Appellate Jurisdiction (a)

Special Appeal No. 97 *of* 1868.

KRISTNASAMY TATACHARRY and 2 others..... } *Special Appellants.*

GOMATUM RANGACHARRY..... *Special Respondent.*

The question whether there was a sufficient ground for the dismissal of a pagoda hereditary servant by a Dharmakarta is one of degree and not of principle, and must therefore depend upon the circumstances of each case.

The finding of the Lower Courts upon such matters must be treated by the High Court on special appeal as a conclusive finding upon a matter of fact, unless it be supported by no evidence whatever.

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THIS was a special appeal against the decree of W. S. Whiteside, the Acting Civil Judge of Chingleput, in Regular Appeal No. 14 of 1865, reversing the decree of the Court of the District Munsif of Conjeveram, in Original Suit No. 736 of 1862.

The facts in this case are fully set forth in the judgment of the Civil Judge, which is as follows:—

"In this suit the plaintiff sued in the Conjeveram District Munsif's Court to recover the 9th Tirtham Arulappadu in the pagoa of Shridevaraja Swami in little Conjeveram which had descended to him as a mirasi right from his ancestors and was confirmed to him by the decrees in Nos. 43 of 1845 and 20 of 1851 of the late Principal Sadr Amin's Court, and 91 of 1856 in the Conjeveram District Munsif's Court, and held by him up to the end of February 1861 when it was withdrawn from him by the defendants who are the Dharmakartas of the pagoda.

The defendants deny the plaintiff's claim and state in reply that the plaintiff was punished by the Magistrate for causing a disturbance in the pagoda, in the course of which he beat and outraged the defendants themselves, for which misconduct he was dismissed by them from his service in the pagoda, and with it he, by consequence, lost the mirasi right that he now claims, and that plaintiff's dismissal was in accordance with the authority vested in them by the

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decree of the late Sadr Court No. 49 of the year 1858 as Dharmakartas to remove pagoda servants from their appointments.

The District Munsif examined no witnesses on either side and based his judgment upon the decree above noted, and a takid from the Collector No. 107, dated 27th September 1860, in which reference is made to the fact that plaintiff had been fined for assault on the 1st defendant, and considering that in view of so grave an offence the defendants were justified in dismissing the plaintiff from office in the pagoda, he dismissed the plaintiff's suit with costs.

The plaintiff now appeals and urges that the misconduct laid to his charge is not grave enough to warrant the defendants in removing him summarily from a mirasi right which had descended to him from his ancestors, and that the Sadr Court's decree relied on by defendants does not apply to this suit; and that the remarks or statements in the Collector's takid upon which the District Munsif based his decree referred to a matter quite foreign to this suit, and that those remarks in no way justified the deprivation of plaintiff and his descendants of the ancient merasi right hitherto enjoyed. That the real fact which is at the bottom of the whole case is, that the defendants are of the Vadagalai sect and plaintiff of the Thengalai sect, and that this removal of the plaintiff from his hereditary mirasi right in the pagoda is solely caused by the religious enmity the defendants entertain towards him.

This is the 4th suit in which the plaintiff and the defendants are parties. The defendants, the Dharmakartas of the paogoda, are all of the Vadagalai sect. The plaintiff (appellant) on the other hand belongs to the Thengalai sect, and they are on terms of great enmity in consequencce. The plaintiff is one of the members of the Local Committee appointed by Government for the management of the pagoda, and he further has the right to the 9th Tirtham Arulappadi in the pagoda which has descended to him from his fore-fathers. The defendants have on repeated former occasions removed the plaintiff from his office in the pagoda and in all the

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consequence litigation thereon the plaintiff has had the best of the contest and been restored to office, only to be turned out again in a short time by the defendants. On the present occasion it appears from the documents filed in this suit on both sides (and upon which the Lower Court passed the decree now under appeal) as well as the pleadings of the vakils on both sides, that in the year 1860 the plaintiff preferred a charge before the Magistrate against the defendants of having misappropriated the funds and property of the pagoda, and in consequence and pending inquiry into the case, certain rooms in the pagoda where property and accounts were kept were sealed up at the plaintiff's desire, as in them were certain papers on the contents of which he relied to prove his charge against the defendants. The defendants then applied to the Magistrate of the District, and stated that it was necessary that certain ceremonies should be performed in those store rooms that plaintiff had got sealed up, and they requested that the seals might be broken and the property in the rooms removed. The Magistrate then sent an order to the Thasildar directing him to have the seals broken open and the property in the rooms removed in the presence and superintendence of the *plaintiff*, the defendants, and the Thasildar. The Thasildar then broke the seals and opened the rooms in the presence of the defendants, but in *absence* of *the plaintiff*, who came running to the spot, hearing of what was going on and declared that certain important papers upon which he relied to prove his magisterial charge against the defendants had been made away with, or removed fraudulently by the defendants before he arrived,—an uproar then followed, and the defendants soon after charged the plaintiff before the District Magistrate with having assaulted them, and the plaintiff was fined by the Magistrate. The defendants then proceeded to punish the plaintiff themselves. They dismissed him (as they had done several times before) and with it cancelled his mirasi right for which he now sues.

The Lower Court was of opinion that the plaintiff's misconduct was such as to warrant his dismissal from office as a bad servant of the pagoda, and rejected his claim, but

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this Court is of opinion that the District Munsif erred in not giving more weight and consideration to the facts that were admitted on both sides as well as apparent from the record of the repeated suits between the parties.

The plaintiff as member of the Committee for the management of the pagoda had brought to the Magistrate's notice certain alleged misconduct of the defendants as regarded the pagoda property, and pending the inquiry certain rooms were locked up containing accounts upon which plaintiff relied to prove his case.

The defendants just at this crisis made an excuse for getting the seals broken. The doors were opened in plaintiff's absence, and on his running to the spot he declared that the defendants had taken advantage of his absence to conceal the papers he desired to produce before the Magistrate in support of his case against them. It is not surprising that under these circumstances seeing that his case against the defendants would break down, that he (however reprehensible his conduct may have been) lost his temper and created a disturbance. For his conduct on that occasion he was duly punished by the Magistrate, and the question then arose whether his offence was of such a heinous nature as also to justify his summary dismissal from the pagoda service, and the forfeiture of his ancestral mirasi rights. The plaintiff acting for the best interests of the pagoda had invited inquiry into the mode in which the pagoda property had been made use of, the parties he had accused of misusing the pagoda property ingeniously managed to get the doors of the rooms opened in plaintiff's absence. A moment or two would be all that was necessary to enable them to get hold of the obnoxious papers that plaintiff relied on; and on plaintiff's coming to the spot and finding as he stated that the papers had vanished and his case in consequence fallen to the ground, it was not unnatural that in the heat and irritation of the moment he forgot himself, and the position of the defendants, and simply regarding them as men who had cleverly tricked him, in his anger, rendered himself in turn liable to a magisterial charge, which opportunity the defend-

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ants quickly took advantage of. There can be no doubt that the difference of sect is what is really at the bottom of the anxiety and repeated efforts of the defendants to oust the plaintiff from his place in the pagoda. On the present occasion they had undoubtedly given him much and great provocation. They had undoubtedly evaded the plain orders of the Magistrate and got access to the rooms and their contents in the plaintiff's absence. Having been once punished by the Magistrate it is unnecessary persecution now to seek to enhance his punishment by entire deprivation of office and complete loss of all his ancestral mirasi privileges. Had the Dharmakartas temporarily suspended the plaintiff from office and then restored him with a warning, no one could have accused them of undue severity; as it is, it is clear they eagerly took advantage of plaintiff's loss of temper to remove him from his obnoxious presence and office in the pagoda. To justify such a severe penalty it should be proved that the plaintiff had been or is a bad servant to the pagoda; that is to say dishonest, neglectful of his duties, incompetent and so forth, and this has not been shewn. His offence was towards the Dharmakartas *individually*, who had without doubt given him great provocation, and for that offence they had him duly punished. It would be persecution to admit that the plaintiff and his family should in addition for ever lose the ancestral rights that he has been so long enjoying.

For the foregoing reasons the Court resolves to reverse the decree of the Lower Court, and hereby orders that the plaintiff (appellant) be forthwith restored to office in the pagoda and to the enjoyment of the mirasi rights, privileges, &c. for the recovery of which this suit has been brought. Defendants (respondents) to bear all the plaintiff's costs."

Against this decision the defendants preferred a special appeal.

Srínivása Cháriyár for the special appellants, the defendants.

Parthasárathi Aiyangár for the special respondent, the plaintiff.

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This special appeal coming on for re-hearing the Court delivered the following

JUDGMENT:—We are unable to say that the decision of the Civil Judge in this case is contrary to any law, or usage having the force of law, or that there has been any substantial error or defect in law in the procedure or investigation of this case; and, therefore, without saying whether, if the case had been presented to us originally or in regular appeal, we should have come to the same conclusion, we think that we should be overstepping our province if we were to interfere with the decision of the Civil Judge, which must therefore be confirmed.

We were invited, during the argument of this special appeal, to lay down some general rules defining the degree and kind of misconduct which would justify the dismissal of a pagoda servant holding an hereditary office like the plaintiff's by the Dharmakartahs; but it would be impossible, we think, to do so at all exhaustively and very injudicious to make the attempt. The determination of each case must depend upon the particular circumstances established in it, and when the question, whether there was a sufficient ground of dismissal, is one of degree and not of principle, the finding of the Lower Appellate Court must be treated by this Court as a conclusive finding on a matter of fact, unless it appears to be opposed to every reasonable view of the material evidence: in other words is without evidence to support it. On the other hand if the Lower Appellate Court has proceeded upon an erroneous view of the legal relation between the parties, or of any of the legal incidents of that relation, it would be the duty of this Court, on special appeal, to correct any error of that kind. If for example we were prepared to say that in point of law any assault by a pagoda servant on one of the Dharmakartahs would justify dismissal, whatever were the circumstances under which the assault was committed, then we should find that the Civil Judge had erred in point of law and ought to reverse his decision; but as we are not able to lay down any such proposition, and are of opinion that it would, under the circumstances of this case, have been a proper question to leave to a jury whether

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there was a justifying cause of dismissal as was done in *Ridgway* v. *The Hungerford Market Co.* (3 Ad: and Ell: 171), and *Horton* v. *McMurtry* (29 L. J. Exch: 260); and as there was proof of circumstances connected with the assault in this case from which the Judge might reasonably form the conclusion that he did, we think that we are not at liberty to set aside the verdict of the Judge and find a new one ourselves.

In Special Appeal No. 8 of 1854 the Sadr Court appears to us to have gone further than the limits of a special appeal allow.

It was pointed out to us that the Civil Judge had made a mistake in his judgment in saying that "the plaintiff *as a member of the Committee for the management of the pagoda* had brought to the Magistrate's notice certain alleged misconduct of the defendants regarding the pagoda property." Whereas, he was not appointed a member of that Committee until some years after; but the material part of the Judge's remark, viz., that the plaintiff had made a charge against the defendants to the Magistrate, is not incorrect, and we consider it unnecessary to send the case back to the Judge for the purpose of asking him whether, if he had borne in mind that the plaintiff was not on the Committee at the time when he made the charge, that circumstance would have altered his judgment on the merits of the case. We confirm the decision of the Civil Judge, but without costs. Having reference to Special Appeal No. 8 of 1854, we think the appellants had a fair ground for asking this Court to review the judgment of the Lower Appellate Court.

Appeal dismissed.