(PRIVY COUNCIL)
(On appeal from the High Court of Judicature at Madras)

Present: LORD MACMILLAN, LORD JUSTICE DU PARCO AND SIR JOHN BEAUMONT

His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarulu Varlu --- Appellant

Prathivathi Bhayakaram Venkatacharlu and others --- Respondents

Temple – Rituals and ceremonies in regard to the conduct of service in-Custom and practice – Members of Vadagalai and Thengalai cults participating in common worship – Right of Vadagalais to recite their own special invocation manthram and Vazhi Thiruman simultaneously with these of the Thengalais at the service – Suit in regard to the right to recognize the conduct of service in temples-Cognoscibility by Civil Court.

The question at issue was whether the Vadagalais who were entitled to be present and take part along with the Thengalais in the service in the group of the Thirumalai and Tirupathi temples, were also entitled to use their own and distinctive Vadagalai invocation manthram at the beginning of the service and to recite their own Vazhi Thirunamam or benediction at the close of the service concurrently with the Thengalais who alone have the right to begin the service by reciting their own invocation manthram and end it by reciting their own and distinctive Vazhi Thirunamam.

Held, the rights of parties depend upon custom and practice. In a matter of this nature where feeling is easily inflamed little reliance can be placed on the oral testimony of partisans on one side or the other. The right to participate in the worship of a temple does not necessarily carry with it the right to insist on using a ritual other than the ritual in use in that temple. There has been no instance of the judicial establishment of a right on the part of the Vadagalais and the Thengalais to use competitive rituals simultaneously at the service in a temple. The successful establishment of such a claim by either cult would not be conducive to the orderly and reverent conduct of the temple service.

In the circumstances, in the temples in suit, both Thengalais and Vadagalais may join in the service, but the Thengalais alone are entitled to open the service with their own and special invocation manthram only and the Vadagalais are not entitled to recite their special invocation manthram simultaneously and the service must also be concluded similarly by the recitation of Thengalai Vazhi Thirunamam alone.

The contention that a suit to establish the right to conduct the service in a temple in a particular manner is not cognizable in a Civil court is untenable.

Sir Herbert Cunliffe, K.C. and Subba Row for Appellant.
Eddy, K.C., Ralph, Parikh and Chaffur for Respondents

Their Lordships' Judgement was delivered by

LORD MACMILLAN- Their Lordships address themselves in this appeal to the consideration of a controversy which is one form or another has agitated the Hindu religious community in the Presidency of Madras for upwards of two centuries. The main question between the parties relates to the right to regulate the conduct of the services in an important group of temples. To the understanding of the issue a short historical survey is essential.

According to the Hindu creed the Deity manifests Himself in three aspects as Brahma the Creator, Vishnu the Preserver, and Siva the Destroyer and Renovator. Those who are devoted to the worship of the Deity in His aspect as Vishnu are known as Vaishnavas and there are many temples, especially in Southern India, dedicated to the worship of Vishnu and known as Vaishnavite temples. The earliest Scriptures, dating from 2500 years ago, are the Sanskrit Vedas or hymns, held sacred by all Hindus. A further series of sacred writings known as Prabandhams consisting 4,000 compositions in the Tamil language, was compiled in later times by certain Alwars who were Vaishnava 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 at an early date became part of the ritual of the Vaishnavite temple services and later the Sthothra Patams were also recited on special occasions. The Alwars and Acharyas, the authors of the Prabandhams and Sthothra Patams, became themselves objects of worship in the temples.

About the fourteenth century there appears to have arisen a difference of view among the Vaishnavites. One section, the followers of Vendanta Desikar, specialized in the study and exposition of the Sanskrit Vedas and regarded the Alwars and their Prabandhams as entitled to less reverence. These 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 Tengalais or followers of the Southern cult. It is important to bear in mind that both derive from and share a common religious origin and faith and that while each adhere to its own school of thought neither of them condemns or rejects the sacred character of the other's cult.

In some of the Vaishnavite temples in the Presidency of Madras the Vadagalai cult prevails, in others the Tengalai cult. The question which shall prevail in particular temples has been the subject of frequent dispute and on several occasions litigation. While the order of service is much the same in both classes of temples there are certain distinctive features of Vadagalai and the Thengalai rituals respectively and it is with regard to the observance of these distinctive features that the present litigation is concerned.

The temples to which this appeal relates are eighteen in number, one group of five in Tirumalai and another group of thirteen in Tirupathi, all in the Chittoor district of Madras. The conduct of the services in these temples is under the charge of what is known as the Adhyapakam office. As its head as president is the Plaintiff, now the appellant, known as Pedda Jiyyangar, who may be described as the high priest. He is a Tengalai. He is assisted in the performance of his duties by a Chinna or Junior Jiyyangar, four Ekangis and certain minor assistants called Adhyapakas and Acharya-purushas. These with the general body of ordinary worshippers when met in assembly constitute the Adyabaka Goshti or congregation. There is now no a question as to the authoritative and predominant position occupied by the appellant. It is in connection with the extent and nature of his rights in the conduct of the service that controversy has arisen.

The order of worship in these, in common with other, Vaishnavite temples follows well-recognised lines. First the Pedda Jiyyangar opens the service by saying "Sadit Arula" (please begin). Then follows the invocation of the patron saint consisting of five stanzas known as the manthram or pathram. The first stanza according to the Tengalai guru Manavala Mahamuni. According to the Vadagalai cult the first stanza begins with the words "Ramanuja Dayapathram" and invokes the Vadagalai guru Vedanta Desikar. The remaining four stanzas are common to both. After the manthram or invocation comes the recitation of selected passages from the Prabandhams appointed for the day, each prefaced with a laudatory verse in praise of its author. The Prabandhams are common to both sects. At the conclusion of the recitation of Prabandhams 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.

This outline of the service is probably sufficient to disclose the substantive divergence between the two rituals. It is the preliminary invocation or manthram which, so to speak, strikes the note of the service which follows, as being an act of devotion or worship in

the one case in honour of the Vadagalai guru and in the other of the Tengalai guru. Hence its importance to the worshipper.

The respondents representing the Vadagalais do not challenge the right of the plaintiff and the Tengalai worshippers to recite their own manthram and invoke their own guru at the beginning of the service or indeed to conduct their worship throughout according to their own ritual. What they maintain is that this right is not exclusive and that they have a concurrent right to recite simultaneously their own manthram and throughout to observe their own ritual where it differs from that of the Tengalais. The Tengalais do not dispute the right of the Vadagalais worshippers to be present and take part in the services but they maintain that if they do attend the services they must conform to the Tengalai ritual or remain silent and in any event that they have no right to interfere with the Tengalai service by using simultaneously their own ritual where it differs. The success of the Vadagalai claim would not seem to conduce to the orderly and reverent conduct of the temple service. It is not surprising that the insistence of the Vadagalais on observing their own ritual in competition with the Tengalai ritual has led to disturbances and has been resisted by the appellant and those associated with him who are responsible for the worship of the temples. There are in Madras temples where the Tengalai ritual is admittedly used exclusively and where if Vadaglais attend the service they must refrain from using their own ritual; and there are temples where the Vadagalai ritual is admittedly used exclusively and where if Tengalais attend the service they in turn must refrain from using their own ritual. So far as their Lordships are aware there has hitherto been no instance of the judicial establishment of a right on the part of the Vadagalais and the Tengalais to use competitive rituals simultaneously at the service in a temple.

The rights of the parties depend upon custom and practice. In a matter of this nature where feeling is easily inflamed little reliance can be placed on the oral testimony of partisans on one side or the other and counsel at their Lordships' bar almost entirely discarded the oral testimony in the case. Both sides agreed that the documentary evidence was what mattered and on it each side claimed the verdict. On the documents the Vadagalais maintained that the Tengalais had failed to prove the exclusive right which they claimed.

A vast set of documents and records of litigations has been accumulated. It has been exhaustively analysed and criticised both by the Subordinate Judge who heard the case in the first instance and in the judgement of the High Court (Madhavan Nair and

Standart, JJ) with the result that on the main question of the use of the manthrams or invocation the Subordinate Judge decided in favour of the appellant and the High Court in favour of the Vadagalai respondents. Their Lordships have had their attention directed to all the relevant documents and to the observations thereon in both Courts. Counsel on each side have assisted their Lordships by selecting for consideration the documents on which they respectively relied as being of material significance and to these or at least to the most important of them it will be sufficient to refer.

The appellant relies first on a document dated 1795 (Exhibit – A). It appears from this document, which is stated to have been approved in the Hosur, that some Vadagalais in connection with the funeral rites of one of their number had recited the verse beginning "Ramanuja Dayapatram" in the Tiruchanoor temple, another Vaishnavite temple in Madras. It is recorded that they were taken to task for this and "having been made to learn that it was wrong to recite Ramanuja Dayapathram in the temple they went away making an agreement that if necessary they would in future do so in their own respective houses as was done in Tirumalai and Tirupathi but no in the temple and that if they should so recite it they would be rendering themselves culpable". This document has been produced in other proceedings and accepted as genuine. The Subordinate Judge states that it is "beyond the reach of criticism" and their Lordships are not impressed by the adverse comments made upon it in the High Court. The point of the document for the present purpose is that it records so long ago as 1795 that it was not permitted to recite Ramanuja Dayapathram in the Tirumalai and Tirupathi temples. It is also important, as will appear in the sequel, in that it recognizes identity of practice as between the temple at Tiruchanoor and the Tirumalai and Tirupathi temples, which are mentioned in association in a number of the documents.

Next comes a takid from the Collector of North Arcot in 1832 (Exhibit H) which confirms that in the case of the Tiruchannoor Vadagalais "Ramanuja Dayapathram manthram should be recited in their respective house and that nothing contrary should be done".

More important is the litigation regarding the Tiruchanoor temple in 1887-1893. In this suit the Pedda Jiyyangar of Tirumalai Tirupathi and certain other residents in Tirupathi, suing in a representative capacity, claimed inter alia the exclusive right to recite the Tengalai manthram in the Tiruchanoor temple. The munsiff before whom the case came in the first instance after a most searching investigation of all the documentary evidence

satisfied himself that the practice in the temple at Tiruchanoor was identical with the practice in the temples of Tirumalai and Tirupathi and expressly found "that the men here of the Vadagalai sect are not entitled to utter the Vadagalai manthram called "Ramanuja Dayapathram" jointly with the Tengalais or separately but that the Vadgaalais are at liberty to utter it in their own houses but not before the Goddess". Though although the case related to Tiruchanoor the decision was based on the practice of Tirumalai and Tirupathi and is consequently of the highest significance as evidence of the usage of the temples in suit over half a century age. On an appeal to the District Court of North Arcot the documentary history of the matter was again most closely scrutinized, the intimate association of the Tiruchanoor temple (which is about three miles from Tirupathi) with the temples in suit was emphasized and the decision of the munsiff confirmed as in accordance with "the custom sanctioned by old usage". In the judgement a document of 1853 is quoted in which the Mahant expressly says that "Tiruchanoor" is indeed in Tirupathi and Thirumalai Devasthanam". On further appeal to the High Court the decision of the Court below were affirmed. The Judgement of the High Court concludes thus "It is alleged that the Vadagalais have great respect for the Tengalai saint in whose honour the verse is recited and they only want the religious privilege of being able to recite their own verse in the presence of the Deity. It appears to us that this professed respect for the saint is accompanied by a good deal of hostility to the saint's worshippers and that the permission could result in nothing but a breach of the public peace. All the evidence goes to show that by established custom the Ramanuja Dayapathram should not be recited and we think the decision of the Courts below is right".

In 1915 another important judgement was pronounced by the District Judge of North Arcot in a suit in which the Pedda Jiyyangar and others on behalf of all Tengalai Brahmins resident in Thirumalai Tirupathi and Tiruchanoor claimed that in the temples in these places the Tengalai manthram was alone permissible. The Subordinate Judge held that both manthrams might be repeated side by side but the District Judge reversed this decision and held that only the Tengalai manthram was permissible.

Meantime there had been a series of other litigations between Tengalais and Vadagalais relating to other temples elsewhere in which the same issue was contested. The report of a case affecting the great temple at Conjeevaram is particularly instructive (Krishnasami Tatacharya V. Krishnamacharyar). The suit was brought to restrain the Vadagalais from introducing their manthram in the temple service. The claim of the

Vadagalais to do so was asserted, as in the present case, to be justified by usage. After a full investigation the exclusive right of the Tengalais to the use of their manthram in the services was established.

In the case of Srinivasa Thathachariar V Srinivasa Aiyangar (9 M.L.J. 355) relating to the temples at Tinnevelly it was held by the High Court, affirming the judgment of the Subordinate Judge, that the Vadagalais were not entitled to interfere with the Thengalai ritual and must not repeat their Ramanuja Dayapathram at the beginning or their Vazhi Thirunamam at the end of the services. The Officiating Chief Justice (S.Subramania Aiyar) says at page 359 "Now Judging from the instances of dispute between Tengalais and Vadagalais which have come not infrequently before the courts in connection with other temples the rule seems to be that but one patram is used in similar occasions". When the High Court had again to consider the question in relation to a temple at Conjeevaram (Thiruvengadachariar V. Krishnaswami Thathachariar) (1915 M.W.N. 281) the history of the controversy was very fully examined and the exclusive right of the Tengalais to use their own manthram was affirmed. The learned judges observe that the judgment of the High Court in the abovementioned case in the ninth volume of the Madras Law Journal "holds that only one manthram can be recited in a temple. This appears also reasonable". The exclusive rights of the Tengalais were further clarified in the case of Appadorai Aiyangar V. Annagaracharia (1 M.L.J. 124)

The present troubles affecting the temples in suit seem to have originated about 1901 in an assertion by the Vadagalais of the rights which they now claim. In May of that year the superintendent of the Tirupathi temple complained to the mahant that the Vadagalais contrary to the custom of the temple were "newly" reciting their own manthrams and that disputes were greatly increasing. A further complaint was made in 1904 and the mahant made a representation to the local magistrate that there was a risk of disturbance owing to the insistence of the Vadagalais in employing their own ritual contrary to usage. In 1905 the matter was taken into Court on a plaint by the Tengalais against the Vadagalais on the lines of the present suit. The Subordinate Judge of North Arcot fond in favour of the joint use by each sect of its own manthram, but his judgment was reversed by the District Judge of North Arcot. "Upon the evidence", he said "I must find that it has not been the custom to recite the Ramanuja Dayapathram". On a further appeal to the High Court the action was

dismissed on a technical plea of misjoinder of parties without any opinion being expressed on the merits. Then came the present suit.

The case for the defence, like that for the plaintiff, was almost entirely based on the documentary evidence. Their counsel began with a reference to certain early documents of 1730, 1737 and 1786 (Exhibits XXIV, XXIV a and XXIV b). But these relate to the Vedanta Desikar temple in which admittedly the service is conducted exclusively according to the Vadagalai ritual. It is significant to note, however, that they appear to recognize the propriety of the attendance of Thengalais at the services of this exclusively Vadagalai temple although Ramanuja Dayapathram is alone recited there. The right of both Tengalais and Vadagalais to worship in the Tirumalai and Tirupathi temples is also recognized but nothing is said as to the manthram used there and if any inference is to be drawn it would rather seem to be that the Tengalai manthram was alone employed there. Their Lordships were referred to other documents in support of the Vadagalai claim. They are discussed in great detail in the judgments of the Subordinate Judge and the High Court. Many of them are equivocal, none is conclusive. That their import is ambiguous is best evidenced by the fact that a careful study of them led the Subordinate Judge to one conclusion and the High Court to a different conclusion. No useful purpose would be served by going through them again in detail. It is enough to say that their Lordships find themselves in several instances unable to agree with the inferences – for they are only inferences-which the learned Judges of the High Court draw from them by the Subordinate Judge. On the other hand their Lordships are not convinced of the validity of the criticisms expressed by the Judges of the High Court depreciatory of the documentary evidence favourable to the plaintiff. Their Lordships are much more impressed by the fact that, so far as they are aware, in the whole series of litigations in Madras on this vexed question the Vadagalais have in no instance succeeded in establishing a right to the joint use of both manthrams in any temple, and that nowhere in the documents is their definite evidence of such joint usage.

There is one consideration of general importance which appears to have greatly influenced the decision of the High Court and to which their Lordships think it right to draw special attention. The learned Judges very properly take note of the admitted and undoubted right of the Vadagalais to participate in the services in the temples in suit. From this they would seem to infer that they must have the right to use their own manthrams.. The

reasoning is that as the manthrams or invocation is the keynote of the service the Vadagalais could not participate in the service at all unless permitted to use their manthram. In short, to forbid the Vadagalais to recite their own manthram in the temples would be tantamount to excommunicating them altogether from the services. Their Lordships do not agree with this view or with the argument founded upon it. In point of fact the right to participate in the worship in the temple does not necessarily carry with it the right to insist on using a ritual other than the ritual in use in that temple. The reported cases consistently recognize the right of the Vadagalais to participate in the worship of temples conducted according to the Tengalai ritual, but on condition of conforming with or at least not interfering with the Tengalai ritual, and it is nowhere suggested that this is a barren or self-contradictory privilege. When the Tengalais attend in the temple of Vedanta Desikar that may not use their own manthram there; when the Vadagalais attend in the temple of Tiruchanoor they may not use their own manthram. Among the documents in the present case there is a series of agreements between 1885 and 1889 whereby ekangis who were Vadagalais expressly undertook to conduct the services in the temple in suit according to the Tengalai ritual. It is thus made clear that it is not against conscience for Vadagalais to take part in services in which the Tengalai manthram alone must be used in the temples in suit does not mean, as the Learned Judges of the High Court seem to think, the virtual exclusion of the Vadagalais from participation in the worship of the temples.

The learned Judges of the High Court belittle the probability of disturbance or unseemly incidents if both manthrams are used simultaneously. But no one can read the papers in this case or the judgments in the other reported cases without noticing the frequent references to disturbances between the rival sects when each has insisted on using its own ritual. Where feelings obviously run so high the risk of violent conduct is manifest. It may be that the nature of the services is such that both parties could recite their respective manthrams without very great mutual interference, but as the District Judge of North Arcot observed in one of the cases ----"knowing the contentious spirit of the opposing factions, I am afraid there would never be peace between them."

A separate issue was raised with regard to one of the temples in suit, the sub-shrine of Tirumalai Nambi of Tirupathi. The contention of the Tengalai appellant was that in this temple the Tengalai manthram or pathram alone might be used while the Vadagalais contended that their manthram alone might be used. The learned Subordinate Judge found

that both may be used simultaneously. This is a singular result to have reached in a case in which the rights of the parties depend upon custom for it is a finding in favour of a custom which neither party alleged. The Vadagalais acquiesced in the decision of the Subordinate Judge but the appellant challenged it in the High Court which accepted it and their Lordships have now to deal with the matter.

As in the opinion of the Subordinate Judge and now of their Lordships, the appellant has established the exclusive right of the Tengalais to use their own manthram in all the other temples in suit, there would seem prima facie to be no reason to make an exception in the case of this temple unless there is clear justification for doing so. The Subordinate Judge after considering the meager documentary evidence that has any bearing on the subject concludes somewhat haltingly---"I should think, reading these disinterested Amulunamas of the Vicharanakartha and Exhibits XXIV series together that both pathrams are used to the exclusion of neither patram," and the High Court "think that this finding should be accepted". Their Lordships have examined the relevant documents. They do not find in the "disinterested Amulunamas of Vicharanakartha" (Exhibit Y series) any reference to the manthram used in the Tirumalai Nambi temple or indeed any special discrimination of this temple from others. As for the Exhibits XXIV series, the significant thing is the express direction that in the Vedanta Desikar temple the Vadagalai manthram alone is to be used and no discrimination is made of the Tirumalai Nambi temple from the other Tirumalai or Tirupathi temples. Had this temple been in the exceptional, indeed, as their Lordships hold, the unique, position among the suit temples and so far as is proved among Vaishnavite temples in madras generally of using both manthrams simultaneously, it is difficult to conceive why among the voluminous documents produced and in the numerous records of past litigation no express reference is to be found to this exceptional usage. Both the Subordinate Judge and the High Court mention the Pedda Jiyyangar's Amulunamas (Exhibits AA series), of which the High Court says that they "no doubt support the case of the plaintiff", but both the Subordinate Judge and the High Court apparently regard them as being of little evidential value because they are subsequent to the Tiruchanoor dispute. This does not seem a convincing reason for disregarding them when it is remembered that the Tiruchanoor case was decided in favour of the Tengalais because the ritual of the Tirumalai and Tirupathi temples was held to rule there. Had the double use been the custom in one of the Tirumalai and Tirupathi temples the fact would surely have been brought out in the Tiruchanoor case. Their Lordships accordingly find that in the temple of Tirumalai Nambi,

as in other temples in suit, both Tengalais and Vadagalais may join the service but the Tengalai manthram alone may be used.

A further question raised relates to the formula to be used in the benediction with which the service ends. Both the Subordinate Judge and the High Court have held "that the plaintiff and other Adhyapakam office holders have the right to close the prabandham recital." But there is a contest between the parties as to the ritual to be observed at the closing ceremony known as Sathumurai. The Tengalais claim that their own Vazhi Tirunamam or benediction should alone be recited. The Vadagalais on the other hand claim the right to recite their own Vazhi Tirunamam, the last five verses of which differ from those of the Tengalai Vazhi Tirunamam, the rest of the verses being the same. The documentary evidence as to the practice in this matter is meager and inconclusive and the conclusion reached in both Courts below is that no reason exists or case has been made out for excluding the Vadagalai Vazhi Tirunamam. If, as the High Court has held, contrary to the view of their Lordships, the Vadagalais are entitled at the opening of the service to recite their own manthram or invocation it would seem to follow almost as a matter of course that they should be entitled to recite their own Vazhi Tirunamam or benediction at its close. But if as the Subordinate Judge has held, and their Lordships also hold, the Tengalai Manthram can alone be used at the opening of the service it would seem quite inconsistent to hold the Vadagalais entitled to use their Vazhi Tirunamam at the conclusion of the service. Here it is instructive to have regard to the practice in other Tengalai temples. The same point came under consideration in the important case relating to the Tinnevelly temple to which reference has already been made (Srinivasa Thathachariar Vs.Sriniva Ayyangar) (1899 9 M.L.J. 355). There it was expressly held that the Vadagalais should not be at liberty to interfere with the plaintiffs and other holders of the Adhyapakam office by repeating their Ramanuja Dayapathram or Vazhi Tirunamam either at the beginning or at the end of Sevakalam. Then again in the case of the temple at Conjeevaram, to which reference has also already been made (Appadurai Ayyangar V. Annagarachariar 1939 1 M.L.J. 124), Mr. Justice Wadsworth after pointing out that in the previous suit (Krishnasami Tatacharyar V. Krishnamacharyar I.L.R. 5 Mad. 313) it has been held that the Vadagalais were not entitled to interfere with the Tengalais in the recital of the manthrams otherwise than as ordinary worshippers, observed that the judgement did not expressly cover the Vazhi Tirunamam to be used at the conclusion of the service. The learned Judge then addresses himself to this question. "It is recognized", he says, "that the Vazhi Tirunamam is the appropriate conclusion of the Adhyapakam service

and that the stanza recited must be in honour of the saint invoked in the manthram which begins the service". He points out that the decree in the previous case in Krishnasamy Tatacharyar V. Krishnamacharyar (1882 I.L.R. 5 Mad 313) though it does not so many words prescribe the singing of the Tengalai Vazhi Tirunamam by the mirasdars does very clearly prescribe the conduct of the whole Adhyapakam service right up to its termination by those mirasdars. It restrains the Vadagalais from singing their own sectarian hymns and chants or taking any part except by joining the Goshti as worshippers and reciting the Prabandhams recited by the mirasdars." He accordingly has "no doubt that the intention of the learned Judges was to authorize the mirasdars to append to the service its customary conclusion in the form approved by the sect to which they belonged, whose cult was to govern the service".

The Lordships in the present case, being of the opinion, with the Subordinate Judge that the Tengalais are entitled to open the service with their own manthram alone and that the Vadagalais are not entitled to recite their manthram concurrently are satisfied, in the absence of any sufficient evidence to the contrary, that the service must also be concluded by the recitation of the Tengalai Vazhi Tirunamam alone.

There remains the question of the recital of sthothrapatams. This matter is left in a very doubtful position on the evidence. The Subordinate Judge apparently found himself unable to reach any conclusion upon it and his formal decree makes no reference to it. The High Court in its decree finds in the sixth place "that plaintiff is entitled to use Thengalai pathram in the recitation of sthothrapatams whenever sthothrapatam is recited outside the temples but this does not exclude the use of Vadagalai Sthothrapatam Tanian Sriman Venkatanadharya". In the judgment of the High Court on the topic of the Sthothrapatams the learned Judge states that they "can find no reliable evidence to support the positive case of either party." Nevertheless they proceed to consider the matter "in the light of the probabilities" and conclude by saying "We have already expressed out opinion under issue 8 that when Prabanda Sevakalam is once begun the Tengalai and Vadagalais that take part in it carry on the service each reciting its own manthram. Judging the evidence in the light of the probabilities of the case we must come to the same conclusion with regard to sthothrapatams also on all occasions when these are sung by the goshti." By parity of reasoning their Lordships having taken a contrary view as to the use of the Vadagalai manthram should "in the light of the probabilities" come to the opposite conclusion from the High Court as to the sthothrapatams. But they do not regards this as a legitimate method of disposing of the

matter and accepting the view of the High Court that there is no reliable evidence to enable the custom of the sects to be ascertained they do not propose to make any finding on the subject.

As regards the conduct of processions inside and outside the temples in suit the appellant in his plaint claims that the Tengalai ritual should be exclusively observed both in the service inside the temples and in processions inside and outside the temples. The respondents did not submit any argument for differentiating in this matter between the case of the service inside the temples and the case of processions inside and outside the temples and their Lordships hold that their decision should extend to both cases alike.

Their Lordships also take note of the fact that the disallowance by the High Court of the appellant's claim relating to the recitations during the Anadhyayanam days was not the subject of any separate argument before them on the part of the appellant, but in the circumstances their Lordships think that the appropriate course is to make no order in the matter.

As regards the third head of the decree of the High Court which saves the rights of certain Vadagalais families to the Adhyapakam office, the appellant intimated that he did not challenge this finding.

The respondents did not withdraw their pleas that the suit was not cognizable I a Civil Court and that it was barred by limitation but it is enough to say their Lordships agree with both Courts below that they are untenable.

Their Lordships will humbly advise his Majesty that the appeal be allowed and that the decree of the High Court of 18th March 1937 be varied so as to read as follows:----

(1) That the plaintiff or any of his deputies Chinna Jiyyangar or any of the four Ekangis is exclusively entitled in the temples mentioned in Schedule A and B in the plaint and in processions both inside and outside the said temples to commence Prabandha Parayanam by saying Sadit Arula and to go on with the Tengalai patram to the exclusion of the Vadagalai patram.

(2) That the plaintiff is exclusively entitled to the headship of Adhyapakam miras.

(3) That the Vadagalais, except the Dharmapuris, Kotikannikadanams and Thomalais (in Tirumalai) are not entitled to the Adhyapakam office in the plain temples.

(4) That the plaintiff and other Adhyapakam office holders have the right to close the prabandham recital.

(5) That only the Tengalai Vazhi Tirunamam can be repeated wherever Vazhi Tirunamam is recited.

(6) That respondents 6, 7, 10-14, 16, 20 and 21 as individuals and representing the Vadagalai community residing at Tirumalai tirupathi and tiruchanoor are restrained by a perpetual injuction from interfering with the rights hereinbefore referred to of Pedda Jiyyangar or his deputies.

(7) That the rest of the plaintiff's claim (except so far as relating to the reciting of sthothrapatams and recitations to be used on the Anandhyayanam days as to which no order is made) be and hereby is disallowed.

(8) That the parties shall each bear their own costs of the suit in the Court of the Subordinate Judge at Chittoor.

(9) That there be no costs in Appeal No.119 of 1926 in the High Court.

(10) That the respondents 6, 7, 41-14, 16, 20 and 21 in the present appeal do pay to the appellant his costs in Appeal No. 466 of 1925 in the High Court and his costs of the present appeal.

Solicitors for Appellant — Lambert and White
Solicitors for Respondents — Harold Shepherd and Chapman Walkers.

Appeal allowed and decree varied.

(Privy Council Appeal No. 33 if 1943 13-5-46)

(Reported in 1947 M.L.J.I. 159 to 167)