additional Subordinate Judge of Honavar.

The plaintiff sued for a declaration that the appointment of defendants 10—15 as Moktesars of the Murdeshvar Matabar Devasthan in the Honavar Taluq was illegal and that the plaintiff along with one Venkatraman Bhat and defendant 16 was entitled to the office of Moktesar. The plaint alleged as follows:—

Defendants 1—9 were appointed, under the Religious Endowment Act (XX of 1863), members of the Temple Committee for the Honavar Taluq. The plaintiff had been, from the time of his ancestors, in the enjoyment of the office of worshipper and Moktesar and was to continue hereditarily from generation to generation. The plaintiff had been accordingly discharging his duties properly along with two other Moktesars, namely, the said Venkatraman Bhat and defendant 16. Defendants 5—8 without any authority in that behalf, without any cause and

* Second Appeal No. 542 of 1905.

without plaintiff's knowledge gave him a notice on the 17th April 1901 that he and Venkatraman were removed from the office of Moktesars and that the charge of the office should be given to defendants 10—15 who were appointed Moktesars instead. The notice reached the plaintiff on the 21st May 1901. The dismissal of the plaintiff and the appointment of defendants 10—15 were illegal. The defendants were acting in collusion, out of hatred towards the plaintiff, for bringing him into discredit and for depriving him of his permanent rights. The plaintiff was, therefore, entitled to be restored to his office of Moktesar.

Defendants 2—8 replied *inter alia*:—The Court had no jurisdiction to entertain the suit. The defendants did not bear hatred towards the plaintiff, they had no cause to do so and were not acting in collusion. The plaintiff and Venkatraman did not look to the management of the Devasthan according to law and according to the Sanad of their appointment. They did not submit accounts to the Temple Committee in accordance with the Religious Endowment Act (XX of 1863) though a written notice was given to them. Many complaints were made against the plaintiff by the local public to the defendants and the temple property suffered considerable loss during the plaintiff's management and would have continued to do so if the plaintiff had been allowed to remain in the office. For all these reasons the plaintiff was dismissed but not for any hatred. The temple was a public one and the plaintiff had no right to call into question the appointment of defendants 10—15 along with defendant 16 as Moktesars of the temple.

Defendant 9 replied:—The office of Moktesar was not hereditary as alleged by the plaintiff. The appointment was originally made by the Committee and when it was found that the plaintiff did not discharge his duties properly, the Committee dismissed him. The suit was opposed to sections 14 and 18 of the Religious Endowment Act (XX of 1863).

Defendants 10—15 added:—The suit was opposed to sections 44 and 45 of the Civil Procedure Code (Act XIV of 1882) and the plaintiff managed the trust property to his own profit and to the loss of the temple.

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The Subordinate Judge found that the Court had no jurisdiction to try the suit, that it was not maintainable unless leave was obtained under section 18 of the Religious Endowment Act (XX of 1863), that the provisions of the said Act applied to the temple in suit, that the plaintiff was properly dismissed and that the suit for a declaration only was maintainable. He, therefore, dismissed the suit.

On appeal by the plaintiff the Judge held that the Subordinate Judge had jurisdiction to try the suit and that he was wrong in holding that the plaintiff was rightly dismissed from his post of Moktesar of the temple. The Judge, therefore, reversed the decree and declared the plaintiff's dismissal from his office as Moktesar of the Murdeshvar temple as void. As for the other reliefs claimed the Judge was of opinion that they could not be granted since Venkatraman Bhat and defendant 16 were not co-plaintiffs and no case was made out that the appointments of defendants 10—15 were invalid. He, therefore, granted relief with respect to the plaintiff's personal claim only. On the merits the Judge observed as follows :—

As to the merits I am of opinion that the lower Court's finding cannot possibly be sanctioned, and in support of this opinion I largely rely on the lower Court's own judgment, although of course independently of what it contains. I am satisfied from the record that there was no just cause for the appellant's dismissal. The Judge says towards the end of his judgment "As I do not, however, hold that they (Temple Committee) have been actuated by *mâlâ fides* I see no reason to disturb the resolution (of dismissal) which, though it rests on very slender foundation, indeed, is technically right." There are other passages in his discussion on this issue which show that the Judge was satisfied that the appellant had been treated unfairly.

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The present case has peculiar circumstances of its own, which favour the appellant. He is a man of 49, quite illiterate, has been Moktesar since he was 14, and his elder brother, father and grandfather were Moktesars before him. He is a Havig, and the Judge of the Court below allows that there is bad feeling between Havigs and Saraswats. I think the majority of the Temple Committee are Saraswats, even if they all are not, as the Judge points out. The judgment by Mr. MacGregor, Magistrate, First Class, has been exhibited as exhibit 61. He refers to this caste-enmity. In that case the appellant was prosecuted for criminal breach of trust and discharged for the reason that the complaint against him was groundless. Now I come to the circumstances which led to the dismissal. Defalcations were vaguely alleged, but not a vestige of

proof is forthcoming. Moreover, it is clear that any errors in the accounts could not be brought home to the appellant, who cannot read or write. The only charge which has the smallest proof to support it is that appellant failed to hand over the accounts of past years. The Subordinate Judge says, and it is admitted that the then current year's accounts were examined on inspection and found correct, and the appellant's version of what occurred when he was called upon to produce the past years' accounts is perfectly credible and confirmed by exhibit 55, the statement admitted to have been made by appellant and a co-Moktesar at that time before some members of the Temple Committee. I cannot see that there were even technical grounds for the resolution of the dismissal, and most certainly there was no good or just cause for it. The onus of proof appears to have been laid wholly upon the appellant, but in a case of this nature when the plaintiff has produced evidence tending to show that he was dismissed without good cause, and the dismissal is admitted by the defendants, I think that it lies upon them to prove that there was good cause. This they have certainly not done. The Temple Committees generally in this part of the world have not the reputation of being highly scrupulous in matters of this kind and it would be grossly unfair that a man who for many years had served the temple (and his father and grandfather before him) should be suddenly dismissed without good reason. The Shanbhog of the temple must have had the accounts as he wrote them.

Defendants 2—5 and 7—9 preferred a second appeal.

Nilkanth Atmaram for the appellants (defendants 2—5 and 7—9):—The view taken by the Judge on the question of jurisdiction is correct, but we contend that he was wrong in holding that the members of the Temple Committee were bound to show good and sufficient cause for the plaintiff's dismissal and that they have not done so. The Judge has found as a fact that the Temple Committee appointed the plaintiff as Moktesar. (A Moktesar is an agent, a deputy, a commissioner, see Wilson's Dictionary of Marathi Terms.) A Moktesar is only an agent or a deputy appointed by the Temple Committee. Therefore the relationship that exists between a Moktesar and the Temple Committee is that of servant and master, respectively. The Committee appointed the plaintiff, therefore, they can dismiss him at any time unless they are precluded by the terms of the deed of appointment. It cannot be presumed that the appointment when once made is made for life. Nobody can deny that a master can dismiss his servant at his pleasure.

Before the Religious Endowment Act was passed the Crown had absolute control over religious endowments: *Seshadri Ayyan-*

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gar v. *Nataraja Ayyar*[1]. Under the Religious Endowment Act, the Temple Committee became vested with all the rights of the Sovereign power and the affairs of the temple are managed by the agents appointed by the Committee. If, by a resolution properly passed, the Committee dismisses a servant whom they have appointed, the Court has no power to set aside the dismissal. It is nowhere suggested that the resolution dismissing the plaintiff was not properly passed. Therefore the finding of the Judge that the dismissal was not for sufficient cause goes beyond the pleadings in the case. The Judge has relied on *Seshadri Ayyangar* v. *Nataraja Ayyar*[1] and *Chinna Rangaiyangar* v. *Subbraya Mudali*[2]. The first case is not applicable because the appointment therein was permanent and it is not clear whether in the second also the appointment was not permanent.

Even assuming that we were bound to prove good and sufficient cause for plaintiff's dismissal, we submit that the first Court has referred to certain circumstances which clearly show that there was good and sufficient cause. The Judge has omitted to notice those circumstances.

S. S. Patkar for the respondent (plaintiff):—It was argued that the Judge was wrong in holding that the members of the Temple Committee were bound to show sufficient cause for the dismissal of the plaintiff. The Religious Endowment Act deals with two kinds of trustees, managers and superintendents of religious establishments, namely, (1) trustee, manager or superintendent under section 3 whose nomination is vested in or exercised by Government or public officer, or is subject to confirmation by Government or public officer, and (2) trustee, manager or superintendent under section 4 whose nomination is neither so vested, nor liable to such confirmation. Under section 4 Government transfers to the trustees, managers or superintendents all the property and all the powers exercisable by the board or local agent are exercisable by such trustee, manager or superintendent to whom such transfer is made. In the case of trustee, &c., under section 3, the Temple Committee is appointed under section 7 and such Committee can perform the duties of the board or local agent. In the present case the plaintiff is the

(1) (1897) 21 Mad. 179. (2) (1867) 3 Mad. H. C. R. 334.

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Moktesar of the temple, that is, the superintendent of the temple under section 3 of the Act. He is, therefore, not the servant of the Temple Committee and they cannot dismiss him arbitrarily, capriciously or without good cause. The ruling in *Seshadri Ayyangar* v. *Nataraja Ayyar*(1) describes the position of a trustee or manager of a religious endowment governed by the Religious Endowment Act. A committee would not be justified in dismissing a Moktesar for what it considers to be a misconduct. The misconduct must be such as would be held to be so by a Court of Equity. The ruling in *Chinna Rangaiyangar* v. *Subbraya Mudali*(2) which is followed in *Seshadri Ayyangar* v. *Nataraja Ayyar*(3) lays down that the power of dismissal can be exercised by the Committee on good and sufficient grounds. In the present case the Judge has found as a fact that there was no just cause for the plaintiff's dismissal. Both the lower Courts have found that vague allegations were made against the plaintiff which were not even attempted to be proved. The Judge has found that the plaintiff is a Havig and the majority of the members of the Temple Committee are Saraswats, and there is bad feeling between Havigs and Saraswats. It is unfair that the plaintiff should be summarily dismissed without good cause, especially as he, his father and grandfather had rendered service to the temple. The finding of the Judge that the plaintiff's dismissal was without good cause is a finding of fact which must be accepted in second appeal. The fact that other Moktesars have been appointed is immaterial, *Chinna Rangaiyangar* v. *Subbraya Mudali* (4).

JENKINS, C. J.:—The plaintiff sued to obtain a declaration that the appointment of defendants 10 to 15 as Moktesars of a certain Devasthan was illegal, and that the plaintiff is entitled to the office of Moktesar of that Devasthan.

The Court of first instance held that the suit was not maintainable without leave obtained under section 18 of Act XX of 1863, and that the plaintiff had been properly dismissed by the defendants 1 to 9, who constitute the Committee of the Temple.

(1) (1897) 21 Mad. 179 at p. 219.
(2) (1867) 3 Mad. H. C. R. 334.
(3) (1897) 21 Mad. 179.
(4) (1868) 3 Mad. H. C. R. 338.

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The lower appellate Court held that the suit did not fall within section 14 of the Act; that leave under section 18 was unnecessary; that the defendants 1 to 9 could not dismiss the plaintiff from office without good and sufficient cause, and that no good and sufficient cause for dismissal had existed. The lower appellate Court reversed the decree of the Court of first instance and declared the dismissal of the plaintiff to be void, but held that no case had been made out for declaring the appointments of defendants 10 to 15 invalid.

The defendants 2 to 5 and 7 to 9, the Committee of the Temple, appealed against that decree.

The objection as to the jurisdiction of the Court of first instance has not been pressed. But it is urged for the appellants that, inasmuch as it has not been held that the plaintiff was a hereditary Moktesar, the plaintiff cannot dispute the right of the defendant-Committee to dismiss him at their absolute discretion, or on mere matter of suspicion, without assigning or establishing their reasons for so doing. The cases of *Seshadri Ayyangar* v. *Nataraja Ayyar* [1] and *Chinna* v. *Subbraya* [2] were relied on by the lower appellate Court. The appellants contend, those cases relate to the dismissal of persons appointed as permanent officers, and, therefore, do not apply; and that as the plaintiff was appointed by the Committee, the relation in which the parties stand to each other is that of master and servant.

We think this contention untenable; for the powers of appointment and dismissal with which the defendants as a Committee were vested, were exerciseable not in their own interests, but in the interests and on behalf of the Devasthan, whereof they were trustees. They were, therefore, not at liberty to appoint or dismiss arbitrarily, capriciously, or for private reasons of their own, but only on grounds justified by the interests of the institution. The appointment of the plaintiff by the Committee, therefore, implied that his tenure of office was to continue so long as its continuance was not inconsistent with the interests of the Devasthan. No doubt it was for the

(1) (1897) 21 Mad. 179. (2) (1867) 3 Mad. H. C. R. 334.

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Committee to exercise their own judgment as to whether those interests were impaired by the plaintiff's continuance in office. And having regard to the case of *Hayman* v. *Governors of Rugby School* (1) we think the onus was, as the Court of first instance placed it, on the plaintiff to show that the defendant-Committee had not, in dismissing him, acted on a *bonâ fide* belief that the dismissal was necessary in the interests of the Devasthan, but had been actuated by some other and improper motive. But the finding of the lower appellate Court is, we think, in effect, that the Committee did act without any real regard to the interests of the Devasthan and were actuated by the bad feeling and caste enmity which, the lower appellate Court holds, the majority of the Committee entertain as Saraswats towards the Havig community, of which the plaintiff is a member.

This we think, is a finding of fact which is binding in second appeal.

The decree of the lower Court must, therefore, be confirmed. The appellants must bear all costs of this appeal.

G. B. R. *Decree confirmed.*

(1) (1874) L. R. 18 Eq. 28.

ORIGINAL CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1906.
March 26.

R. S. WOONWALLA AND COMPANY (APPELLANTS) *v.* N. C. MACLEOD AND ANOTHER (RESPONDENTS).*

Indian Insolvency Act (11 and 12 Vict., c. 21), section 31—Sale by Official Assignee—Sanction of the Court—Power of Court to set aside a completed sale.

Under the Indian Insolvent Act the Official Assignee has full power to sell the property and effects of an insolvent, and it is his duty to make sale of the same with all convenient speed. The sanction of the Court to the sale is not necessary.

Section 31 of the Indian Insolvent Act does not vest the Court with power to set aside completed sale.

* Appeal No. 141?.