

*Privy Council Appeal No. 83 of 1924.*

Nattu Kesava Mudaliar - - - - - *Appellant*

*v.*

V. S. Govindachariar and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 6TH MAY, 1926.

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*Present at the Hearing :*

LORD PARMOOR.

LORD BLANESBURGH.

LORD DARLING.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD BLANESBURGH.]

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The suit out of which this appeal arises was instituted on the original side of the High Court at Madras by the appellant and another, since deceased: the two dhamakartas or trustees of a temple at Mylapore. The object of the suit was to establish by declaration and consequential injunction against the defendants, the trustees of an adjoining temple, the plaintiffs' alleged rights under an agreement stated to have been entered into on the 26th January, 1846, by the then trustee of the defendants' temple.

There were many defences raised to the suit, both technical and substantial, but the learned Trial Judge, Mr. Justice Phillips, accepting the plaintiff's construction of the document sued on as correct—and no other construction was apparently suggested to him by the defendants—repelled all these defences, and by a judgment dated the 18th February, 1921, in substance decreed the suit. The respondents appealed to the High Court on its appellate

side, and there raised a question of construction, on which the decision of that Court ultimately turned. By a decree and judgment of the 4th September, 1922, of the Chief Justice, Sir Walter Schwabe, and Mr. Justice Wallace, who composed the Court, the decree of the Trial Judge was reversed and the suit dismissed, for the reason that the plaintiffs had, in the opinion of the Court, misconstrued the agreement sued on, and were not entitled in the circumstances to any relief at all. Dismissing the suit on that ground, the learned Judges in terms refrained from pronouncing any opinion upon the sufficiency or otherwise of the defences set up by the defendants as a further answer to it. The surviving plaintiff appeals.

The appellant's temple is known as the Audikesavaperumal Peyalwar Temple, and is of great antiquity. In these proceedings it has been referred to as the "Y" temple. The respondents' temple is known as the Sri Vedanta Desikar Temple. It was built in or shortly after 1832. In these proceedings it has been referred to as the "U" temple. The two temples abut on the same street in Madras, and their entrances are within a few yards of each other. They belong to rival sects, and owing to the fact that the ritual of each involves many processions, the preliminary ceremonies of which have to be performed in the street while their recurring celebrations frequently occur on the same day, it follows that the services of both temples in their completeness can only be carried out without inconvenience, friction and confusion to both sets of worshippers if there be present either a spirit of mutual accommodation or the exercise of some degree of external control.

The appellant's "Y" temple is not only the older; it is also the more important institution of the two. In 1846, at the date of the agreement in suit, the one idol in the "U" temple was Sri Vedanta Desikar, and that god had only been there installed for at most thirteen years. There was then extant a decision of the Sudder Court that no new procession and no procession for any newly installed deity could be lawfully carried on in the streets, and that anyone objecting to any such procession might apply to the Court and obtain an injunction restraining it. In these circumstances, and most probably because the installation of the idol in the "U" temple had been so comparatively recent, the authorities of the "Y" temple were in 1846 objecting that all processions from the "U" temple were illegal, and their Lordships feel little doubt that the terms of the agreements between the two temples then arrived at, and with which the present suit is concerned, are to be explained and their true effect ascertained by reference to the view or belief of both parties that the law as to processions enunciated by the Sudder Court was in truth the law of the land.

Two agreements were apparently entered into in that year. One of them only—the document sued on—is extant. The recital of the provisions of the other there made is the only source from

which these provisions can now be ascertained. Whether they are there completely set forth must remain in doubt.

It is convenient to transcribe in full the document in suit, the more so because apparently the translation of it, with which the learned Chief Justice dealt in his judgment, is not textually the same as that with which their Lordships have been supplied.

The document, which purports to be signed by the then trustee of the "U" temple, is as follows :—

A.

26—1—1846.

"The 26th day of January 1846 corresponding to 15th Thai Visvvasu. The agreement executed to Nattu Mannaperumal Mudaliar Avargal, trustee of Sri Akilantakoti Brahmanda Naiker Sri Audikesavaperumal Sannadi at Tiru Mylapore by Villivalam Viraraghavachariar, trustee of the Vedanta Desikar Sannadi at Kesavaperumal Sannadi Street in the same place is as follows :—

"Ever since the institution of Vedanta Desikar Sannadi in the aforesaid Kesavaperumal Sannadi Street you have been disputing the taking of the procession through the street and I have been disputing the conduct of Bramha Utsavam, the garden festival, the Kottai festival and Sri Ramaswami Utsavam of Kesavaperumal. Both of us have therefore come to a compromise between us to the effect *that I should be at liberty* to take the procession of the said Vedanta Desikar through the streets, just as I like on the 12 Tirunakshatram days and the 11 annual festival days including Ganthapodi festival, Vasantha festival thus in all 23 days in the year. If the garden festival or the floating festival had to be conducted on any of these 23 days I shall be at liberty to conduct such festivals in any place I like. If on any account any of the festivals is postponed I shall be at liberty to conduct such festival on any subsequent day. If during the Vasantha Utsavam and the Vidayathi Utsavam when the deity comes into the street through the temple tower gate (Gopuravasal) and goes to the adjoining mantapam, Kesavaperumal's Utsavam occurs, we may be allowed without interruption thereto, to take out whenever we require. You wrote and gave (a writing) *to this effect*. You will be at liberty to conduct, as you like, the festivals of the said Kesavaperumal such as the daily festivals, Panchaparva Utsavam, Ayana Utsavam (half-yearly festivals), the annual festival called the Bramha Utsavam, the garden festival, the Kottai Utsavam, Vasantha Utsavam, etc., festivals and the monthly and Bramha Utsavams of Sri Ramaswami Perumal and other idols, and the monthly Tirunakshatram festivals of Alwar and other Acharyas, and the annual festivals, and all the festivals of all other idols that may be instituted hereafter. If under any circumstances any of the festivals is postponed you are at liberty to conduct them on any subsequent occasion. You will be at liberty to conduct any festival of Peyalwar, Manavala Mahamuni and other idols attached to the said Kesavaperumal Sannadi. You may conduct the festivals at any time and at any place as you like. If on any of the 23 days on which festivals are to be conducted for the said Desikar in the year any of the aforesaid festivals of the said Kesavaperumal in which processions have to be taken intervenes you will first finish the *Purappadu* (procession) and the Tiruvandikkappu before 10 o'clock. If on account of your indolence it is dragged after 10 o'clock we will start our Desikar's procession. If the delay is caused by any act of providence or by rain or by any other incident we shall conduct our festival after you have finished yours.

"Each of us will conduct our affairs according to the custom obtaining in each sannadi.

"Neither I nor any person stepping in my place shall raise any objection to this. In this way I have executed this agreement of my own free will."

As has been already stated, the only processions which in 1846 were in use from the " U " temple were the processions of the one deity installed there. Between that time and the date of suit one further festival had been instituted—the Karthigar festival—and, it may be, other festivals also. New idols, too, had been installed in the temple.

In these circumstances, it happened that on the 13th November, 1918, the trustees of all the temples in Madras were requested by Government to have prayers offered in commemoration of the Armistice. That day was not one of the 23 days mentioned in the agreement for " U " temple processions. It chanced, however, to be a day on which, at night, a very important Utsavam of the " Y " temple fell to be performed, and the defendants came under the ban of the plaintiffs for that they, deferring to the Government's request, did, between 5 and 9 p.m., with the aid of the police, and before the arranged hour for the plaintiff's procession, hold a procession of Sri Vedanta Desikar in celebration of the Armistice. As a result, but not until the 1st September, 1919, this suit was instituted, and founding it upon the agreement just set forth, upon the defendants' action on the 13th November, 1918, and upon the fact that new idols had been placed in their temple, the plaintiffs in effect claimed that they were by the agreement entitled to prevent the defendants from holding any processions except those of the Sri Vedanta Desikar, and these only on the 23 days in each year referred to in the agreement, and that they were entitled also to prevent the defendants from installing or retaining in their temple any other idol; and they claimed a declaration and injunction accordingly. The Trial Judge held that the plaintiffs were not entitled to any order for the removal of the new idols which had been placed in the " U " temple, and no complaint is now made with reference to that part of his order. He held also that the plaintiffs were no longer entitled to interfere with the celebration there of the Karthigar festival any more than with those mentioned in the agreement; but, in other respects, he acceded to the plaintiffs' claim, and framed a decree on that footing. The High Court, on appeal, on construction of the agreement, held that the plaintiffs had no such right as they claimed, and dismissed the suit. Between these two views the Board has now to pronounce.

The form of the document of the 26th January, 1846, supplies, their Lordships think, the key to its meaning and effect.

It is, as has been said, and as appears from its terms, one of two agreements reached at the same time. Its purpose is to set forth the liberty which as between the " U " temple and the " Y " temple the latter was to enjoy in the matter of processions and the like. That liberty, it will be noted, is very wide in its scope, extending even to " all the festivals of all other idols that may be instituted hereafter." There is no restriction as to time or place. " You may conduct the festivals at any time and at any place as you like," save on any of the 23 days of the " U " festivals, with reference to which a qualified precedence is

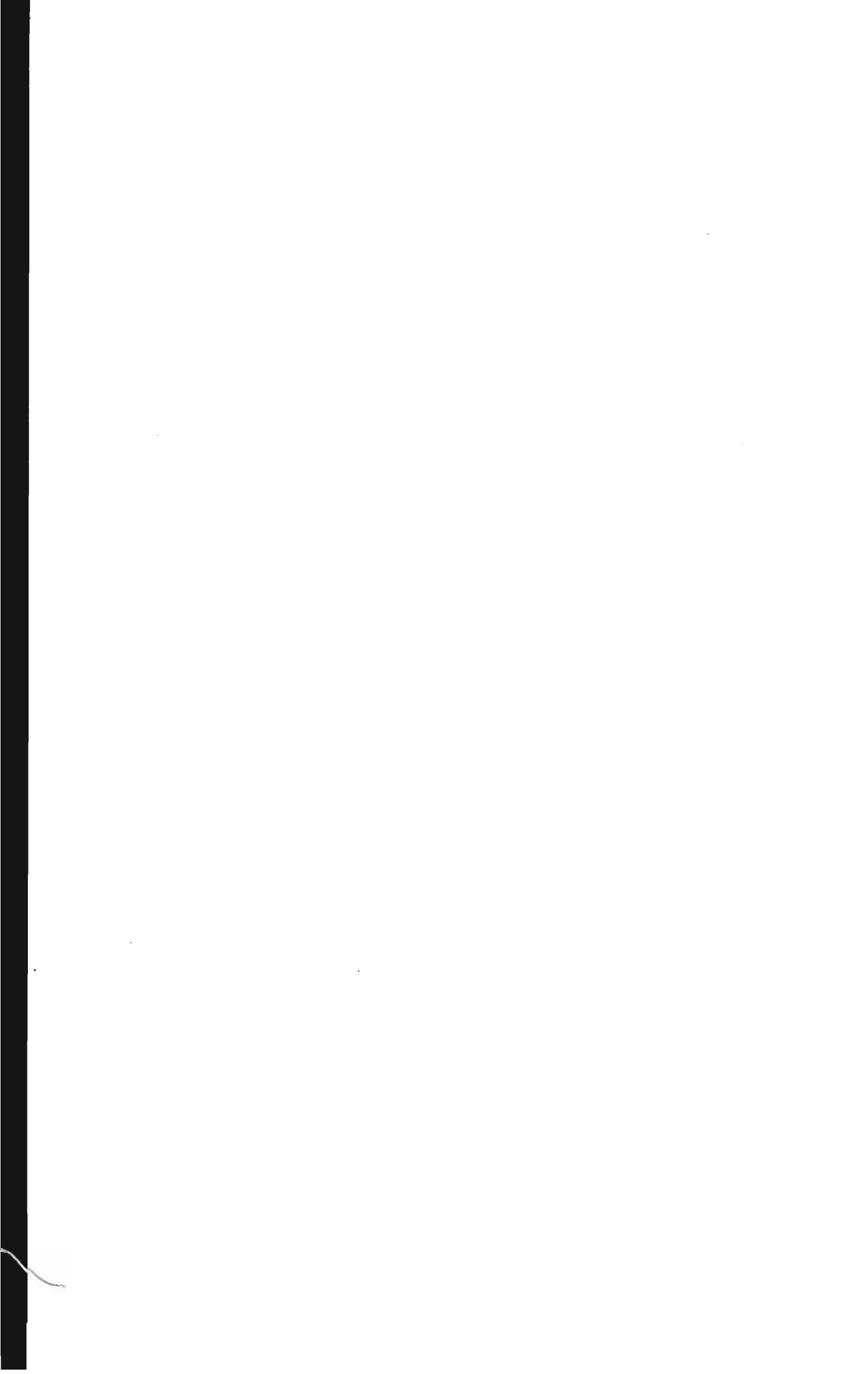
reserved for the "U" processions. The meaning of all this, as their Lordships think, is plain. First of all, except for the supposed illegality of certain processions, the "Y" temple had always been fully entitled to carry out any of its processions without asking the "U" temple's leave. Presumably, therefore, the liberty was sought for and conceded in consequence of that supposed illegality. But, secondly, the agreement could not make legal processions which for any reason were illegal. All it could do with reference to the "Y" temple processions and ceremonies was to provide that no objection to these would be taken by the "U" temple, whatever might be at law its right to stop them. And this the agreement in effect did. Further, by implication, as their Lordships think, the agreement imported that the "U" temple would not by any procession or ceremony of its own, or in any other way, interfere with or obstruct any processions or ceremonies of the "Y" temple thereby authorised, except to the extent in terms permitted by the agreement itself.

But the agreement imposes no further fetter or restriction upon the "U" temple. If any further restriction on that temple conventionally exists, it must be found in the other agreement, the agreement by which, as recited, the "Y" temple in similar form, although in terms more restricted, had apparently defined the processions and the like which, as between the "U" temple and itself, the "U" temple might carry out. And if the law had been what it was then supposed to be, the liberty so conceded by the "Y" temple would have been, in effect, the measure of the "U" temple's enjoyment, because the agreement did not prevent the "Y" temple from exercising any right the general law gave it to stop any further processions of the "U" temple. But equally the agreement as recited imposes no restriction in terms upon the "U" temple, and, however non-existent the privilege may have been supposed to be, the agreement in no way purports to interfere with the exercise by the "U" temple of any rights in respect either of processions, ceremonies, or anything else of which by law that temple was, irrespective of any consent or approval of the "Y" temple, possessed. And the legal rights of the "U" temple in such a matter are now undoubted. The decisions of the Sudder Court above referred to are over-ruled. All religious processions, those of the appellant's and the respondents' temples indifferently, are now under the control of the police. As so controlled all are equally lawful. If, therefore, the true effect in this matter of the two agreements be, as their Lordships think it is, that the obligation of the respondents thereunder is merely an obligation not to interfere with or obstruct any authorised procession or ceremony of the "Y" temple, it is plain that by their procession of the 13th November, 1918, the respondents infringed no right of the appellant or his temple under that agreement. The result is, that the suit fails. Their Lordships, however, are not without hope that the elucidation of the effect of the instruments and the free course for the "Y"

temple's processions which, so far as the " U " temple is concerned, these secure will, when brought to the notice of the police, enable them by apt regulation of the processions of the two temples to bring about an accommodation between them which ought to have been reached without any recourse to litigation.

Their Lordships, in expressing these views as to its meaning, have, like the High Court, assumed the agreement in suit to be valid. They have not inquired into and do not pronounce upon the defences to the suit made in their written statement by the respondents.

For the reasons they have given, their Lordships think that the order and decree of the High Court should stand, and they will humbly advise His Majesty that this appeal therefrom be dismissed with costs.



In the Privy Council.

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NATTU KESAVA MUDALIAR

vs.

V. S. GOVINDACHARIAR AND OTHERS.

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DELIVERED BY LORD BLANESBURGH.

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