

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Ponnambala Tambiran v. Sivagnana Desika
Gnana Sambandha Pandara Sannadhi
Visvalinga Tambiran and Saminadha Tam-
biran, from the High Court of Judicature at
Madras; delivered 28th April 1894.*

Present :

LORD MACNAGHTEN.

SIR RICHARD COUCH.

HON. GEORGE DENMAN.

[*Delivered by Sir Richard Couch.*]

This appeal arises out of proceedings in the execution of a decree of the High Court at Madras, made on the 23rd of October 1888 in an appeal in which Gnana Sambandha, the Plaintiff in the suit, was Appellant, and the second Respondent Visvalinga Tambiran, the representative of Humarasami Tambiran the original Defendant in the suit, was Respondent. The suit related to two mutts (temples), one situated at Tiruppanandal and the other at Benares, and was brought by the Plaintiff as the representative for the time being of a religious institution called the Adhinam at Dharmapuram in the District of Tanjore. The Plaintiff's case was that the properties in suit were the endowments founded in support of the mutts and various charities at Benares and other places, in the charge and under the management of the Tambirans or representatives of the mutt called the Benares Mutt at Tiruppanandal in the same District; that the last lawful manager of

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who was the Plaintiff in the suit to name a Tambiran from among the Tambirans of his Adhinam competent to discharge the duties of the managing Tambiran of the Benares (Kasi) Mutt at Tiruppanandal; that if the Subordinate Judge saw no objection to the fitness of the person so named for the office aforesaid he should appoint him as such managing Tambiran, but in case the Subordinate Judge should object to the person so named he should appoint a competent person of the Dharmapuram Adhinam as such managing Tambiran, and should thereupon direct the Appellant to invest him as usual and certify it; and that upon the investiture being certified the Subordinate Judge was to place the person so appointed and invested in possession of the mutt, &c.

On the 21st of January 1889 the Plaintiff in the suit, and Appellant in the High Court, applied to the Subordinate Judge for execution of the decree by a warrant for realization of the costs awarded by it, and that further proceedings might be taken regarding the appointment of a Tambiran to the then vacant place in the Kasi (Benares) Mutt at Tiruppanandal in accordance with the decree. Thereupon on the 25th of January the Subordinate Judge made an order directing the petitioner to name a Tambiran from among the Tambirans of his Adhinam competent to discharge the duties, ten days being given for that purpose.

On the 11th of February 1889 the Plaintiff presented a petition to the Subordinate Judge, praying that inasmuch as Ponnambala Tambiran one of the Tambirans of his Adhinam was a fit man for the vacant place, was competent to discharge the affairs thereof with efficiency, and was one of good character from among the Tambirans of his Adhinam, the Court would be pleased to appoint him to the vacant office.

in the present appeal who on the 28th of February petitioned the Court to admit him in the place of the deceased and to take further proceedings. On the 15th of March he was ordered to be made the representative of the deceased Plaintiff. On the same day he presented a petition to the Court stating that Ponnambala was unfit to manage the properties of the Benares Mutt at Tiruppanandal, and that contrary to the decision he was a Tambiran who received Kashayam (a ceremony of initiation) from the Madura Adhinam, and praying that the Court would permit him to withdraw the petition submitted to the Court by the former Pandaran Sannadhi nominating Ponnambala Tambiran, and to appoint Karbar Saminadha Tambiran to the office. On the 16th of March the petition, and also one for the realization of the costs, came on for hearing, the representative of the Defendant in the suit and Ponnambala being described as counter petitioners in the title of the judgment. The former did not appear. Ponnambala appeared by two vakils, and in the judgment it is said that on his behalf it was contended *inter alia* that the power of nomination could be exercised only once, that it was exercised by the late Pandara Sannadhi, and that under the decree of the High Court the representative of the Appellant had no power to make a fresh nomination unless directed by the Court. The Petitioner's pleader contended that there was power to withdraw the nomination and to make a fresh nomination. The Subordinate Judge in his judgment, after saying it was suggested that matters would be greatly facilitated by his deciding first of all the question about the power of nomination, gave his reasons for holding that the power of nomination could be exercised only once.

Evidence was then gone into, the new head of

remanded, and that the Judge should proceed to inquire if there was any objection to the appointment of the person nominated by the then Plaintiff, and appoint him if there was no objection, and if his appointment was found on inquiry to be open to objection, to proceed to appoint a competent Tambiran to Tiruppanandal. The present appeal is brought by Ponnambala from that order.

The Solicitor-General, who appeared for the first and third Respondents, objected to the appeal being heard, on the ground that Section 244 of the Civil Procedure Code (Act XIV. of 1882) was applicable, and that Ponnambala ought to have brought a separate suit. By an Order of Her Majesty in Council, dated the 9th of May 1891, special leave to appeal against the order of the High Court was given, but the Respondents were to be at liberty to raise any questions regarding the competency of the appeal at the hearing thereof. Section 244 enacts that questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution discharge or satisfaction of the decree, shall be determined by order of the Court executing the decree and not by separate suit. It would be a sufficient answer to this objection that it was not taken before the Subordinate Judge when he allowed Ponnambala to become a party to the proceedings and appear by a wakil at the hearing, at which it was decided that the nomination could not be withdrawn. Nor was the objection taken in the grounds of appeal to the High Court. It is too late now to take it. But their Lordships cannot see what suit could be brought by Ponnambala. The nomination could not give a right to bring a suit, and whilst the decree of the High Court stood he had no title upon which to bring one

of Ponnambala and to nominate Saminadha Tambiran. This was not granted by the Subordinate Judge, but the High Court, if their Lordships rightly understand its judgment, appears to have held that until the Subordinate Judge acted upon the nomination there was a *locus penitentiae*, and he was entitled to withdraw it if in his opinion there was any valid objection to it, and therefore the petitioner might withdraw it if there was any valid objection to it. Their Lordships do not concur in this construction of the decree.

There remain then two questions for determination: 1. Was Ponnambala a Tambiran of the Dharmapuram Mutt? 2. Was he unfit to be appointed Tambiran of the Mutt at Tiruppanandal? The first witness was the then head of the Dharmapuram Adhinam, who petitioned to be allowed to withdraw the nomination of Ponnambala. He said that Ponnambala was removed from the Odakkam (an office) in the Dharmapuram Mutt for some wrongful acts committed by him in respect to cash and paddy. He used to visit Dharmapuram occasionally from Trichinopoly where he held an office, and finding Ponnambala unemployed he asked him the reason. Ponnambala said he had committed some faults in respect of cash and paddy, and that the Pandara Sannadhi had removed him. The witness spoke to the Pandara Sannadhi himself, who said he had removed Ponnambala for wrongful acts committed by him in respect to cash and paddy. In answer to the Court the witness said that the late Pandara Sannadhi did not think Ponnambala fit for the office of Tambiran of Tiruppanandal, and that he nominated him in consequence of the persuasion of persons whose names he gave, because it was thought he would act up to their wishes. In cross-examination he said that he had been to the

of unfitness against Ponnambala upon vague and general statements, of which he had not at that time any evidence, and to have been influenced by a desire to have the other candidate appointed. The next witness, Venkatarama Aiyar had been an agent in the Dharmapuram Mutt for 47 or 48 years, and had known Ponnambala for 10 or 11 years. He said he was a Tambiran of the Madura Adhinam. He said, "I asked him, and he said " he had come from the Madura Adhinam. " I have moved with him closely these 10 or 11 " years. He is not fit to manage the estate of " the Tiruppanandal Mutt as the Tambiran " thereof." He went on to say that Ponnambala was dismissed from the Odakkam for acts of malversation as regards paddy rice and cloths, and was unemployed for two or $2\frac{1}{2}$ years; that he was afterwards sent for five or six months by the Pandara Sannadhi to assist the Katlai Tambiran at Tirubhuvanam who was ill, and was afterwards sent to Tiruvarur where he had been for the last two years, and there had been frequent complaints that he did not manage the lands properly. He said, "The complaints existed from the time of " the late Pandara Sannadhi." Their Lordships think that if there had been any malversation in the Odakkam which rendered Ponnambala unfit for employment he would not have been appointed to Tiruvarur or allowed to remain there for two years. In cross-examination the witness said, "From what Ponnambala Tambiran and other " Tambirans told me, I said he belonged to the " Madura Adhinam." As to the faults, as the witness called them, in the Odakkam, he said the Pandara Sanadhi held an inquiry, and called on Ponnambala for an explanation, and asked the witness and other agents to look into the accounts. They did so, and reported the matter to the Pandara Sannadhi, who did not press it. The next witness is Dharmalinga Pillai who said he

"there was no ground for remission at all.
 "Pandara Sannadhi sent for Ponnambala. The
 "agents said that the sale proceeds were carried
 "towards the payment of debts due to one
 "Somasundara. This was what the accounts
 "stated. They said Ponnambala said he had not
 "committed any faults and that the accounts
 "would support him." The accounts were not
 produced as they should have been. Without
 them this evidence is of no value. The
 next witness is Ramaswamy Aiyar, who was
 employed in the Rajan Katlai at Tiruvarur as
 the Attavanai accountant. His charges against
 Ponnambala were that he expended money
 without Uthara chits (which are orders on the
 Shroff for disbursements of monies, prepared by
 the witness and signed by the Tambiran); that
 when there were not Uthara chits Tambiran
 himself spent the money and the Shroff had no
 knowledge of it. He said Ponnambala wrote in
 the accounts some fictitious debts, and appro-
 priated the sums to his own use; that the debts
 were written in the names of Somasundara
 Chetti and Tyagu Chetti. The witness also said
 that a sum of 100 and odd Rupees, the produce of
 a sale, was not brought into account and there
 was a remission to a lessee; that the Pandara
 Sannadhi directed the amount remitted to be
 collected, and as regards the matters not brought
 into account he said he would send final orders,
 but no such orders were received. Without the
 accounts the truthfulness of this witness could
 not be tested. He said he got Rupees 6 a month
 in the Rajan Katlai and "did not mention to
 "any one else the said matters up to now,"
 which is improbable if they were of any
 importance. The next witness is Ramaswamy
 Aiyar, one of the Brahmins who were said by
 a former witness to have made a complaint. He
 does not give any material evidence, and appears

that he never made expense without issuing uthara chits. He was then examined as to sums amounting to 200 Rupees, credited in the accounts of Rajan Katlai under the name of Somasundari Chetti. He admitted that there was a man of that name at Dharmapuram, a cook in the mutt there, who was serving under him for a month or two, but he said he did not know who the Somasundari Chetti in the accounts was and did not inquire "until now." He said he knew the man; he was living at Tiruvarur; he kept no profession of any kind as far as he knew; he said he had a house; he must look to the accounts to see if there were any dealings with that man before he went to Rajan Katlai. He then spoke about credit in the name of Tayagu Chetti which he had been charged with. He said that one Tyagaraja Pillai and a Mudaliar kept a common shop at Tiruvarur; that the Kanakku Pillai used to borrow from him for their Katlai purposes and wanted to give credit in the name of Tiyagu Chetti and he gave him leave to do so; that he knew Tyaraja Pillai who came to him to demand money due to him; that there was no man of the name of Tyagaraja Mudali at Tiruvarur, and he had made a mistake when he said before that the creditor was Tyagaraja Mudali; that the Judge was not well at the time, and he was told to answer readily and to the point, and so the mistake happened. The Judge's diary in the record shews that he was ill at this time. This part of Ponnambala's evidence appears to be what is referred to in the judgment of the High Court as "matters against him in evidence, which he ought to have explained, but has not explained satisfactorily." It is to be observed that the Plaintiff's witnesses had been examined before the predecessor of the Subordinate Judge who gave the judgment, but Ponnambala was examined before that Judge, who did not express any

examination the witness said the nominee Ponnambala told him about his native place; that he had belonged to Panangudi and had received his Kashayam in the Madura Mutt. He is the only witness who speaks about another Ponnambala.

The case of the nominee Ponnambala was that he received his Kashayam at the mutt in Sivasilam, and did not belong to Panangudi but to Kallianpuram. Three witnesses, members of his family residing in Kallianpuram, deposed that he got his Kashayam at the Dharmapuram Mutt at Sivasilam; he was then 20 or 22 years of age. Another witness, Chitambaranadha, a Tambiran of Dharmapuram, said that Ponnambala got his Mantra Kashayam at Sivasilam; the witness was then present at Sivasilam outside the Pujamatam; that Ponnambala came to Dharmapuram and was employed at the Odakkam. Ponnambala was not asked in cross-examination or by his own pleader about the statements it had been said he had made that he came from the Madura Adhinam. This is a frequent omission in trials in India and no inference can fairly be drawn from it. Their Lordships cannot attach much weight to the evidence that Ponnambala said he came from the Madura Adhinam. Assuming that the witnesses intended to speak the truth it is possible they may not have exactly recollected what was said. He may have said he came from Madura, which appears to be true, and it may have been supposed by the witnesses that he meant he came from the Madura Adhinam. Their Lordships do not give credit to the evidence that he belonged to Panangudi and that there was a Kallianpuram Ponnambala who is dead. Upon the question whether the nominee Ponnambala was a Tambiran of Dharmapuram the High Court was silent, but as they may have

