Natesa and ors. Vs. Ganapati and ors.

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Court : Chennai

Decided On : Mar-17-1890

Reported in : (1891)ILR14Mad103

Judge : Muttusami Ayyar and ;Shephard, JJ.

Appellant : Natesa and ors.

Respondent : Ganapati and ors.

Judgement :

1. In Appeal No. 108.--The respondents brought this suit to remove the appellants and three others from the offices of dharmakartas and worshippers in the temple of Saba Nayakar at Chitambaram in South Arcot. Both parties to this appeal belong to a class of Smarta Brahmans called Dikshadars who, from time immemorial, have held both offices in that institution which is one of considerable antiquity and renown in Southern India. About 250 families of Dikshadars reside at Chitambaram, and the nett income of the temple, which is derived from general offerings, is their recognized means of livelihood. According to their usage every Dikshadar becomes entitled, on marriage, to take part in the management, to do puja or perform service in the minor shrines, and to share in the emoluments of the institution. He is, however, considered not qualified for performing service in the principal shrines, until he is twenty-five years old and initiated in a ceremony called Diksha. There are five principal shrines, and they are called

(1) Chit Saba,

(2) Kanaka Saba,

(3) Deva Saba,

(4) Amman Covil, and

(5) Mulastanam. Of these, the first is the seat of the presiding deity, named, Saba Nayakar or Natesar, and unless service is first held in it, it can be held, according to custom, in no other shrine. The temple being ancient, the necessity for putting it in repair was felt by the Dikshadars in 1877 and a wealthy class of merchants called Nattucottai Chetties, residing in the district of Madura, regarded its restoration as a great act of pious charity. A deputation of the former then waited upon the latter and induced them to undertake the repair. Between 1877 and 1881, the Chetties raised between three and four lakhs of rupees, and some of their leading men visited Chitambaram in 1881. Thereupon, general meetings of Dikshadars were held and an agreement called samakiya was executed in July 1881. It authorized the Chetties, inter alia, to proceed with the repair and specified the shrines included in the scheme of repairs. The merchants deputed one of them, named Chitambara Chetty, to carry the scheme into execution, and he commenced the repair at once. The Chetty and the Dikshadars acted in harmony till June 1882, when a minor shrine in the temple called the Pillayar Covil had to be dismantled, in order that it might be rebuilt. For this purpose, it was necessary to perform, according to the usage of the temple, a ceremony called Vala Stapanam and an auspicious day was fixed for its performance. A leading Dikshadar, named Sabanatesa and eight or ten others objected to the day fixed, as not being sufficiently auspicious and their objections were discussed and overruled at a general meeting of the Dikshadars. The question, whether the opinion of a majority of Dikshadars present at a general meeting ought to bind the minority or whether all the Dikshadars should concur, before any valid act could be done in connection with the temple, was then brought into controversy. Despite the remonstrance of the minority, the Chetty and the majority of Dikshadars carried out the ceremony; but the result was a disturbance which the Police had to interfere to put down. Thenceforward, there was a split among Dikshadars, they divided into two

factions, and the minor faction gradually gained strength and development. There are conflicting versions as to the real motive for this party quarrel, but, whether it was the Chetty's refusal to give presents to the minor faction, whilst he gave them to the major faction or a religious scruple as mentioned above, the fact is clear that party strife began at that time and gradually became so acrimonious as often to threaten the public peace and impair the efficient management of the affairs of the temple.

2. For nearly thirty years previous to 1881, the right of collecting the offerings made by worshippers in the temple, used to be leased out to the highest bidder among dikshadars at a general meeting convened in the temple once in twenty days and held before a sacred lamp, brought from the Kanaka Saba by a pandaram who held the office of podumanishiyan or common friend. The proceeds of the lease were first applied to the payment of temple servants and to the expenses of necessary repairs and temple festivals and the residue was then divided among all the dikshadars. Shortly after the factions came into existence, this practice was objected to by the minor faction and first held in abeyance by mutual consent pending the adjustment of their disputes, the 'morai-karars' or turn-holders among the dikshadars taking the offerings made during their respective turns. After the prior practice had remained in abeyance for some time, it was felt that funds were required for some temple festival, and it was then agreed between the two parties that the system of leasing was to be resumed for eleven days, and that, on the expiration of that period, it was again to be held in abeyance. But, when that period expired, the major faction attempted to revive the old practice and the minor faction resisted the attempt. The result was that, when the podumanishiyan or common friend proceeded, according to usage, to fetch the sacred lamp from the shrine, called Kanaka Saba, a riot ensued, and the sixth defendant stabbed with a knife some of the members of the major faction in June 1882 and caused them grievous hurt. This resort to violence checked any further attempt to restore the previous practice which continues yet to be held in abeyance. Another matter, which it is necessary to mention for the purposes of this appeal in connection with the conduct of the minor faction, is the systematic obstruction which it offered to the repair by the Chetty of the Chit Saba and Kanaka Saba and Tirumalapati Mantapam. The contention was that such repair

was incompatible with the traditions of the temple, that the edifices mentioned above were originally built by divine agency, that they should not be desecrated by repair, and that such desecration would materially lower the prestige of the institution for its sacred character in public estimation. In support of this contention, the minor faction relied on the plea that no act could validly be done in connection with the temple in question, unless all the dikshadars concurred in it and that the voice of the majority ought not to prevail. It was also contended for it that those shrines needed no repair and that they were exempted from the scheme of repairs sanctioned by the agreement of July 1881. The major faction denied every one of these allegations and insisted that the scheme of repairs sanctioned by the agreement of 1881 should be carried out in its entirety, This was the contention between the two parties from 1884 to November 1888, until the District Court in the first instance and the High Court on appeal, disallowed the several objections of the minor faction and decided in favour of the major faction in Original Suit No. 16 of 1885 and in Appeal Suit No. 53 of 1886. The misfeasances imputed to the defendants in connection with the question of repair are:

(1) the institution of Original Suit No. 16 of 1885 otherwise than bond fide,

(2) the closing of the principal shrines, viz., Chit Saba, Deva Saba and Amman Covil from the 29th June to the 4th July 1886, and

(3) the obtaining of the agreement (Exhibit VI) on the 5th July 1886, under pressure or coercion, whereby the custody of the keys of the principal shrines was transferred contrary to usage from the turn-holders to lour persons who belonged to the minor faction.

3. Another result of the party quarrel was the loss of temple jewels and other articles of considerable value which was imputed to the misconduct of some of the members of the minor faction in 1886. After this seven members of the major faction brought the present suit against eight members of the minor faction under Act XX of 1863 with the sanction of the District Court and prayed for their removal from the offices of dharmakartas and worshippers for the acts mentioned above and other acts of minfeasance. The defendants denied that they were guilty of any misfeasance and that they were responsible for the loss of temple property which,

they further alleged, was exaggerated. It was also contended for them that the suit was bad for misjoinder of causes of action and that it could not be maintained under Act XX of 1863. The Judge disallowed the two preliminary objections and found that the first five defendants wilfully obstructed the necessary repair of the temple, closed the three principal shrines of Chit Saba, Deva Saba, and Amman Covil from the 29th June to the 4th July 1886 and improperly obtained document VI, whereby the custody of the keys of the principal shrines was changed to the prejudice and contrary to the usage of the temple. He also found that the loss of temple property to the extent of Section 11,800 was imputable to them and decreed that the first five defendants be suspended from their trusteeship and all right of puja and emoluments connected therewith and from all share in the management of the temple, until such time as they may succeed in showing to the satisfaction of the Court that such suspension may be withdrawn without prejudice to the interests of the institution. He further directed that they be held jointly and severally liable for the sum of Rs. 11,800 on account of the temple property missing. As regards the other defendants, he dismissed the suit as against them and directed that their costs be paid out of the temple funds. The seventh defendant died afterwards and the first five defendants appeal from the decree so far as it is against them, whilst the plaintiffs appeal from it so far as it exonerates the sixth and eighth defendants from liability for suspension or dismissal.

4. As regards the defendants' appeal (No. 108 of 1888), the two preliminary objections taken in the Court below are again pressed upon us, but we are of opinion that the Judge was right in disallowing them. The grounds of decision against the appellants are that they jointly obstructed the execution of necessary repairs to the temple and that they were guilty of negligence or misconduct in respect of the temple property in their joint custody and both those grounds concern all the appellants in common. The plea of misjoinder of causes of action cannot, therefore, be supported. It is true that the Judge has found that appellants Nos. 2 to 4 closed the temple and that appellants Nos. 1 and 5 improperly obtained Exhibit VI, but he has also found that both those acts were done on behalf of the minor faction and in furtherance of its common object, viz., that of obstructing the repair of the Chit Saba and Kanaka Saba, &c.; It is then argued for the appellants that, according to the plaint as originally framed, the suit was bad

for misjoinder and that the Judge erred in entering on the merits without dismissing it at once. But we observe that the misfeasances imputed to the defendants, consisted of acts alleged to have been done on behalf of the minor faction and in pursuance of its common policy. Even if the frame of the plaint was defective as alleged, the procedure followed by the Judge is in accordance with Section 31 of the Code of Civil Procedure which authorizes him to deal with the matter in controversy so far as regards the liability of the appellants.

5. As for the objection that Act XX of 1863 is not applicable to this suit, the contention in the Court below was that the temple was not an institution falling either under Section 3 or 4 of that enactment, but the Judge held that the Act took the place of Regulation VII of 1817 and that the temple in dispute being endowed both with land and jewels, the trustees were liable to be dealt with under Section 14. It is now urged that the temple is the dikshadars' private property and that its endowments ought to be treated as those of a private temple, but this is apparently an afterthought. The appellants admitted in their written statement, paragraph 3, that they were adinam dharmakartas or hereditary trustees of the temple and their present contention is at variance with their own averment. It is not denied that the institution has been used as a place of public worship from time immemorial but it is said that the public worship in it by permission of the dikshadars. Though it is denied that the temple has any endowment in lands, the 86 inam pattas marked as Exhibit M series amply support the finding of the Judge. There is not a particle of evidence in support of the assertion that this ancient temple is the private property of the dikshadars, and the occupation of some of the rooms in the temple by the dikshadars and the inclusion of such rooms in the partition deeds of their families is referable to their status as hereditary dharmakartas, and to an arrangement made between them for mutual convenience whilst in the discharge of their duty as dharmakartas, worshippers and custodians of the temple and its property.

6. Turning to the merits, three questions arise for decision, viz., (1) whether the misfeasances, for which the appellants are suspended from office, have been sufficiently proved, and (2), if so, whether the Judge was entitled to deprive them of their right of puja under Act XX of 1863, and (3) whether the finding as to the

description and value of temple property lost is supported by the evidence in the case.

7. As regards the first question, it was finally decided in Original Suit No. 16 of 1885 between the two factions that the minor faction was not entitled to object to the execution of the repair of the Chit Saba and Kanaka Saba and Tirumalaipati Mantapam. In that suit, six principal questions were raised for decision. The first related to the status of the dikshadars in the temple and the final decision in regard to it was that it was sufficient for the purposes of that suit to hold that the dikshadars were the trustees and managers of the temple and were collectively the governing body. The second question was whether dikshadars of the minor faction originally gave permission to the Chetty to repair Chit Saba, Kanaka Saba and Tirumalaipati Mantapam and whether such permission was validly revoked. It was decided that they did give permission and that it was not since validly revoked. The next three questions were whether the repair of those edifices was contrary to the regulations and usage of the institution, whether the execution of such repair would injuriously affect their sacred character and whether the repair was necessary or called for. It was held that there was necessity for the repair and that the repair of the particular edifices in question was not contrary to Hindu religion, provided that a necessity existed for the same. Another question raised for decision was whether unanimity among dikshadars was necessary, according to the usage of the institution, for the carrying out of any act in connection with the temple, and, if so. whether such usage was valid. It was held that their own rules provided that the majority should decide. In accounting for the contention that unanimity was indispensable, the District Judge referred to the practice of oecumenical councils in which resolutions are said to he passed unanimously, because it is the recognized duty of the minority to give way to the majority, and suggested that such was probably the case among dikshadars and that the procedure was intended to give weight to their resolutions among the general public and not to enable the minority to ignore the voice of the majority. We take it then to have been judicially determined that the minor faction was acting illegally and contrary to the usage of the institution both in treating the decision of the majority at a general meeting duly convened as not binding upon those who dissented from it, and in opposing the repair of the Chit Saba, Kanaka Saba and

Tirumalaipati Mantapam as inconsistent with the usage of the temple and its traditions. This being so, it follows that the acts done by them, if done for the purpose of obstructing the repair, were misfeasances within the meaning of Section 14 of Act XX of 1863. Of the three acts referred to by the Judge, the first was the institution of Original Suit No. 16 of 1885, and it is urged, with reference to it, that the minor faction ought not to be blamed for seeking to vindicate what it considered, though erroneously, to be its legal right. The Judge held that the suit was not instituted bond fide, and we concur in his opinion for the reasons mentioned by him; and we may add that the learned Judges who heard Appeal Suit No. 53 of 1886, observed that the motive which influenced the action of the minor faction, was personal and not creditable.

8. The second act which, the Judge considers, was done in order to obstruct the repair was that of closing three of the principal shrines on the 29th June 1886 and refusing to open them till 5th July next. Such an interruption of public worship is obviously a serious breach of duty on the part of trustees of a public temple and is prejudicial to its interest. That the appellants Nos. 2, 3 and 4 did close the temple, is not disputed. Nor is it denied that they did so on the day prior to that, on which one of the important annual festivals was to commence, and this is an aggravation of their misconduct. But it is urged on their behalf that there was a dispute among some of the dikshadars about the turn, in which puja was to be performed and that the temple was closed for fear that the major faction might, otherwise, take forcible possession of the shrines. Judging, however, of the appellants' conduct in the light thrown by document VI, we consider that the Judge was right in finding that the shrines were closed for the purpose of obstructing the repair and securing to the minor faction possession of the keys of the principal shrines as a means of rendering such obstruction effectual. The provisions in document VI as to the turn are referable to the temporary interruption, and to the festival which was likely to enhance the value of offerings.

9. The third act of misfeasance which the Judge considered to he proved, was the obtaining of Exhibit VI under coercion. It is argued before us that the agreement was executed by five members of each faction as representatives of that faction in provisional adjustment of the dispute between the two factions, and that the fact of

the Tahsildar and Inspector of Police having assisted in bringing about the amicable adjustment, shows that no coercion could have been used. We do not consider that any physical restraint was used, for the major faction was numerically stronger than the minor, and it is in evidence that the Tahsildar and the Inspector of Police advised the parties to temporarily arrange the matters in dispute between them. But we are of opinion that the document was executed under pressure put by the minor faction by persistently refusing to open the temple at the time of the annual festival and thereby injuring its prestige. The festival time was passing away and the interference of the Magistracy and of the Police raises a presumption that there was probably public excitement owing to the stoppage of public worship at an important juncture. Again, the agreement was on its face beneficial to the minor faction and it secured, thenceforward, possession of the keys of three of the principal shrines to four members of that faction. The only consideration in its support, to which the appellant's pleader can refer us, is the opening of the temple and it cannot be accepted as a legal consideration, as the act of closing a public temple and interrupting public worship, is in itself illegal. Again, the provision as to the possession of keys by four members of a faction is an innovation upon the usage of the institution and as such bad in law. The subsequent conduct of the major faction in repudiating the document as obtained under pressure and declining to register it raises a presumption in favour of its contention. Though the oral evidence on the point is conflicting, the probabilities of the case support the evidence for the major faction and justify the conclusion that its members consented to execute the agreement under pressure put upon them by the minor faction. However this may be, the agreement is clearly bad as being contrary to the usage of the temple. According to it, the daily puja or the regular service is performed in rotations of twenty days by a body of twenty dikshadars and these are again sub-divided into batches of four, each batch serving by turn in one of the five shrines in the temple for four days and each member of that batch being entitled to serve for one of the four days. The twenty dikshadars who are on duty for twenty days at a time are called morai-karars or turn-holders and there are thus always twenty moraikarars for the whole temple, four special morai-karars for each of the five shrines for every four days, and one special morai-kara for each day in each shrine. According to custom, the morai-karars had charge of the keys

of their respective shrines, during their turn and when each set of four special moraikarars passed from shrine to shrine, the custody of the keys of the shrine also changed hands; and the jewels and valuable articles in each shrine were examined once in four days. The change introduced by Exhibit VI, in regard to the custody of the keys, was a departure from the usage of the temple and injurious to its interests, so far as it put a stop to the necessity of seeing once in four days that the property in each shrine was safe. We see no reason to doubt the correctness of the conclusion at which the Judge has arrived as to this part of the case.

10. Further, the document purports to have operation pending the settlement of the disputes between the two factions by a civil suit. Not only did the decisions in Appeal Suit No. 53 of 1886 set at rest the matters in controversy between them regarding the repair and the legal effect of the decision of the majority, but there is also evidence to show that the civil suit in contemplation was the one then pending on appeal in the High Court.

11. As to the loss of temple property, it consists partly of property kept for ordinary use in the several shrines and partly of property in the Treasury room which is usually called Astantram or Bookusham. The Treasury room is situated in the Deva Saba and no access can be had to it except through that shrine. It has also a smaller room inside and the outer door is secured by double locks and keys, whilst the door of the inner room is also usually locked. As valuable property belonging to the temple and not required for ordinary use is secured in it, it is not opened according to custom except in the presence of the general body of Dikshadars. The shrine of Deva Saba has also an outer door which is locked at night when it is not kept open for public worship. According to custom, of the two keys of the outer door of the Bookusham, one was kept in the shrine called Chit Saba and the other in Amman Covil, and the key of the inner room was kept in the shrine called Mulastanam. From the date of Exhibit VI, viz, 4th July 1886, the keys of three of the principal shrines, viz., Chit Saba, Deva Saba and Amman Covil, remained in the custody of the four persons mentioned in that document, viz., appellants 2, 3 and 4 and another. The respondents' case was that, from 4th July 1886, the minor faction, especially the four persons named in Exhibit VI, had the entire control of the three shrines and of the Astantram and that the appellants were responsible

for the missing jewels and articles. It was not denied that appellants Nos. 2 to 4 were responsible for property which was in the three shrines of Chit Saba, Deva Saba and Amman Covil on 4th July 1886 and which was afterwards lost, but they repudiated all responsibility for any other property and for the property kept in the Treasury room. They also contended that the respondent tampered with some of the locks of the Treasury room and that some of the members of the major faction used to sleep in the Deva Saba. But the Judge found that property valued about Bs. 11,000 and odd was proved to be missing, that it was lost between 4th July 1886 and sometime in December of the same year, that the appellants Nos. 2 to 4 might have had access to the Treasury room during that period, that the respondents could not have had access to it, that the imputations made against them were not well-founded and that appellants Nos. 2 to 4, as persons in charge of the shrines under Exhibit VI, and appellants Nos. 1 and 5 as their guarantors, were responsible for the missing property. It is argued before us that the appellants had no control over the property in the Treasury room, that the Judge was in error in holding them responsible for any part of the property missing in it and that the rinding as to the extent and value of property lost, is not warranted by the evidence on record.

12. We shall first deal with the grounds, on which the Judge considered the appellants liable. It is the case of neither party that the loss was due either to robbery or house-breakmg committed by strangers. There was no such complaint before suit. From July 1886, the shrines, in which the keys of the outer door of the Treasury room were usually kept, were admittedly in the possession and under the control of the four persons, named in Exhibit VI, including appellants Nos. 2, 3 and 4. This suggests the inference that, if the keys were in the shrines at the date of Exhibit VI, they continued to remain under their control. As to one of them, viz., the key usually kept in the Chit Saba, the possession of it is admitted and appellant No. 4 eventually produced it before the Commissioner in March 1887. Though the oral evidence is conflicting as regards the key customarily kept in the Amman Covil, we agree with the Judge that the evidence for the appellants is inconsistent with the omission to note the fact in Exhibit VI and with the fourth appellant's conduct in objecting to the Commissioner breaking open the Treasury room and examining its contents in the presence of both parties. We think that the

probabilities of the case are in favour of the Judge's finding. It is said that the Astantram was opened in November 1886, when the temple jewels were shown to one Mr. Reid and that the general body of Dikshadars was then present. This is not inconsistent with the Judge's finding that the property was removed some time in December 1886, if not before. This being so, the imputations cast on the major faction and the evidence of partisan witnesses in support of those imputations do not, as observed by the Judge, deserve credit. How could the major faction have found access, through the Deva Saba which was in the possession of the minor faction? How could it have gained access into the Treasury room, whilst the key of the lock which was found to be fastened by the Commissioner, remained with the appellant? If the door had been forced open, how was it there was no complaint made at once by the four persons in charge? As to the possession and control of both the keys of the outer door, we see no ground for differing from the opinion of the Judge. The presumption then in the absence of satisfactory evidence to show how property in the Treasury room came to be made away with in part is that those who had the control of the keys and their guarantors, appellants, are answerable for the loss either on the ground of negligence in preserving trust property or of dishonest dealing with it.

13. The next question which we have to consider is as to the extent and value of property lost from the shrines and from the Treasury room. The Judge has held that the appellants are answerable for items of property Nos. 7, 10, 21, 1 of 27 or 49, 51, 2, 3, 5, 4, 1 and a gold pot and the finding is questioned in appeal as regards each of the items.

14. As to item No. 7, it is a jewel called Madura Pandiya padakam of Rs. 750 in value. The Judge has found that it existed in 1872, and has presumed that it continued to exist until the date of Exhibit VI. He relied on Exhibit CIO, and the appellants' contention was that such a jewel never existed. It is in evidence that the Treasury room is opened at least twice a year and that jewels are taken out for use during the annual festivals. The lists marked C series were found inside the Treasury room by the Commissioner, and they purport to be authenticated by the signature of Podumanishiyan or common friend, and they contain information as to the condition of the jewels on the dates to which the entries refer. C10 and C9

contain two entries regarding this jewel, and there is also the evidence of plaintiffs' witnesses 14 and 21. We cannot say that the decision of the Judge as to this item of property is incorrect.

15. The next item is No. 10, which is described as Virappa Nayakan diamond padakam of Rs. 1,000 value. The appellants say that it is the same as item No. 49 in the Commissioner's list C8, which is described as consisting of diamonds and rubies. The Judge refused to accept the appellants' statement for two reasons, viz., CIO mentions no rubies, and the appellants did not offer this explanation when the Commissioner prepared 08, in which this jewel was entered as missing and which they signed. Though they allege that the Commissioner did not note their explanation, they omitted to examine him on the point, and the appellants' witnesses Nos. 1 and 15, to whose evidence our attention is drawn, do not identify it as No. 49. There is the evidence of the respondents' 14th witness that such a jewel was in existence as shown by CIO. We consider that the Judge has come to a correct conclusion.

16. We may here observe that the endeavour on the part of the appellants to identify these items of property save the gold pot with property found in the Treasury room is probably an after-thought. The respondents stated, in paragraph 6 of the plaint, that the items, save the gold pot, were all in the shrines in appellants' charge when Exhibit VI was executed, and that they were not to be found there on the date of the plaint, and the appellants contended that the items were not in the shrines in paragraph 8 of their written statement. Issues were taken as to whether they were in the shrines or not, and the respondents' witnesses deposed that they were in the shrines in appellants' charge, and after they closed their case, the appellants tried to identify them with some of the items of property entered in the Commissioner's list as found in the Astantram. Their first witness was the only one who deposed to the identity. They produced two lists before the Commissioner of jewels in the shrines, and, though these items were not mentioned in those lists, they did not then say that they would be found in the Treasury room. These facts raise a presumption that the attempt to identify them with articles in the Treasury room was an after-thought, and it is in favour of the conclusion arrived at by the Judge.

17. The next item in dispute is 21 described as Mahalakshmi padakam set with rubies and of Rs. 1,000 value. The Judge has discredited the appellants' statement that it was identical with item No. 57 in the Commissioner's list, and has assigned satisfactory reasons for his opinion. The suggestion that it may be that the jewel derived its name from the name of the donor and not from the figure of the image of Mahalakshmi upon it rests on no reliable evidence, and appears to be an ingenious conjecture. As to the item which is said to be one of item 27 or 49, C10 and respondents' witnesses prove it, and no grounds are shown for disturbing the finding. As to item No. 51, there is evidence that two nose-ornaments existed in 1872, and that only one is now forthcoming. There is the evidence in its support of the respondents' 7th witness, who belongs to neither faction. As to items 2 and 3, which are of Rs. 3,000 value, the appellants admitted that they existed, but alleged that Pandiyaraja Dikshadar and TungasamiDikshadarof the major faction took them for useduring the consecration cere mony of the shrine called MukkuriniPillayar Covil, but never returned them. This was denied on the other side. Appellants' witnesses 1, 2, 3, 4, 6, 7, 8, 10, 12 and 15 gave evidence for them, and respondents' witnesses 4, 5, 9, 14, 21, 25 and 27 contradicted them. The Judge has considered the evidence, and we see no sufficient reason to say that he was in error in declining to accept the evidence for the appellants as satisfactory. As to items 5 and 41, the appellants' contention was that they were lost when the car of the temple fell down with the idol in it in January 1882. Here again there was conflicting evidence, but the respondents' 22nd witness, a member of the family of the donor of item No. 5, swore that he saw the ornament on the idol some three years after 1882. There was no complaint made of the loss of the jewel at the time of the accident. We do not think that the Judge was wrong in giving credit to the evidence for the respondents in preference to that of the appellants. As regards item No. 41, the respondents' 6th witness, the brother of the donor of the jewel, says that he saw it in the temple about fifteen or sixteen months before he gave his evidence in February 1888 and the Judge relied upon his evidence.

18. The next item of property is a gold pot of Rs. 5,000 in value. The appellants' contention was that it was damaged and, therefore, it was given to the Chetty in order that it might be melted and that the gold might be used for gilding the

vahanams or vehicles which the Chetty was making for use during temple processions. Here again, there was a contradictory evidence of witnesses, plaintiffs' witnesses Nos. 3, 5, 10, 12, 14, 15 16, 19 and 20 on the one side, and defendants' witnesses Nos. 1, 2, 3, 4, 5, 10 and 12 on the other side. The 28th witness, who was Chitambara Chetty's agent and superintended the making of the vahanams, denied that the gold pot was given as alleged by the minor faction. Having regard to the quantity of gold required for gilding the vahanams, the evidence of the witnesses for the minor faction was open to doubt. We may also observe that the Chetty, who was spending several lakhs of rupees on the temple, would hardly accept the gold pot used for pouring water on the principal idol as a contribution from the Dikshadars for gilding vahanams. Nor is it explained to our satisfaction how the gold pot, which was made in 1859, and which was in use only on special occasions in the temple; came to be so damaged as to induce the Dikshadars to consent to its being broken up instead of its being repaired. The probabilities of the case appear to us clearly to point to the conclusion to which the Judge has come upon the conflicting evidence. There is also reliable positive evidence in its support. Among the witnesses, there are several independent persons of respectability who saw the gold pot in the temple in 1886 and subsequently. We may refer to the 3rd witness, Inspector of Police, who saw it in 1886; to the 16th witness, the Taluk Sheristadar, who saw it in use in 1882 or 1885; to the 15th witness a Head Constable; to the 10th witness, who is the agent of the Pandara Sannadi at Tiruvadutorai, and who saw it in use till 1885; and to the 20th witness who is the agent of the donor and who saw it in use until two years before suit.

19. As to the value of the property lost, the respondents' 29th witness gives general evidence and there is, besides the evidence of the 20th witness as to the gold pot, of the 7th witness as to item No. 51, of the 22nd witness as to item No. 5, and of the 18th witness as to item No. 2. The appellants did not deny the correctness of the value in their written statement. We are not prepared to attach weight to the objection taken to the estimated value of the property missing.

20. The only question which remains to be considered is as to the decree that has been passed. The suit was in its nature punitive but, having regard to the acts of

misfeasance and to the appellant's conduct in connection with the loss of temple property, the Judge has dealt with the appellants rather leniently. It is urged that the Nattukottai Chetty pays the expenses of the litigation and that the suit was vindictive. But, considering the facts proved against the appellants specially, and against the minor faction generally, we cannot say that the conduct of the former did not richly merit the punishment that has been inflicted upon them. It is argued that the Judge was not authorized by Act XX of 1863 to deprive them of their right of puja in the temple. According to the usage of the institution, it is appurtenant to their status as dharmakartas and the interests of the temple would be but inadequately protected if the two rights were severed for their benefit. We consider, however, that, in its present form, the decree is open to amendment so far as it leaves the period of suspension indefinite. We shall, therefore, amend it by directing that the suspension be withdrawn, if the appellants file an under taking with two sureties in the amount of Rs. 2,000 each that they will duly conform to the decision of the majority of Dikshadars recorded at a general meeting duly convened in all matters connected with the repair of the temple, and with the management of its affairs, and to the usage of the temple as to the leasing out of the general offerings, and the custody and preservation of its property, and confirm the decree in other respects. As the appeal has substantially failed, the appellants will pay the respondents' costs in this Court. We direct also that the undertaking do include restoration of so much of the property found to be missing or its value, as cannot be recovered in execution. The sureties must be approved by the District Judge.

21. In Appeal No. 159 of 1888.--In this appeal it is argued for the plaintiffs that the Judge was in error in not dismissing the defendants Nos. 1 to 5 and in exonerating defendants Nos. 6 to 8 even from liability for suspension. The appellants' pleader states at the hearing that he does not press the appeal against the eighth defendant and the appeal is dismissed as against him with costs.

22. As regards defendants Nos. 1 to 5, the Judge has considered what punishment would be adequate and has apparently adjusted it with reference to the protection due to the interest of the institution. We consider that the terms we have imposed are also sufficient to prevent the recurrence of the party quarrel.

The Judge has taken into consideration the loss of the right of puja and of the right to other emoluments which dismissal is likely to entail.

23. In connection with the obstruction to the necessary repair of the temple, the acts of misfeasance are excesses in the assertion of a supposed legal right. Though their conduct in connection with the loss of temple property is certainly serious, two of them are held liable as guarantors and it is not clearly established which of the other three took away the property, though their joint civil liability for its loss is made out. There is also the fact that they are only five out of upwards of about 250 trustees belonging to the temple.

24. We do not, therefore, consider it necessary under the special circumstances of this case to direct their dismissal.

25. So far, however, as defendant No. 6 is concerned, he obstructed the leasing of the offerings in 1882 and stabbed some of the members of the major faction and the Judge himself finds that his special connection with the obstruction is proved,

26. Again, he was specially connected with the obstruction caused to the repair of the temple. He was one of the plaintiff's in Original Suit No. 16 of 1885 and one of the five who took Exhibit VI on behalf of the minor faction.

27. The only circumstances in his favour are that no special connection is proved against him with the loss of temple property. But it appears from the evidence of the Commissioner that he was one of those who objected to the Treasury room being opened and to its contents being examined. In a punitive action like this, in which a whole faction consisting of a large number of persons is passively concerned, we are inclined to agree with the Judge that the interests of the temple do not require that all should be punished and that they would be sufficiently protected, if those who took an active part were punished. But applying this principle, we are unable to hold that defendant No. 6 was not liable to be suspended together with defendants Nos. 1 to 5.

28. We shall, therefore, set aside the decree so far as it exonerates him from liability for supension and directs that his costs be paid out of temple funds and

decree instead that defendant No. 6 also be suspended in the same manner and subject to the same conditions save as to the liabilities to restore the temple property found to be missing and as to the withdrawal of the suspension as defendants Nos. 1 to 5 are, and that he do bear his own costs in the District Court and pay the appellants' proportionate costs in this Court. The appeal against respondent No. 7 is dismissed with costs as it is not pressed.

29. The appeal is also dismissed so far as defendants Nos. 1 to 5 are concerned but under the circumstances without costs.