Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Arumugam Chetty and others v. *Perriyannan Servai and others, from the High Court of Judicature at Madras; delivered 27th November* 1875.

Present:
SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THE Appellants, who were the Plaintiffs in the action out of which this Appeal has arisen, are or represent the Nattukottay Chetties who belong to the Nagaram of Velangudi, and have been throughout these proceedings, and in this judgment will be termed "the Nagarattars." The action was brought by them against certain persons of a different caste who represent a community, that may be called and has been called throughout the proceedings "the Nattars." The Plaintiffs the Nagarattars form part of the urban and trading population of this district of Velangudi. The Nattars belong to the rural population, and are probably cultivators of the soil. The object of the suit is to have it declared that the Nagarattars are entitled to the management of two pagodas, which for all practical purposes may be treated as one pagoda, devoted to the service of the Durga goddess, whose particular title is Periyanayaka. They also claim to have delivered over to them the possession of those pagodas, with the appurtenances, consisting of ornaments and other articles relating to the worship of this idol. The

Civil Judge found in favour of the Nagarattars. The High Court has reversed his decree, and made a decree dismissing the suit, against which the present Appeal is brought.

Their Lordships cannot but regret that the learned Judges of the High Court have not stated in greater detail the reasons which induced them to come to a conclusion contrary to that which the Civil Judge had suppported by a judgment, which, whether it be right or wrong, must be admitted to be one very carefully considered. The very nature of the dispute renders it peculiarly desirable that their Lordships should have all the light which the full expression of the opinions of judges of local experience, dealing with conflicting evidence, would throw upon the case. Their Lordships, however, must deal with the case as it stands.

The case made by the Nagarattars was that these pagodas were mere dependencies of a larger pagoda dedicated to the worship of Siva, of which they are the admitted managers; that the three pagodas had been supported out of the same funds; that they, the Nagarattars, had the administration of those funds; that the worship and all the services of the pagodas were performed by servants appointed by them; and, feeling it necessary to account for a change in the possession of the pagodas, they distinctly alleged in their plaint that "on the night of the "28th April 1871 the Defendants forced open "the doors of the said two Periyanayaki "Amman's pagodas, and took possession of the "said pagodas, and are keeping the sacred jewels "and other property which they took there-"from." And further, "that the Defendants "on that same night unlawfully carried away "the idol of the village, Periyanayaki Am-"man, which, according to custom, had been "brought to the Kanteswara Mudayar pagoda

" for the Sivaratri festival, and also the property " mentioned below, even before the festival was " over." Then they pointedly say, " The cause " of action is the fact of the Defendants having " unlawfully entered the said pagodas, and taken " possession of the things therein. It arose on " the 28th April 1871."

Now it is admitted that of this forcible entry and dispossession there is no evidence whatever, and therefore that the issue which had been framed upon that allegation in the plaint would of necessity have been found against the Nagarattars. On the other hand, it may be admitted that the case made by the Nattars is not altogether consistent with the evidence taken in the cause. They seem to have asserted that these pagodas were wholly distinct from the pagoda of Siva, and in no way connected, by worship or otherwise, with it; and they suggested that certain sacrifices involving the taking of animal life, which formed part of the worship of the Durga goddess, and were not permitted in the worship of Siva, rendered it impossible, in a Hindoo point of view, that the two institutions should be so connected. The evidence, no doubt, does not support these or some of the other allegations made by the Defendants. There does seem to have been a certain community of management. It was admitted in the case that there was but one set of servants for the three pagodas up to the date of the Inam Puttah of the 19th November 1869, and that up to that date all the incomes were enjoyed in common. It was admitted, or, if not admitted, proved, that the image of the Periyanayaki idol was occasionally taken to the pagoda of Siva, and there remained for a certain time; that the same dancing girls attended the two pagodas; that the endowment being a common one, the granaries and other things were in common; and that certain daily

allowances were, at all events until the dispute culminated in a rupture, made by the Nagarattars for the daily worship of the Periyanayaki Amman. But the failure of the Defendants to make out wholly the case which they have pleaded in defence will not entitle the Plaintiffs, if they have failed to make out their title, to disturb the existing possession, or to succeed in this suit.

Now, if the allegation of forcible dispossession had been made out, the case of the Nagarattars would, no doubt, be an extremely strong one. It would probably have been inferred from the evidence that their possession up to the date of that forcible act had been consistent with the title which they alleged. But since they have failed to prove the dispossession alleged, we have to deal with a possession on the part of the Defendants which is not shown to have commenced in wrong, and the Plaintiffs can only disturb that by proving distinctly a superior title. In the opinion of their Lordships, they have failed to do so. There is, no doubt, a great deal of conflicting testimony; but the evidence on the whole, as to the ceremonies and the like, support several of the short observations which the learned judges of the High Court have made in support of their decree. It certainly appears that the Nattars have been allowed precedence and peculiar honours in some ceremonies and points of worship; it also appears that they have exercised some control over the transfer of the image and other matters into which their Lordships do not think it necessary to go at length. One very important circumstance is that the custodian of the jewels of this idol, which appear to be of very considerable value, is admitted to be a Nattar who is described as the hereditary jeweller of the village. His ancestors, therefore, may be inferred

to have had the possession of these jewels, which the civil judge has by his decree preserved to him. The cars and all that were necessary for the movement of the idol are also found to have always been in the custody of the Nattars.

Upon the question of possession, Mr. Mayne, abandoning the forcible dispossession alleged by the plaint, has fallen back upon a dispossession supposed to be consequent upon the delivery out of the pottah of 1869. This brings us to the consideration of that which is the most important piece of evidence in the cause, namely, the proceedings of the Inam Commission, which are set out at page 74*a* and the following pages. One, if not the principal, object of that Commission appears to have been to ascertain what lands had been effectually made subject to religious trusts, and, as such, had become either rent free, or subject only to a small and fixed quit rent. The inquiry seems to have been conducted locally, under the authority of the Inam commissioner, by the deputy collectors of the different districts, and to have been carried on from village to village. It seems to their Lordships clearly to result from the exhibit, No. 90 T, at page 74*a* and the three following pages of the record, that the dispute as to the rights of the Nattars in these pagodas cannot have dated, as Mr. Mayne contends, from the delivery out of the pottah in 1869, because the proceedings to which those documents relate certainly took place in 1863. Now what is the effect of those documents? Those at pages 74*b* and 74*c* relate to the villages Pandiranendal and Ayakaranendal, which form part of what may be called the common endowments of the pagodas, and each gives the result of the inquiry of the Commission touching the particular village to which it relates. In each the village in question is described as a davas-

tanum village in the zemindary of Sivagangai. It says, "this was granted for the maintenance "of the temple of Stri Khandeswaraswami in "Velangudi; this is a permanent grant. No "pottah." From this it may be inferred that the original grant of the lands was made by some ancient zemindar of Sivagangai. But there is no evidence of the date or of the terms of the grant. Each document says, "The temple is efficiently kept up." In each there is afterwards a more particular statement of the trusts to which the proceeds of the village are applicable. In that relating to Pandinarendal it is said, "The proceeds of "the village are appropriated for the temple "of Stri Khandaswara Swami, and for Nattukcvil "of Peria Nayake Ammen." The latter are the temples in dispute. "Though the name of the "goddess is not entered in the accounts of "Fusli 1211 and 1223, in the Zemindar's "account of Fusli 1212 it is entered. Hence "the village belongs to Nagara Kovil of "Kandeswara Swamy and Nattukovil of Periya "Nayake Ammen; these two temples are under "the management of the trustees in column 16 "since long." The corresponding note upon the other village is in greater detail, and makes it still more clear that there was then a distinct allegation, acquiesced in by the Collector, that the pagoda of the goddess belonged to the Nattars:—"The proceeds of this village "are appropriated for the use of the temple "of Khandeswarra Swami, which belongs to "Nagarattar or Nattukottay Setties, and to "the temple of Periya Nayakee Ammon, which "belongs to Nattar." Again it appears that the persons originally treated as the trustees of the property were only the two Chetties whose names are entered in the 16th and 17th columns. But before the record was finally made up, the names of three Nattars were added; and that

this was done upon the representation of the Nattars, insisting upon some record of their rights is admitted even by the Civil Judge in the explanation which he gives of the circumstance. That the addition was subsequent to the first draft of the document appears from the note in the 20th column, which is dated June 1864; whereas the date of the preceding note is December 1863, or six months earlier. Their Lordships cannot admit the explanation of the alteration which is suggested by the Civil Judge, if by it he means to suggest that the alteration was made in consequence of some tumultuous representations of the Nattars, amounting to coercion. It may be true that a mob of Nattars tumultuously desired that the three Nattars should be registered as trustees. But their claim, though, in the first instance, tumultuously asserted, was obviously under consideration for a considerable time, and was finally confirmed by the officiating Inam commissioner on the 22d of December 1864. These proceedings cannot have been had under pressure on the part of a mob; and it must be presumed that the authorities came advisedly to the conclusion that the claim was a just one.

This view is in some degree confirmed by what was done also in 1863 with regard to the small portion of land which was afterwards the subject of the pottah of 1869. The document at p. 74 *a*. of the record treats the proceeds of that land as exclusively devoted to the support of the pagoda of Periyanayaka. The Inam ticket was not given, as in the other case, to the Nagarattars. They were not entered as trustees in the column of trustees; and though, on the other hand, no Nattar is entered, the ticket was made over to the gurukhal. He was treated as the worshipper entitled to the ticket. A distinction was therefore made, which would hardly have been

made if the three pagodas had been really and undisputedly part of the same institution, and subject to the same management.

It was said that, notwithstanding these proceedings, everything went on as before; that the proceeds of the endowments were received by the Nagarattars; and that there was no dispute until the pottah of 1869 was issued, and, in conformity with the document at p. 74 *a*, was given out to the gurukhal, from whom it passed to the principal of the Nattars. It is suggested that this gurukhal played his employers, the Nagarattars, false, and made an improper transfer. But there is nothing to show that he was not right in so dealing with the pottah. It is perfectly clear that the pagoda had been described as a Nattar pagoda, and that the Nattars were as early as 1863 claiming some rights of management in it, or they would never have been entered in the documents relating to the common endowments as trustees. This particular parcel of land belonged exclusively to the pagoda of Periyanayaka Ammon. The Nagarattars had ostensibly no concern with it. Again, the pottah which was granted of the other villages is not produced, and it is not satisfactorily accounted for. It is perfectly consistent with probability, and must be presumed, in the absence of any evidence to the contrary, that this pottah was in conformity with the records of the Inam Commission, and was a grant of these villages to the Nattars as well as the Nagarattars as trustees. The superior habits of business and life of the Chetties may account for their continuing to receive the profits of, and generally manage, the common endowment; but that is not a circumstance which establishes their right to recover the possession of these pagodas from the Nattars, who, as far as their Lordships can see on the evidence, have

always to some extent been in possession. Certain it is that the dispossession of the Nagarattars, or the first claim of possession on the part of the Nattars, cannot be said to date only from the grant of that pottah, because it is proved in the cause that as early as 1867 the Nattars were resisting the removal of this image, when the Nagarattars wished to have it removed to the temple of Siva; and must, therefore, at that time at least, have been asserting dominion over the image in opposition to the Nagarattars.

Of the original foundation of the Siva temple, beyond what is to be gathered from the proceedings of the Inam Commission, there is no trace. One contention of the Appellants was that wherever there is a temple devoted to Siva there will be found a dependent temple devoted to the worship of some Durga goddess in its vicinity. It is, however, established that this state of things is universal, and it may well have happened that these temples may have been established by the Nattars or the Nattar community taking advantage of the vicinage of a Siva temple, and giving the managers of that temple the benefit of the new foundation. The inscription, which might have shown who was the founder of the pagodas in dispute, is unfortunately defaced in an important word. Again, it may have been arranged by the zemindar for the time being of Sivagungai that part of his endowment of the Siva Temple should go to the sustentation of the other temples, though founded by Nattars. That is perfectly consistent with the theory that some right of possession and management is in the Nattars.

Upon the whole their Lordships are of opinion that the explanation which has been given by the Civil Judge of the proceedings of the Inam Commission, and of the addition made to them in favour of the Nattars, is unsatisfactory; that those documents turn the scale of the conflicting

evidence, and that certainly the Nagarattars have not made out their right to disturb the possession which now exists. The necessary consequence of this is that the suit as framed is improper, and that the decree of the High Court is correct.

It has been alleged by Mr. Mayne that a decision to this effect leaves the parties in an unsatisfactory position. And this, no doubt, may be true. It may happen that, either by reason of the refusal of the Nagarattars to apply the funds in their hands to the sustentation of the smaller pagodas while they are in the possession of the Nattars, or from some other cause, fresh difficulties and disputes may arise. It is much to be hoped that if this should be the case the parties will contrive to have their differences determined by a native panchayat, a tribunal peculiarly adapted to determine disputes of this kind, which necessarily involve many nice considerations founded on Hindoo usage, Hindoo ritual, Hindoo belief, and Hindoo feeling. But, even if the parties have again to come to the Courts, they must so come in a suit properly framed for the purpose of having their disputes settled by what we should call a scheme for the administration of the endowment. Dealing with this suit as it stands, their Lordships can but advise Her Majesty to affirm the decree of the High Court, and to dismiss this Appeal, with costs.