APPELLATE CIVIL.

Before Duval and Mitter JJ.

1926

Dec. 9.

DEBENDRA NARAIN SARKAR

v.

SATYA CHARAN MUKERJI.*

Right of Suit—Suit for declaration of right to religious office, if office is honorary—Civil Procedure Code (Act V of 1908), s. 9.

A suit by a person claiming to be entitled to a religious office against a usurper for a declaration of the plaintiff's right to the office is a suit of a civil nature and will, therefore, be entertained by a Civil Court, though no emoluments are attached to the office at all.

Mamat Ram Bayan v. *Bapu Ram Atai Bura Bhakat* (1) and *Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami* (2) relied on.

Gourmoni Debi v. *Chairman of Panihati Municipality* (3), *Limba bin Krishna* v. *Rama bin Pimpla* (4) and *Gursangaya* v. *Tamana* (5) referred to.

Tholappala Charlu v. *Venkata Charlu* (6), *Subbaraya Mudaliar* v. *Vedantachariar* (7), *Shankara bin Marabasapa* v. *Hanma bin Bhima* (8) and *Narayan Vithe Parab* v. *Krishnaji Sadashiv* (9) dissented from.

SECOND APPEAL by Debendra Narain Sarkar and others, plaintiffs.

This appeal arose out of a suit, which was in substance one to establish the plaintiffs' right of management over the worship of Saradiya Haragouri

* Appeal from Appellate Decree, No. 2189 of 1924, against the decree of Jagadish Chandra Sen, Subordinate Judge of Burdwan, dated Aug. 19, 1924, reversing the decree of Ram Lal Banerji, Munsif of Burdwan, dated June 11, 1923.

(1) (1887) I. L. R. 15 Calc. 159.
(2) (1899) I. L. R. 27 Calc. 30.
(3) (1910) 12 C. L. J. 74.
(4) (1888) I. L. R. 13 Bom. 548.
(5) (1891) I. L. R. 16 Bom. 281.
(6) (1895) I. L. R. 19 Mad. 62.
(7) (1904) I. L. R. 28 Mad. 23.
(8) (1877) I. L. R. 2 Bom. 470.
(9) (1885) I. L. R. 10 Bom. 233.

Thakurani. The case of the plaintiffs was that the father of plaintiff No. 1, who was the *talukdar* of the village Narainpur in district Burdwan, established the *puja* in the year 1850 and ever since that date, the father and, after his death, plaintiff No. 1 and other members of his family have been managing the worship. In Aswin, 1257 (October, 1850), the father of plaintiff No. 1 purchased one and a half *cotta* of land and ever since that purchase, the worship is annually held at that place. Two *bighas* of land have been given by the plaintiffs' family in *chakran* to the *mistri* who prepares the image and the said *mistri* has all along been paid Rs. 8 per annum in cash for labour. The properties mentioned in the plaint were dedicated by the said plaintiff's father for the worship of the image. As a token of his managership and as a local usage, certain offerings known as *Ulat Khansa*, *Purna Patra*, *Pancha Gabya*, etc., were invariably supplied from the house of the plaintiff's father. At the time of the *Sandhi puja*, *naibedya* were offered from the house of the latter and on the *Bijaya* day, female members of the house exercised their right of bidding farewell to the goddess. In Aswin, 1328, the defendant No. 1 excluded the plaintiffs from their right of management and ever since that time prevented the plaintiffs from managing the said *puja*. The plaintiffs prayed for a declaration of their right of management and also, incidental thereto, for a declaration of their right to offer certain offerings mentioned above and to bid farewell to the image and for a permanent injunction restraining the defendants from interfering with these rights.

The defendants' case on the other hand was that the *puja* was not established by the father of plaintiff No. 1, but by the widow of one Kenaram Majumdar and that, therefore, the plaintiffs had no right of

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management as claimed. During the trial, the defendants did not attempt to prove that the *puja* was established by the widow of Kenaram Majumdar.

The Court of first instance decreed the plaintiffs' suit in full.

On appeal, the suit was dismissed, it being held that the plaintiffs' suit was in effect a claim to the dignity and not to any right and, therefore, not maintainable.

Hence this appeal by the plaintiffs.

Sir Provash Chunder Mitter (with him *Babu Lalit Mohan Sanyal*), for the appellants. The Lower Appellate Court is wrong in holding that the Civil Court has no jurisdiction to entertain a suit like this. Every presumption shall be made in favour of the jurisdiction of a Civil Court. It shall not be taken away except by express words or by necessary implication: *Ram Narain Singh* v. *Lachmi Narain Deo* (1), *Muvvula Seetham Naidu* v. *Doddi Ram Naidu* (2), *Winter* v. *The Attorney-General of Victoria* (3).

The right to exclusive performance of a ceremony performed on a particular day at a periodical festival in a Hindu temple, to bear the expenses of the ceremony and to receive the honours connected therewith is a right of civil nature, although the recognition of the right may depend on the decision of questions as to religious rights and ceremonies and a suit to enforce such a right is cognizable by Civil Courts: *Thirumalai Alwar Aiyangar Swamigal* v. *Srinivasa chariar Swamigal* (4). Civil Courts have jurisdiction to determine the order of precedence in the

(1) (1912) 17 C. L. J. 239, 243.
(2) (1909) I. L. R. 33 Mad. 208.
(3) (1875) L. R. 6 P. C. 378.
(4) (1916) 36 I. C. 568, 571, et seq.

distribution of honours in a temple: *Soma Ballachariar* v. *Thiruvenkatachariar* (1).

Interference with plaintiff's right to present to certain persons at a certain festival in a certain temple a crown and water is a civil right: *Srinivasa* v. *Tiruvengada* (2).

The Lower Appellate Court erred in relying on the case of *Narayan Vithe Parab* v. *Krishnaji Sadashiv* (3).

Such a suit is maintainable in Civil Courts, although no emoluments are attached to the office: *Mamat Ram Bayan* v. *Bapu Ram Atai Bura Bhakat* (4), *Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami* (5), *Gourmoni Debi* v *Chairman of Panihati Municipality* (6).

The suit is one for establishment of plaintiffs' possession as *sebaits* for the time being and for carrying on the worship of the goddess annually. In fact the suit is for the office of the *shebait*, although no emoluments are attached to it. The plaintiffs base their right as heirs of the founder of the worship. The said right has been interfered with. They should have a remedy. See *Gossami Sri Gridhariji* v. *Romanlalji Gossami* (7).

As to whether a suit lies, there are some Bombay decisions. They may be divided into two classes: those in which religious office is attached to a shrine and those in which the office is entirely personal in character. The Bombay High Court has held that a suit lies in the former class and it does not lie in the latter.

There is no special reason for this distinction.

(1) (1912) 15 I. C. 409, 411.
(2) (1888) I. L. R 11 Mad. 450.
(3) (1885) I. L. R. 10 Bom. 233.
(4) (1887) I. L. R. 15 Calc. 159.
(5) (1899) I. L. R. 27 Calc. 30.
(6) (1910) 12 C. L. J. 74.
(7) (1889) I. L. R. 17 Calc. 3; L. R. 16 I. A. 137.

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However, in this conflicting state of decisions, we should follow the decisions of this Court.

Lastly, the judgment of the Lower Appellate Court is not a proper one, inasmuch as it has failed to consider all the points raised by the parties.

Mr. Sarat Chandra Basu (with him *Mr. Atul Chandra Gupta* and *Babu Radhika Ranjan Guha*), for the respondents. The suit is really one for vindication of a mere dignity attached to an office. Hence, it cannot be regarded as a suit of a civil nature within the meaning of section 9 of the Code of Civil Procedure. The plaintiffs sue for certain personal rights in a public worship and the same cannot be recognised in a Civil Court. Moreover, there is no corresponding obligation to the right claimed by the plaintiffs in this suit. Civil Courts cannot recognise such rights. See *Tholappala Charlu* v. *Venkata Charlu* (1), *Subbaraya Mudaliar* v. *Vedantachariar* (2) and *Shankara bin Marabasapa* v. *Hanma bin Bhima* (3). See also Mulla's Civil Procedure Code, 8th Ed., commentaries under section 9.

Cur. adv. vult.

MITTER J. This appeal arises out of a suit commenced by the plaintiffs for a declaration of the plaintiffs' right to supervise the Saradiya Haragouri Puja in village Narainpur, to prepare and offer certain offerings on that occasion and for an injunction to restrain the defendants from interfering with plaintiffs' right of management. The defence is a denial of plaintiffs' right of management. The Court of First Instance decreed the suit with costs and declared plaintiffs' right of management over the worship of the image Hara Gouri Thakurani, performed annually

(1) (1895) I. L. R. 19 Mad. 62. (2) (1904) I. L. R. 28 Mad. 23.
(3) (1877) I. L. R. 2 Bom. 470.

at the autumn season at village Narainpur, and also made certain declarations with regard to plaintiffs' exclusive right to offer offerings. On appeal by the defendants, the Subordinate Judge of Burdwan dismissed the plaintiffs' suit, holding that such a suit was not maintainable in Civil Court. As the suit has been thrown out on the ground that such a suit cannot be entertained in the Civil Court, it becomes necessary to set out in greater details the precise scope of the suit.

The plaintiffs state in their plaint that one Nanda Kumar Sarkar, who had 9 annas share in Narainpur *putni taluk*, established the autumnal worship (Saradiya Puja) of Iswar Haragouri Thakurani in the said village of Narainpur with the help of the seven annas co-sharer of Narainpur *patni taluk*. And in order to build a *mandir* (temple) for performing the worship of the said image he purchased one and half *cottas* of land from one Munjari Dasi on the 9th of Aswin, 1257 B. S. and erected a house thereon. It was further alleged that the said Nanda Kumar Sarkar, in order to defray the expenses of the Saradiya Puja, dedicated several *bighas* of land, and, with the voluntary contributions of the tenants of the village Narainpur, and, with the annual stipend of Rs. 3 settled by him from the *zemindari sheresta*, he performed annually the autumnal *puja* under his own supervision, meeting the balance of his expenses from his own pocket. Plaintiffs further alleged that so long as Nanda Kumar was alive he, and, after his death, his son and the father of plaintiff No. 3, and, after his death, the plaintiff No. 1, and, in the absence of plaintiff No. 1, his sister's son Gorachand Roy, under plaintiff No. 1's order, had performed the autumnal *puja*. That in 1328 B. S., with the evil intention of excluding the plaintiffs from the *puja*, the defendants in collusion with one another set up

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the defendant No. 1 as the *karta* (manager) and excluded the plaintiffs from the *puja* and had prevented the plaintiffs from supervising the said *puja*, from the preparing the *Ulatkhansa* and had obstructed the plaintiffs in offering *Purnapatra*, *Pancha Gabya* and *Pancha Pataka* and had prevented the ladies of the plaintiffs' house from performing the *Olata* (farewell) ceremony of the Goddess on the *Bijoya* day and that at the time of the *Sandhi puja*, the plaintiffs having taken a *naibedya* for offering, the defendants prevented the priest from accepting the same, and defendant No. 1 had kicked out the said *naibedya* with his feet.

The defendants in their defence alleged in paragraph 6 of the written statement that the *puja* has never been performed under the supervision and orders of his son, after the death of Nanda Kumar Sarkar, the father of plaintiff No. 3, and after his death plaintiff No. 1 and in the absence of plaintiff No. 1 of his sister's son, Gora Chand, till 1327 B. S., nor is there or was any reason for their so doing and that the allegations in paragraph No. 4 of the plaint are false. There was no reason of the *puja* being performed under the management of the plaintiffs or under that of any members of their family; nor has it been so done at any time.

The reason given by the Lower Appellate Court for holding that the suit is not maintainable has been stated as follows:—"In the case *Narayan Vithe Parab* v. *Kishnaji Sadashiv* (1), it has been held that claims to precedence of worship, such as the claim to the fact to worship the deity, cannot be entertained in Civil Court. Plaintiffs not only claim right of management, but they also claim to vindicate their dignity to have precedence in giving certain offerings to the exclusion of others, who are also subscribers and with whose

(1) (1885) I. L. R. 10 Bom. 233.

money the worship is performed. Plaintiffs claim personal rights in public worship, which cannot be recognized or declared by Civil Courts. If the plaintiffs cannot agree with other villagers regarding the management and worship of the deities, plaintiffs can stop their subscription, but I do not think that plaintiffs' exclusive right to give offerings to the deity to the exclusion of other villagers, can be declared in this suit. For the above reasons I am inclined to decide all these points against the plaintiffs."

It has been contended before us that the Lower Appellate Court is wrong in holding that the Civil Courts have no jurisdiction to entertain such a suit and in relying on the Bombay decision. Our attention has been called by the learned advocate for the appellant to three cases, viz., *Mamat Ram Bayan* v. *Bapu Ram Atai Bura Bhakat*, (1) *Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami* (2) and *Gourmoni Debi* v. *Chairman of Panihati Municipality* (3) in support of the contention that such a suit is maintainable in the Civil Courts, although no emoluments are attached to the office. The appellants contend that the suit is really one for the establishment by the plaintiffs of their possession as *sebaits* for the time being for carrying on the worship of the Goddess Durga every year and that the suit is really for the office of a *sebait* although no emoluments are attached to the said office. We think that this argument is well founded and must prevail. The allegations in the plaint make it clear that the plaintiffs base the right as heirs to the founder of the worship and on the fact that their ancestor established the worship and the services were performed by their ancestor ever since the dedication in the year 1850. They say their right of management has been interfered

(1) (1887) I. L. R. 15 Calc. 159. (2) (1899) I. L. R. 27 Calc. 30.
(3) (1910) 12 C. L. J. 74.

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with by the defendants and claim relief. There can be no doubt that the right of management has been infringed and consequently there must be a remedy. It has been held in this Court that a suit by a person claiming to be entitled to a religious office against a usurper for a declaration of the plaintiff's right to the office is a suit of a civil nature and will therefore be entertained by a Civil Court though no emoluments were attached to the office at all. See *Mamat Ram Bayan* v. *Bapu Ram Atai Bura Bhakat* (1) in which case the office was that of a musician who chanted songs in a *jatra* at a certain village. In the case of *Dino Nath Chuckerbutty* v. *Pratap Chandra Goswami* (2), the office was that of a *sebait* and the suit was by one member of a family against another for a declaration of a hereditary right to officiate as *sebait* at the worship performed by votaries at the foot of a certain tree. It was held that the suit was maintainable although no fees were attached to the office but voluntary offerings were made by the votaries. In the case before us the office was one attached to a place as distinguished from an absolutely personal office. Following these decisions, we hold that plaintiffs have a right to get the declaration which they seek for in the suit. The learned advocate for the respondents contends that the suit is really for vindication of a mere dignity attached to an office and as such cannot be regarded as one for an office and consequently cannot be regarded as a suit of a civil nature within the meaning of section 9 of the Code of Civil Procedure. We are unable to accept this contention. It is not a question of precedence in worship or precedence in receiving gifts in public religious ceremonies. We are not unmindful of the fact that in Madras it has been held that a suit does not lie for a

(1) (1887) I. L. R. 15 Calc. 159. (2) (1899) I. L. R. 27 Calc. 30.

religious office to which no fees are attached. According to that Court a religious office in which no fees are attached is not an office within the meaning of section 9, Civil Procedure Code: *Tholappala Charlu* v. *Venkata Charlu* (1) and *Subbaraya Mudaliar* v. *Vedantachariar* (2). The Bombay decisions may be divided into two classes, viz., *first*, those in which religious office is attached to a temple shrine, a sacred spot, and, *secondly*, those in which office is entirely personal in its character. In the former class of cases, a suit has been held to lie: *Limba bin Krishna* v. *Rama bin Pimplu* (3) and *Gursangaya* v. *Tamana* (4). In the latter class, a suit has been held not to lie: *Shankara bin Marabasapa* v. *Hanma bin Bhima* (5). We prefer to follow the decisions of our own Court and the Bombay decisions which fall in the first class and hold that a suit such as the present lies. We think the other reliefs claimed follow as a necessary consequence of the plaintiffs' right of management. In this view we think the Civil Court has jurisdiction to entertain the suit. The result is that the decree of Lower Appellate Court must be set aside and the case be remanded to it for re-trial of the appeal on the merits The respondents are to pay the costs of this appeal.

DUVAL J. I agree.

Appeal allowed.

S. M.

(1) (1895) I. L. R. 19 Mad. 62.
(2) (1904) I. L. R. 28 Mad. 23.
(3) (1888) I. L. R. 13 Bom. 548.
(4) (1891) I. L. R. 16 Bom. 281.
(5) (1877) I. L. R. 2 Bom. 470.