

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Crump.

1919.

Novem-
ber 19.

HARI RAGHUNATH PATVARDHAN (ORIGINAL DEFENDANT), APPELLANT
v. ANTAJI BHIKAJI PATVARDHAN AND OTHERS (ORIGINAL PLAINTIFFS)
RESPONDENTS².

Hindu law—Public temple—Manager of the temple—Right to remove the image and instal it in a new building—Worshippers objecting to the removal—Injunction.

Under Hindu law, the manager of a public temple has no right to remove the image from the old temple and instal it in another new building, especially when the removal is objected to by a majority of the worshippers.

SECOND appeal from the decision of R. T. Taleyarkhan, District Judge of Thana, reversing the decree passed by B. N. Sanjana, Subordinate Judge at Panvel.

Suit for declaration and injunction.

The defendant was the manager of an ancient public temple of Ganpati at the Turade village. The temple was out of repairs. The defendant constructed a new building at his cost on an adjoining piece of land which belonged to him. He proposed to remove the image of Ganpati to the new building and instal it there.

The proposed removal was objected to by the plaintiffs, who were worshippers at the temple.

The plaintiffs sued on their own behalf and also on behalf of the worshippers at the village, under rule 8 of Order I of the Civil Procedure Code, for a declaration that they had the right to go to the old temple and worship the image there, and for an injunction restraining the defendant from removing the image to the new building.

The trial Court granted the declaration sought, but declined to issue the injunction on the defendant's

undertaking to dedicate the land and the new building to the public.

On appeal, the plaintiffs expressed their willingness to rebuild the old temple at their cost. On their depositing Rs. 1,500 into Court for the purposes, the lower appellate Court issued an injunction to the defendant restraining him from removing the image from the old temple.

The defendant appealed to the High Court.

G. S. Rao and C. H. Patvardhan, for the appellant:—
The appellant has been manager for over forty years. The old temple is now in a ruinous condition. The appellant has constructed a new building close by the old temple and if the image be allowed to be removed, he is prepared to dedicate the ground and the building to the public. The villagers never cared to subscribe for the repairs of the old temple. They never objected to the building of the new structure, though they knew the intentions of the appellant. The manager of a temple in such a case has the power to remove the image to a new building; otherwise the image and the worshippers will both be jeopardised. The appellate Court allowed the appellants to make a new case by asking them to make a deposit for the repairs of the old temple. They had never offered to do so in the first Court. We have led evidence to show that in neighbouring villages images were removed permanently to another building. The ancient texts also contemplate removal in certain cases. The plaintiffs are raising captious objections and their action is not supported by some of the villagers who support the defendant-appellant.

P. V. Kane, for the respondents:—Appellant being the manager for many years should have looked to the repairs of the temple and should have called on the

1919.

HARI
RAGHUNATH
v.
ANANTJI
BHIKAJI.

1919.

HARI
RAGHUNATH
v.
ANANTJI
BHIKAJI.

villagers to provide funds. He never did so, though there are some lands belonging to the temple endowment. As he built on his own land, the villagers could not raise any valid objection. The cause for action arose only when he threatened to remove the image. According to the *Pratishtha-Mayukha* of Nilkantha and other ancient works an image is to be removed permanently only in case of unavoidable necessity, such as where the current of a river carries away the image. Here the image is intact. It is only the temple that is dilapidated. For repairing it, the image need not necessarily be removed. Even if it may be necessary to remove the image, that will be only temporarily. The manager has under Hindu law no power to effect permanent removal of an image in the teeth of opposition from a large number of the worshippers. In the instances cited by the appellant, worshippers had consented to the removal. Permanent removal of an image without unavoidable necessity is against Hindu sentiment.

Patvardhan, in reply.

SHAH, J. :—This appeal arises out of a suit brought by certain villagers with leave under Order I, rule 8, for a declaration that the temple of Ganpati in question was a public temple and for an injunction restraining the defendant from removing the image of Ganpati to another adjoining building put up by him. The plaintiffs, who represented the villagers, alleged that this was an old temple of Ganpati which was not the private property of the defendant, that the defendant was about to remove the image to another building which he had no right to do and which, they alleged, was contrary to their sentiments and religious belief. The defendant pleaded that the temple was a private temple, that he had been in management of the temple for many years, that the temple building was in a

dilapidated condition and that he had put up a new building on his own land where he wanted to instal the image removing it from the old temple. He contended in effect that as the manager of the temple he had a right to do so.

The trial Court found that the temple was a public temple, that the defendant was the manager of the temple and that in view of the omission of the villagers to effect the necessary repairs in the old building which was in a dilapidated condition the defendant was justified in putting up a new building for the location of the image. It was found that the land on which the new building was put up by the defendant belonged to him ; but in the course of the proceedings the defendant expressed his willingness to dedicate the land with the building to the temple and agreed to treat the old building and the new building on the same footing as a public temple. The trial Court incorporated this undertaking on the part of the defendant in the decree and refused to grant the injunction which the plaintiffs had prayed for. In appeal the learned District Judge came to the conclusion that the defendant had no right as manager to remove the image from the present temple to the new building. In view, however, of the fact that the existing temple had fallen into disrepairs the plaintiffs agreed to deposit Rs. 1,500 with a view to effect the necessary repairs, and a decree on that basis was passed restraining the defendant from removing the image to the new building.

In the appeal before us it has been urged on behalf of the defendant that the plaintiffs have taken up an unnecessarily obstructive attitude and that in view of the fact that he is willing to dedicate the new building to the temple there should be no objection to the image being installed in that building. On the other hand the plaintiffs urge that the defendant has been

1919.

HARI
RAGHUNATH
v.
ANANTJI
BHIKAJI.

1919.

HARI
RAGHUNATH

v.

ANANTJI
BHURAJI.

actuated by an indirect motive in thus removing the image from its present position to a building which has been erected by him. We are not, however, concerned in this litigation with the motives of either side. It may be that the defendant has acted only in the interests of the temple in putting up a building on his own land with the intention of removing the image to that building and of duly installing it in that building. It may be that the plaintiffs have not been so far diligent in seeing that the present building was properly repaired and that they may have some animus against the defendant in refusing his offer to dedicate the new building to the temple. We are concerned in this appeal only with the question of law which has been raised on behalf of the defendant that as a manager he is entitled to remove the image and to instal it in the new building. It is common ground now that the existing temple is an ancient public temple. It is also common ground that the defendant has been the manager of this temple for a number of years. It is not disputed that the existing building is in a ruinous condition and that it may be that for the purpose of effecting the necessary repairs the image may have to be temporarily removed. Still the question is whether the defendant as manager is entitled to remove the image with a view to its installation in another building which is near the existing building. Taking the most liberal view of the powers of the manager, I do not think that as the manager of a public temple he can do what he claims the power to do, viz., to remove the image from its present position and to instal it in the new building. The image is consecrated in its present position for a number of years and there is the existing temple. To remove the image from that temple and to instal it in another building would be practically putting up a new temple in place of the existing temple.

Whatever may be the occasions on which the installation of a new image as a substitute for the old may be allowable according to the Hindu law, it is not shown on behalf of the defendant that the ruinous condition of the existing building is a ground for practically removing the image from its present place to a new place permanently. We are not concerned in this suit with the question of the temporary removal which may be necessary when the existing building is repaired. The defendant claims the right to instal it in the new building permanently, and I do not think that as a manager he could do so, particularly when he is not supported by all the worshippers of the temple in taking that step. I am clearly of opinion that the view which the District Judge has taken in this case of the powers of the manager is right and that the decree passed by him under the circumstances is correct. In coming to this conclusion I have not overlooked the fact that in the appeal before us some of the villagers have supported the defendant in the position which he has taken up.

I would confirm the decree of the lower appellate Court and dismiss the appeal.

The appellant to pay the costs of the plaintiffs-respondents. The other respondents who have been added here on the application of Mr. Sathaye must bear their own costs.

CRUMP, J. :—I concur.

Decree confirmed.

R. R.

1919.

HARI
RAGHUNATH
v.
ANANTJI
BHIKAJI.