

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**APPELLATE CIVIL**

**LETTERS PATENT APPEAL NO. 45 OF 1974  
1976, September 9**

**BEFORE P.S.KAILASAM C.J. AND BALASUBRAMANYAM J.**

**Thatha Desika Thathachariar and another, Appellants.**

**Vs.**

**K.V. ALAGIAMANAVALA JEERSWAMY AND OTHERS, RESPONDENTS.**

**Hindu Religious and Charitable Endowments Act (II of 1927) Sections 18 and 79—  
Scope and applicability—Decision of Board under Act will not operate as res judicate to  
subsequent decision of Court.**

**Dismissal of petition to amend plaint on ground of delay along with pronouncement of  
judgment—Whether it will affect decree.**

**Change of Thengalai namam to temple elephant into Vadagalai namam by trustee of  
temple—usage in temple violated—Question of limitation—When it starts—Principle  
underlying it.**

The contention of the appellants that the trial Court was in error in granting a decree directing the defendants to paint the living elephant in the suit temple with Thengalai namam permanently restraining the defendants from putting the Vadagalai namam on the living elephant maintained or possessed by the temple, on the ground that as the application for amendment of the plain was refused, relief, which was ultimately given should not have been given, cannot be accepted. The trial Court held that it was unnecessary to consider this application as the orders on the application and in the suit were passed simultaneously. The amendment petition was dismissed only on the ground that the judgment in the suit was being delivered on that day. Hence, the plea of the appellants that the trial Court having dismissed the amendment petition ought not to have given a decree in the terms in which it did is, therefore, without substance.

The further contention that the decision of the Hindu Religious Endowments Board in O.A.No.466 of 1940, that the temple elephant should bear Vadagalai namam has become final and as such the suit is barred by res judicata, is also not tenable. The application was filed by two persons under Sections 18 and 79 of the Madras Act II of 1927,

for a direction to the trustees to preserve Thengalai namam. The Board dismissed the petition on various grounds. The main ground was that the decision in Appeal suit No. 13 of 1854 applied only to the then living elephant and therefore, after the death of the elephant in question in 1894, the judgment in Appeal Suit No.13 of 1854 was no longer applicable. This is clearly beyond the scope of the powers of the Commissioner of the Hindu Religious Endowments Board as they cannot question the correctness of a civil Court's decree. The Board ordered that Vadagalai namam should be painted on the elephant. The decision was mainly based on the ground that it was the donor's wish that the elephant should be painted with Vadagalai namam, and that the elephant formed part of the paraphernalia of the chief deity and the chief deity in the temple admittedly bears Vadagalai namam. But both the reasons given by the Board, do not relate to any question of usage in the temple. Further, the application was made in an individual capacity by two persons under Sections 18 and 79 of Madras Act II of 1927 for direction from the Board to the trustees to preserve the Thengalai namam. The question of the established usage regarding the namam to be painted on the elephant made it clear that the decision was subject to any decision by the civil court in a suit that may be filed by the aggrieved party. Section 18 of the Madras Hindu Religious Endowments Act, 1927, conferred powers of general superintendence of all religious endowments on the Board and empowered the Board to do all things which are reasonable and necessary to properly maintain the institution. The section, while conferring on the Board the right of general superintendence over the temple, does not confer any right on the Board to decide or adjudicate the rights of the parties. Under Section 18 the rights of parties cannot be decided by the Board. Apart from this fact that the Madras Act II of 1927, has not made the order of the Board final, even on merits, the order cannot be construed as deciding the usage of the temple. It can only be taken as an order relating to the living elephant presented by the Maharaja of Travancore.

The decision in A.A.O.No. 111 of 1946 cannot operate as res judicata. The appeal was not disposed of on merits. The suit was dismissed as having been filed in a Court which had no jurisdiction. The plaint was returned. The appeal was not disposed of on merits. The mere fact that the Court had recorded an undertaking that the appellants would not proceed with the suit, would not affect the rights of the present plaintiffs. As there was no trial of the issues at any stage the dismissal of the appeal would not improve matters. Thus the judgement in A.A.C.No. 111 of 1948 cannot operate as res judicata.

There is no basis at all for the contention that the right even if it was declared in favour of the Thengalai sect in 1894 was lost by non-user. As already found from 1894 to 1940 there was no temple elephant and after that there were disputes between the parties and the decision of the plaintiffs losing their established right by non-user does not arise at all on the facts.

The contention that the period of limitation starts running from the date on which the declared right of the plaintiffs to have Thengalai namam was infringed and on that basis the suit is barred is unsustainable as the cause of action arises on every occasion when the right is infringed. It is not open to the defendants to contend that the trustees by their acting contrary to the rights of the parties started prescribing a title or extinguished the existing title the trustee cannot prescribe any right as against a beneficiary. It would be anomalous to hold that the defendants in their capacity as trustees can prescribe a right to destroy the long established usage of the temple.

APPEAL under Clause 15 of the Letters Patent against the decree and judgment of RAMANUJAM J., dated 27<sup>th</sup> June, 1974 and passed in Second Appeal No.98 of 1973 preferred to the High Court against the decree of the Court of the Principal Subordinate Judge, Chingleput dated 30<sup>th</sup> September, 1972 and passed in Appeal Suit No.108 of 1970 (Original Suit No.408 of 1966, Principal District Munsiff's Court, Chingleput).

K.Parsaran for the appellants

V.N.Venkatavaradachariar and P.S.Srisailam for the respondents.

THE JUDGMENT OF THE COURT WAS DELIVERED BY KAILASAM  
C.J.----

The Defendants 2 and 3 in the suit are the appellants in the Letters Patent Appeal. The suit was filed by plaintiffs 1 to 4. They are residents of Kancheepuram and are Thengalai vaishnavites holding office in Sri Devaraja Swami Temple. The suit was filed for themselves and as representatives of the entire body of Thengalai vaishnavites of Kancheepuram, who are office holders and mirasdars of Sri Devaraja Swami Temple. The dispute mainly relates to the namam which the temple elephant should bear. The elephant dies on 28<sup>th</sup> March 1965. According to the plaintiffs the trustees were making an attempt to get an elephant themselves and introduce it with Vadagalai namam. According to the

plaintiffs, the established usage of the temple is that the elephant should have only a Thengalai namam. As the plaintiffs apprehended that the trustees would induct an elephant with a Vadagalai namam, they offered to present an elephant provided it bore the Thengalai namam. They also apprehended that the trustees, who belong to the Vadagalai sect, might introduce an elephant with a Vadagalai Namam and therefore sought to prevent it. The reliefs they sought in this suit were direction to the defendants to accept the gift of an elephant to the suit temple by the plaintiffs or their nominees and have it painted with Thengalai namam on all occasions inside and outside the temple and in temple processions with Deities or when connected with the worship and other ceremonies of the temple as per the decree in Appeal Suit No. 13 of 1854 and a permanent injunction restraining the defendants of their agents or servants from putting Vadagalai namam to the living elephant donated, maintained, or possessed by the temple and using the same for any festivals, processions, functions or occasions of the temple.

(2) The executive trustee and two other trustees were made defendants in the suit and they raised various contentions opposing the grant of the reliefs prayed for in the suit. The executive trustee files a written statement and other two defendants, who were honorary trustees, also filed separate written statements.

(3) The plaint was filed on 23<sup>rd</sup> November, 1965. The plaintiffs offered an elephant to the temple, but that offer was declined by the Trustees. The suit, though filed in July 1965 was numbered only by the end of November, 1965. In the meantime, on 17<sup>th</sup> November 1965, an elephant with a Vadagalai namam was introduced in the temple. The plaintiffs filed Interlocutory Application No.1176 of 1965 on 14<sup>th</sup> December, 1965 for an injunction complaining against the superstitious introduction of the elephant. In January, 1966, the defendants admitted the presentation of the elephant with a Vadagalai namam and contended that as a Vadagalai namam had already been put on the elephant, no temporary injunction need to be granted. The plaintiffs filed Interlocutory Application No. 439 of 1968 praying for an amendment of the plaint on the ground that after the filing of the suit plaint, an elephant with a Vadagalai namam had been introduced. They sought for a direction to the defendants to erase the Vadagalai namam put on the face of the elephant and for placing instead a Thengalai namam.

(4) Various contentions were raised in the trial Court. The trial Court framed six issues on 2<sup>nd</sup> February, 1966 and subsequently on 3<sup>rd</sup> April 1968 framed an additional

issues. Again on 25<sup>th</sup> April 1968, it deleted issues 1 and 5 framed on 2<sup>nd</sup> February 1966, but framed 19 additional issues.

(5) The trial Court held that the established usage of the temple was to paint the temple elephant with a Thengalai namam, that it was only in the year 1941 the temple trustees for the first time began parading the temple elephant with Vadagalai mark on the pretext that the elephant was one which was presented by the donor with a condition that it should bear Vadagalai namam, that the painting of Vadagalai namam on the temple elephant was contrary to the established usage of the temple which had been found and recognized in Appeal Suit No. 13 of 1854, that the said decision was binding on the trustees, that the elephant which was painted with Vadagalai namam after 1941 was gifted to the temple with the condition that only Vadagalai namam had to be painted, that the decision in O.A.No. 466 of 1940, was based on the fact that the elephant maintained that of time by the temple had been gifted with a condition that should bear only the Vadagalai namam and that therefore the decision on O.A. 466 1940 could not be said to be conclusive on the question of the established usage of the temple, that the suit was not barred by the provision of the Hindu Religious and Charitable Endowments Act and that the plaintiffs were entitled to maintain the suit for giving effect to the usage which had been found in Appeal Suit No. 13 of 1854. in the result, the trial Court decreed thee suit directing the defendants to paint the living elephant in the temple with Thengalai namam on all occasions, inside and outside the temple and in temple processions as per the decree in Appeal Suit No.13 of 1854 and restraining the defendants from putting Vadagalai namam to the living elephant maintained by the temple and using the same for any festivals, processions, functions, or occasions of the temple.

(6) On appeal by defendants 2 and 3, the lower appellant Court also agreed with the view taken by the trial Court and confirmed the decree.

(7) In the second appeal, RAMANUJAM, J., confirmed the findings of the Courts below holding that the established usage in the temple was that the elephant should have only a Thengalai namam and rejecting all the contentions advanced by the defendants, be dismissed in the second appeal, but granted leave. Hence this Letters Patent Appeal.

(8) It would not be out of place to give a short history of this 150 years war of the namams. A short account of the temple, the worship of Vishnu in southern India and of the rituals and ceremonies in Vaishnavite temples are found in the decision of the Privy

Council in *Pedda Jiyyangaru Varlu Vs. Venkatacharlu* (1947 M.L.J. 159). The earliest scriptures, dating from 2500 years ago, are the Sanskrit Vedas of hymns, held sacred by all Hindus. Very much later, Prabandhams consisting of 4000 compositions in the Tamil language were compiled by alwars who were Vasishnava devotees in Southern India. Subsequently, the Acharyas or learned Brahmins acted as religious preceptors. Of these, the most famous was Ramanuja, who flourished between 1017 and 1137 A.D. Vedanta Desikar who flourished between 1268 and 1369 A.D. and Manavala Mahamuni who lived between 1370 and 1443 A.D. These Acharyas composed a number of Sanskrit verses in praise of the Deity called Sthothra Patams. The Prabandhams being earlier in origin became part of the ritual of the Vaishnavite temple services and later the Sthothra Patams were also recited on special occasions.

(9) Differences arose among Vaishnavites by about the fourteenth century as to form of worship. One Section followed Vedanta Desikar and they specialized in the study and exposition of the Sanskrit Vedas and regarded the Alwars and their Prabandhams as entitled to less reverence. They became known as Vadagalais or followers of the Northern cult. The other section, the followers of Manavala Mahamuni specialized in the study and exposition of the Tamil Prabandhams of the Alwars and became known as Thengalais or the followers of the Southern cult. There are several Vaishnavite temples in which the Vadagalai cult prevails, while in others, the Thengalai cult prevails. While generally the services are the same in both classes of temples, there are certain features which distinguish Vadagalai and Thengalai rituals. It is unnecessary to go into the details except to say that the first stanza according to the Thengalai cult begins with the words “Sri Sailesa Dayapathram” and invoke the Thengalai guru Manavala Mahamuni whereas, according to the Vadagalai cult, the first stanza begins with the words “Ramanuja Dayapathram” and invoke the Vadagalai guru Vedanta Desikar,. At the conclusion of the recitation of the Prabandham benedictory verses called Vazhi Tirunamam are recited consisting of nine stanzas of which the first four are common to both sects, while the last five differ. While both the Vadagalais and Thengalais share a common religious origin and faith and also adhere to their own school of thought, neither of them condemns or rejects the sacred character of the other cult. While so, the divergence between the two rituals outlines above has given rise to the most bitter, unreasonable and vicious fight between the two groups for nearly two hundred years.

(10) In this litigation, the dispute centres on the question as to the namam which should adorn the temple elephant. The namams of Vadagalai and Thengalai differ from each other. It is unnecessary to go into the origin or the difference between the two namams. It is sufficient to state that the namam is considered as a very important religious symbol and any violation of the practice of using a particular namam is looked upon as a serious inroad into the religious practice on the other. The dispute as regards the namam in this temple started as early as 1792. The nature of the dispute is revealed in the several decisions of this Court and certain documents relied on by the plaintiffs. The particulars of the disputes as revealed by the documents and the decisions show that the Thengalai community had the right of painting the Thengalai namam on the temple elephant from the year 1823. The documents that are filed by the plaintiffs in this suit and accepted by all the Courts and which related to this aspect, are exhibits A-1, A-2, A-3, A-4, A-8 and A-12. Exhibit A-1 is a copy of the list of the Thengalai namams prepared by the Temple Superintendent Narahari Rao on 17<sup>th</sup> January 1823. Exhibit A-1 shows that there were constant disputes between Vadagalai and Thengalai sects as regards the nature of the namam put on the various places in the temple and that for resolving the dispute, he had been asked to take out a list of names found in the temple precincts, deities etc. He submitted a report and according to the report, the temple elephant had only a Thengalai namam. Exhibit A-2 is a document marked in Appeal Suit No. 14 of 1854 on the file of the Civil Judge, Chingleput. The document is a copy of the Ursee, which was sent with the list by Ramaswami Maistry, Superintendent to the Collector. Exhibit A-2 is found in pages 158 to 160 of exhibit A-12. The order of the Collector reveals that by his own inspection he ascertained that exhibit A-2 was correct. The inventory of four amins (exhibit A-3) and the report of the peon Kasiram, which is found in pages 170 to 173 of exhibit A-12, were compared and the conclusion was arrived at that Manavala Mahamuni was purely a Thengalai priest and that the Vadagalai people changed the Thengalai namam of Manavala Mahamuni. The learned Appellate Judge in Appeal Suit No. 14 of 1854 came to the conclusion that the namams were changed on the living elephant, the northern wall of Gangaikondan Mandapam, the Yali Vahanam and the elephant suspended thereto. The learned District Munsif in this suit had considered all these documents and accepting Ramaswami Maistry's report found that it was established beyond doubt that prior to August 1827 the living elephant in the suit temple was wearing only Thengalai namam. This finding has been accepted by all the Courts and it cannot be questioned in second appeal or in the Letters Patent Appeal.

(11) In the year 1850, Original Suit No.14 of 1850, was filed in the Civil Court by the Theertham and Aroopadaon and Adhyapaka Mirasdar, as the principal man of Thengalai for the removal of Vadagalai namam in the Mandapam and on the living elephant. Another suit, Original Suit No.15 of 1850, was filed complaining of further mutilations of Thengalai namams after the filing of the earlier suit. The suits were dismissed. But the two appeals preferred in O.S.Nos. 13 and 14 of 1854 before the Civil Judge Chinglepet were allowed with a direction that the Thengalai namam should be restored on the temple elephant. The Civil Court considered all the oral and documentary evidence and after personal inspection held that an attempt had been made by the Vadagalais to mutilate the Thengalai namam and to make it a Vadagalai namam and therefore the plaintiffs were entitled to the restoration of the Thengalai namam not only in the mandapam, vahanams etc., but also on the living elephant. Clause 21 of the decree in Appeal Suit No.13 of 1854 directed the trustees to restore the Thengalai namams on the living elephant. The judgments in the appeals are marked as exhibits A-4 and A-5. These judgments reveal that the established usage prior to 1854 was to paint Thengalai Namam on the temple elephant. These judgments became final as a further appeal to the Sadar Adalat Court against the judgment in Appeal Suit No.13 of 1854 was dismissed on 28<sup>th</sup> April 1857. Exhibit A-8 dated 10<sup>th</sup> April 1858 reveals that a Hukum Nama was issued by the Civil Judge to the Amin for the restoration of the Thengalai namam on the living elephant. The Court amin complained that on 30<sup>th</sup> April 1858 he was obstructed by the trustees when the Thengalai namam was put on the elephant. He reported that the elephant was refused to be taken by the trustees for the uthsavams. On receipt of the report, the civil Judge passed an order on 8<sup>th</sup> May 1858 directing the removal of obstruction and stating that if any further obstruction was given by anyone, they would be dealt with for disobedience and for disregarding the process of the Court. Subsequently the direction of the Court was carried out and a Thengalai namam 1 foot in length and  $\frac{3}{4}$  foot in breadth was painted on the living elephant. A proclamation was issued by the Civil Judge on 2<sup>nd</sup> June 1858 that the Thengalai namam according to mamul had been caused to be put on the living elephant and on other things and that anyone who disfigured or removed the namams would become liable to serious punishment and for damages according to law. Still the Vadagalais would not accept defeat and the temple trustees covered the head of the elephant having the Thengalai namam with a cloth on which Vadagalai namam had been put. A complaint was made in 1858 in Miscellaneous Petition No.166 of 1858 by the Thengalais against the trustees that they were purposely covering the head of the elephant with a cloth so that Thengalai namam would not be seen. The Court imposed a fine of Rs. 50-00 on the trustees

for contempt of its order. But subsequently the order was set aside by the appellate Judge on the ground that evidence was not sufficient to show that the trustees, themselves infringed the order of the Court, though the direction to restore the namams was affirmed.

(12) The disputes between the parties had come up before this court on various occasions. Apart from the documents referred to above, the details of the dispute can be found *Krishnaswami Thathachariar V. Krishnamachariar* (I.L.R. 5 Mad. 323) and *Veeraraghavan Thathachariar V. Srinivasa Thathachariar* (23 M.L.J. 134). In the latter decision, the rights of the Thengalais have been declared. It was found that the Thengalais owned the right to a good proportion of the thirteen offices. Many of the namams in the temple are Thengalai namams. The Thengalais have also the right of Abirvathams and a Thengalai is entitled to the office of Mulji Dhamakartha. The various documents filed in the above two cases and in *Krishnasami Ayyangar V. Samram Singarachariar* (30 M.L.J. 158) show that the Thengalais had various rights and held the important office of Mulji dharkartha. The irreconcilable dispute and the bitter enmity between the Thengalais and Vadagalais in the temple is recorded in the above decisions.

(13) The temple elephant which was having the Thengalai namam died in the year 1894. One of the points at issue between the parties is as to whether the temple owned any elephant between 1894 and 1940 and, if so, what namam the elephant bore. According to the plaintiffs, the temple did not own any elephant during that time. But the trustees paraded an elephant with Vadagalai namam and when objected to by the Thengalai sect, the elephant was withdrawn. According to the defendants, the temple owned an elephant during that time and it was painted with Vadagalai namam as usual. The finding on this point is that it has not been shown that the temple owned any elephant between 1894 and 1940. The Courts below as well as the learned Judge in second appeal have found that there is absolutely no evidence to prove that the temple acquired any elephant between 1894 and 1940. The trustees have not produced any accounts to show that the temple owned and maintained any elephant during that period at the temple expense. The learned Judge accepted the concurrent finding of the trial Court as well as the first appellate Court that the temple did not own any elephant between 1894 and 1940. The finding is one of fact and we see no reason for not accepting the concurrent finding of all the three Courts. We have therefore to proceed on the basis that the temple did not own any elephant till 1940.

(14) In the year 1942, the Maharaja of Travancore, presented an elephant to the temple with a condition that the elephant should bear only a Vadagalai namam. That elephant was painted with Vadagalai namam and was taken out during temple festivals and processions. Two members of the Thengalai sect filed O.A.No. 466 of 1940 under sections 18 and 79 of the Madras Hindu Religious Endowments Act, 1927 for a direction to the trustees to put only Thengalai namam on the living elephant. That application was resisted by the trustees. The Hindu Religious Endowments Board by an order dated 3<sup>rd</sup> February 1942 held that the temple elephant should bear only Vadagalai namam. Various reasons were given for coming to this conclusion. The Board of Commissioners were of the view that the decision in Appeal Suit No.13 of 1854 would apply only to the elephant then living and would not apply to the subsequent elephants that might be owned by the temple. They also found that the main deity bore Vadagalai namam and therefore the temple elephant also should bear Vadagalai namam. In any event as the elephant was donated by the Maharaja of Travancore and the donor's wish was that the elephant should have Vadagalai namam, it was ordered that the elephant should bear only Vadagalai namam. A direction was issued to the trustees to continue to paint the living elephant with Vadagalai namam subject to the result of any suit which any aggrieved party might file. Thereafter five of the members of the Thengalai sect filed Original Suit No. 7 of 1945. In that suit the plaintiff questioned the correctness of the order of the Board of Commissioners and sought a direction to the trustees to paint the living elephant with Thengalai namam in accordance with the long established usage. That suit was dismissed by the District Court of Chingleput on the ground that it had no jurisdiction to entertain the suit as it should have been filed before the Court of the Subordinate Judge. The plain was returned for presentation to the proper Court. The plaintiffs filed Criminal Miscellaneous Appeal No. 111 of 1948 to this Court. But, ultimately, the appeal was dismissed as it was reported that the matter had been settled out of Court and permission was sought for to withdraw the appeal. A representation was also made that the appellants would not proceed with the suit. The appeal was dismissed as withdrawn.

(15) The temple is governed by a scheme, which was framed by this Court in Appeal Suit No.175 of 1934. The scheme provides that an Executive Trustee shall be appointed, who is a smartha or a Madwa Brahmin, aged not less than 30 and not more than 62 on the date of appointment and who is willing to reside permanently in Kancheepuram for the period of his office. Clause 5 provides that a person appointed as Executive Trustee shall hold office for a period of five years subject to good conduct. The functions and powers of

the trustee under the Madras Hindu Religious Endowments Act shall ordinarily be exercised by the Executive Trustee alone. But provision was made for two honorary trustees of whom one shall be the member of the Eastern Branch and the other of the Western Branch of the family of Koti Kannikadanam Sri. Thathadesikar. The Honorary Trustees were to hold office for five years. Clause 12 of the scheme provided for consultation with Honorary Trustees by the Executive Trustee in the administrative of the affairs of the Temple. It is the contention of the plaintiffs that the two Honorary Trustees whose function is merely advisory are unduly influencing the Executive Trustee giving the administration a tilt in favour of the Vadagalai sect, that the present litigation itself is at the instigation of the two Honorary trustees and in fact the second appeal to the High Court and this Letters Patent appeal are not strictly competent as the Executive Trustee has not preferred the appeal.

(16) On the above facts, several contentions was raised by the learned Counsel for the Honorary Trustees before the learned Judge in Second appeal and before us. The first contention of Mr. K.Parasaran, the learned counsel for the appellants was that the trial Court was in error in granting a decree directing the defendants to paint the living elephant in the suit temple with Thengalai namam and permanently restraining the defendants from putting the Vadagalai namam on the living elephant maintained or possessed by the temple. The contention is that the decree granted is not in accordance with the relief claimed. The relief claimed in the plaint is a direction to the defendants to accept the gift of an suit elephant to the temple by the plaintiffs and a permanent injunction restraining the defendants from putting Vadagalai namam to the living elephant donated. As after the filing of the plaint, an elephant was donated and accepted by the temple with Vadagalai namam put on it, the relief claimed cannot include a direction to paint the living elephant, which had already been painted with Vadagalai namam, with Thengalai namam and the defendants cannot be restrained from putting Vadagalai namam which had already been put on the elephant. It may be stated that after the filing of the plaint an elephant was accepted and Vadagalai namam was put on it and the plaintiffs came forward with an Interlocutory Application No.439 of 1968 for amending the plaint to include the relief of perpetual injunction against putting Vadagalai namam on the elephant which was surreptitiously brought into the temple on 17<sup>th</sup> November 1965 and for a direction to the defendants to remove the Vadagalai namam and paint the Thengalai namam. They also prayed for a mandatory injunction directing the defendants to remove the Vadagalai namam put on the elephant and to put Thengalai namam instead. This application for amendment of the plaint was dismissed. As the amendment was

refused it is contended by Mr. Prarasaran that the relief which was ultimately given should not have been given. This contention does not take note of the fact that the learned District Munsif held that it was unnecessary to consider this application as the orders on the application and in the suit were passed simultaneously. The learned District Munsif delivered the order on this application on 8<sup>th</sup> May 1968, the date on which the judgment in the suit was delivered. The learned District Munsif stated that he did not agree with the defendants' contention that if the amendment was allowed it would change the cause of action and introduce a new cause of action. The real and substantial question was what namam should be put on the living elephant in the suit temple and that would be the question even if the amendment was allowed. The trial court therefore, held that the amendment had to be allowed to determine the real question in controversy between the parties. But it dismissed the petition on the ground that it was filed after a long time. The Learned District Munsif concluded his order with the following words:-

I am pronouncing judgment in the suit today. In the  
circumstances this petition has to be dismissed.

It is seen that the amendment petition was dismissed only on the ground that the judgment in the suit was being delivered on that day. The judge considered what it called the real and substantial question that is what namam should be put on the living elephant in the suit temple and gave a decision on that point. The plea of the learned Counsel for the appellants that the trial Court having dismissed the amendment petition ought not to have given a decree in the terms in which it did is therefore, without substance.

(17) The next contention of the learned Counsel is that the suit is barred by res judicata. The contention of the learned Counsel is that the decision of the Hindu Religious Endowment Board in O.A.No.466 of 1940 dated 3<sup>rd</sup> February, 1942 that the temple elephant should bear Vadagalai namam has become final. The application was filed by the two persons under Sections 18 and 79 of the Madras Act II of 1927 for a direction to the trustees to preserve Thengalai namam. The Board dismissed the petition on various grounds. The main grounds was that the decision in Appeal Suit No.13 of 1854 applied only to the then living elephant and therefore, after the death of the elephant in question in 1894 the judgment in Appeal Suit No.13 of 1854 was no longer applicable. This is clearly beyond the scope of the powers of the Commissioners of the Hindu Religious Endowments Board as they cannot question the correctness of a civil Court decree. It is no doubt true that the Board ordered

that Vadagalai namam should be painted on the elephant. But it appears that the decision was mainly based on the ground that it was the donor's wish that the elephant should be painted with Vadagalai namam. The learned Judge dealing with this question held that the two reasons given by the Board as to why the then living elephant should bear the Vadagalai namam are (i) that the elephant formed part of the paraphernalia of the chief deity and the chief deity in the temple admittedly bears Vadagalai namam and (ii) that the elephant having gifted by the Maharaja of Travancore with a condition that the elephant should have Vadagalai namam the donor's wish should be respected and complied with. As rightly pointed out by the learned Judge both the reasons given by the Board do not relate to any question of usage in the temple. Further it has to be noted that the application was made in an individual capacity by two persons under Sections 18 and 79 of Madras Act II of 1927 for direction to the Board of the trustees to preserve the Thengalai namam. The question of the established usage regarding the namam to be painted on the elephant was not in question. The order of the Board has made it clear that the decision was subject to any decision by the Civil Court in a suit that may be filed by the aggrieved party. Section 18 of the Madras Hindu Religious Endowments Act 1927 conferred powers of general superintendence of all religious endowments on the Board and empowered the Board to do all things which are reasonable and necessary to properly maintain the institution. Section 79 of the Act preserved the established usage of a math or temple or the rights, honours emoluments and perquisites to which any person may by custom or otherwise be entitled in such math or temple. Section 18 of the Madras Act II of 1927 while conferring on the Board the right of general superintendence over the temple does not confer any right on the Board to decide or adjudicate the rights of parties. In the subsequent Act namely Madras Hindu Religious Endowment Act 1946 Section 79-A conferred the power on the Board to decide disputes arising under Section 79 and Section 79-A (3) provided that the order of the Board shall be final in all cases where the dispute related to mere ritual or religious observances or honours and shall not be liable to be modified or set aside in a Court of law. In other cases provision was made for the aggrieved person to apply to the Court for modification or for the setting aside of the order but subject to the result of such application the order of the Board was made final. As there was no such provisions in the 1927 Act, the order of the Board was not final. In Venkaiah V. Raghavacharyulu (A.I.R.1956 A.P.74) Viswanatha Sastru J. has held that under Section 18 the rights of parties cannot be decided by the Board. See also the decisions in Sri.Kothandaramasami Temple V. Veeshinatha Ayyar (1945. M.L.J. 63) Amirthalinga Padayachi V. Chandrashekara Padayachi (1945 1 M.L.J. 357). Apart from the

fact that Madras Act II of 1927 has not made the order of the Board final even on merits we agree with the view of the learned Judge that the order cannot be construed as deciding the usage of the temple. It can only be taken as an order relating to the living elephant presented by the Maharaja of Travancore. In this view we reject the contention that the order passed by the Board would constitute *res judicata*.

(18) It was next contended that the judgment of this Court in Appeal against order No.111 of 1948 finally decided the rights of the parties and, therefore, the present suit is not maintainable. It was an appeal against the order of the District Judge of Chinglepet in Original Suit No.7 of 1945. Original Suit No.7 of 1945 was filed in the Court of the District Judge of Chingleput by five persons for a direction against the hereditary trustee of Sri Devaraja Swami temple that he Alwars and Acharyas and the living elephant of the temple and big bell should only bear Thengalai namam. Issue No.6 framed in the suit related to the mark that has to be put on the then temple elephant. The written statement filed by defendants 1 and 2 are exhibits B3 and B4 respectively. The District Judge returned the plaint for presentation to the Sub-Court on the preliminary question of jurisdiction. The District court held that it had no jurisdiction and that under Section 15 of the Code of Civil Procedure the suit should have been instituted in the Sub Court. Against that decision the plaintiffs filed Appeal against Order No.111 of 1946. When the appeal was taken up it was reported that the matter had been settled out of Court and permission was requested to withdraw the appeal. It was represented that the appellants should not proceed with the suit. The Court ordered that the appeal be dismissed as withdrawn. It is clear that the appeal was not disposed of on merits. The suit was dismissed as having been filed in a Court which had no jurisdiction. The plaint was returned. The appeal was not disposed of on merits. The only contention raised by the learned Counsel for the appellants is that the Court had recorded an undertaking that the appellants should not proceed with the Suit. We fail to see how this statement would affect the rights of the present plaintiffs. The plaint was returned on the ground that the District Court had no jurisdiction. It is therefore clear that there was no trial of the issue at any stage and the dismissal of the appeal would not improve matters. In the circumstances we agree with the view of the learned Judge that the judgment in Appeal against Order No.111 of 1948 cannot operate as *res judicata*.

(19) It was contended that the suit is barred by limitation. According to the learned Counsel for the appellants over since 1894 only Vadagalai namam was painted on the

temple elephant and the Thengalai Vaishnavites have acquiesced such a usage and such conduct would amount to waiver or abandonment of their claim. But this plea cannot stand a moment's scrutiny for the appellants' assertion that the temple elephant bore only Vadagalai namam from 1894 had not been established. The finding of the Court is that there is absolutely no evidence to prove that the temple owned any elephant between 1894 and 1940. The learned Judge has referred to the fact that the trustees have not produced any account to show that the temple owned and maintained any elephant between 1894 and 1940 at the cost of the temple. The finding is that during that time, the Thathachari trustees paraded an elephant with Vadagalai namam but that was not a temple elephant. The learned Judge has accepted the finding of the two Courts below that the temple did not own any elephant between 1894 and 1940. On such a finding which cannot be challenged no question of acquiescence of waiver or abandonment of the rights of Thengalai Vaishnavite arise. After 1940 an elephant presented by the Maharaja of Travancore was accepted and Vadagalai namam was painted on that. It was submitted that the relief by way of an injunction is not the proper remedy and that as the Vadagalai namam was painted on the elephant at any rate from 1940, the plaintiffs to succeed ought to have filed a suit for a declaration of the established usage in the temple and for restoration of the earlier practice. This contention was rightly rejected by the learned Judge and we do not see any substance in it. The right of the plaintiffs has been satisfactorily established in the Appeal Suit No. 13 of 1854 and the suit for injunction is clearly maintainable. It was submitted that the relief by way of injunction ought to have been negatived as the plaintiffs are guilty of laches in that they did not pursue the remedies from the year 1940, when the elephant presented by the Maharaja of Travancore was painted with Vadagalai namam. This plea is also unsustainable as the Thengalai sect whom the plaintiffs represent has all along been protesting. They took the matter up to the Board and subsequently filed a suit. The learned Judge therefore rightly came to the conclusion that this is a fit case in which remedy by way of an injunction should be granted.

(20) Elaborate arguments were advanced by the learned Counsel for the appellants that the rights even if it was declared in favour of the Thengalai sect in 1894, it was lost by non-user. We see no basis at all for this contention. As already found, from 1894 to 1940 there was no temple elephant and after that there were disputes between the parties and the question of the plaintiffs losing their established right by non-user does not arise at all on the facts.

(21) It was finally contended that the suit is barred by limitation. The contention is that the period of limitation starts running from the date on which the declared right of the plaintiffs to have Thengalai namam was infringed, and on that basis, the suit is barred. This plea is again unsustainable as the cause of action arises on every occasion when the right is infringed. It was not open for the defendants to contend that the trustees by their acting contrary to the rights of the parties started prescribing a title or extinguished the existing title. It has been repeatedly held that the trustees cannot prescribe any right as against a beneficiary. As rightly observed by the learned Judge, it would be anomalous to hold that the defendants in their capacity as trustees can prescribe a right to destroy the long established usage of the temple. On a careful consideration of the elaborate arguments of the learned Counsel for the appellants, we see no reason to differ from the conclusion arrived at by the learned Judge in disposing of the second appeal. The learned Judge has dealt with all the points that were raised by the defendants fully, and we have no hesitation in confirming the decision of the learned Judge.

(22) Before leaving this appeal, we are constrained to take note of a submission that was put forward by the learned Counsel for the plaintiffs-respondents. The suit was filed on behalf of the Thengalai Vaishnavites by the plaintiffs against the executive trustee as well as the two Thathachariars who are honorary trustees. The suit was decreed by the trial Court. An appeal was preferred not by the Executive trustee, but by the defendants 2 and 3, the two Thathachariars honorary trustees. The Second appeal and the Letters Patent Appeal before us also preferred by the Thathachari honorary trustees, and not by the executive trustee. While Mr. Venkatavaradhachari the learned Counsel for the respondents before us informed us that he was reluctant to challenge the maintainability of the appeal by the honorary trustees in the place of the executive trustee as he would like to have a decision on the merits, he submitted that the course of this litigation would show that it is the unreasonable attitude of the honorary Thathachar trustees which is the cause of the unfortunate litigation and never ending trouble of the temple administration. This submission, we must say is not without foundation. In the narration of the history of the litigation subsequent to Appeal Suit No.13 of 1854, we have seen that the Vadagalai sect was most reluctant to accept the decision of the Courts. The attempt of the Court aamin for the restoration of the Thengalai namam on the living elephant was obstructed. The Court directed the arrest of the persons who opposed the execution of the Court orders and the Dharmakarthis who happened to be the Thathacharis managed to collect a body of persons

and resisted enforcement of the civil Court's decree. The order was enforced and a proclamation was made by the civil Court. But the Vadagalai vaishnavites sought to get over the decree by covering the head of the elephant with a cloth painted with Vadagalai namam to cover the Thengalai namam that was painted on the elephant. Contempt proceedings had to be taken for this action. We see sufficient basis in Mr. Venkatavaradhachari's grievance that the trouble is mainly due to the unreasonable attitude of the Thathachari trustees. It is sufficient to quote a passage from Srinivasachariar V. Thatha Desika Thathachariar (85 L.W. 407) in which the Bench has quoted the remarks of Sadasiva Aiyar J. in Thathachariar V. Thiruvengkatachariar (1915 MWN 916).

Mr. Venkatavaradhachariar, appearing for the defendants 4 and 5 urged with some amount of justification that this attitude of the Vadagalais in putting forward some innovation or other in one form or another from time to time has been responsible for the series of litigations pertaining to this temple going on for the last two centuries. In Thathachariar V. Thiruvengkatachariar (1915 M.W.N. 916) Sadasiva Aiyar J. had occasion to make some adverse remarks against the attitude of the Vadagalais wherein the learned Judge has pointed out that the litigation in that case was the result of the action of a small, though influential, faction of Vadagalai sectarians residing in Kancheepuram by introducing innovations in customary practices during the period of regular official worship in the temple.

We fully agree with the views expressed by the learned Judges in both these decisions. It is unfortunate that even though the remarks were made over sixty years ago, the Honorary Trustees do not seem to have realized their responsibilities. It is the ineffectiveness of the Executive Trustee and his playing into the hands of the Honorary Trustees that has led to this deplorable litigation. A scheme was framed for the administration of the temple in Appeal Suit No. 175 of 1934. The relevant provisions of the scheme are that the Devasthanam shall be administered by a paid Executive Trustee who shall be elected in the manner laid down in the scheme. The Executive Trustee shall be a Smartha or Madhwa Brahmin not less than thirty years and no more than 62 years of age on the date of first appointment and willing to reside permanently in Conjeevaram for the period of his office. The Executive Trustee is to hold office for five years and he is required to give security for Rs. 2,000/-. He should be paid an honorarium, which shall not exceed Rs. 100 per mensem. Clause (6) of the scheme significantly provides that the functions and power of the trustee under the Madras Hindu Religious Endowments Act shall ordinarily be exercised by the Executive Trustee along.

Clause (12) provides the rights of the Honorary Trustees. They are entitled to receive any information which they may require regarding the affairs of the Devasthanam. The executive trustee shall call a trustees' meeting once a month and shall place before that meeting all matters of importance relating to the administration of the Temple and in the case of difference of opinion between the trustees when the majority consists of the executive trustee, and one honorary trustee, its decision shall prevail. But when the majority consists of the two honorary trustees, the matter shall be referred to the Board whose decision shall be final. The executive trustee shall perform the functions of the land holder with respect to the village belonging to the Devasthanam, and all the income of the Devasthanam shall be received by the Treasurer and paid by him into a bank to be approved by the Board. Under clause (15) the Board is empowered to make rules for carrying into effect the purposes of the scheme. The scheme makes it clear that the temple should be administered by the Board by appointing an executive trustee. All functions and powers of the trustee under the Madras Hindu Religious Endowments Act shall ordinarily be exercised by the executive trustee alone. The function of the honorary trustees is restricted to receiving information which they may require regarding the affairs of the Devasthanam and to take part in the monthly meetings. It is significant that if the executive trustee differed from the honorary trustees, the matter will have to be decided by the Board. These precautions were put to in the scheme to see that the Board and executive trustee function without undue hindrance by the honorary trustees. We find in this litigation that the honorary trustees have taken and were allowed to take undue and unhealthy interest in this litigation. The honorary trustees have taken a partisan attitude which had interfered with the smooth functioning of the religious institution. The Vadagalai sect as such are not parties to this litigation and we have no material to come to the conclusion that the Vadagalai sect is supporting the Honorary Trustees in their improper acts. Sri Devaraja Swami Temple at Conjeevaram is one of the most famous vaishnavite temples like Thirupathi and Srirangam. It is the bounden duty of the Government and the Endowment Board to see that this famous pilgrim centre of all India importance functions without let or hindrance by a small influential faction of Vadagalai Vaishnavites. We hope the Government and the Endowment Board will take immediate and adequate steps to see that a competent executive trustee is appointed to the temple for effectively administering the affairs of the temple and to safeguard the interest of the various section of the devotees. It is the bounden duty of the endowment Board and the executive trustee to see that the influential minority does not overstep their limits and disturb the peace and solemnity of the holy temple. A copy of the judgment would be sent to the Government for appropriate action.

(23) In the result, agreeing with the reasoning and conclusion arrived at by the learned judge of this court we dismiss the appeal with cost.

( Reported in 1 MAD. I.L.R. 1978 125-152 )