

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice and
Mr. Justice Parker.

1888.
March 12, 27.

SRINIVASA (DEFENDANT No. 4), APPELLANT,

and

TIRUVENGADA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code, s. 11—Right to an office in a temple.

Plaintiffs sued for an injunction to prevent defendant from interfering with their right to present to certain persons at a certain festival in a certain temple a crown and water. The lower Courts found that plaintiffs possessed the right claimed and granted the injunction :

Held, that the suit was cognizable by a civil court under s. 11 of the Code of Civil Procedure, and that the injunction was properly granted.

APPEAL from the decree of W. F. Grahame, Acting District Judge of Trichinopoly, confirming the decree of A. Kuppusami Ayyar, District Munsif of Trichinopoly, in suit No. 67 of 1885.

Plaintiffs sued for a perpetual injunction restraining defendant No. 4 (appellant) from interfering with them in the exercise of their hereditary right to distribute water and a gold crown to certain persons at a certain festival in a certain temple at Srirangam. They claimed Rs. 5, damages for loss of dignity and power, and one anna eight pice, damages for loss of boiled gram.

The Munsif dismissed the claim for damages, but granted the injunction.

Both parties appealed.

The District Judge dismissed the plaintiffs' appeal as to loss of dignity, because the claim could not be assessed in money, and as to the loss of gram, because, being only 2 pice in value, *de minimis non curat lex*.

He also dismissed the appeal of defendant No. 4.

Defendant No. 4 appealed to the High Court, and plaintiffs filed objections to the decree *quoad* the claim for gram.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Parker, J.).

* Second Appeal No. 174 of 1887.

Pattabhiramayyar, Sadagopacharyar, and S. Subramanya Ayyar for appellant.

Parthasaradhi Ayyangar for respondents.

JUDGMENT.—The first point contended is that the claim is not one for an office, but for a mere honor and dignity, and is, therefore, not one for which a suit will lie in a civil court.

The Courts below have found that plaintiffs have established their claim to the *hereditary office* mentioned in the plaint. But it was also found that the pecuniary benefit said to be attached to the office and to consist in the money-value of some cooked Bengal gram was the result of voluntary offerings made by worshippers and was not a pecuniary benefit in the nature of wages payable from the income of the temple. The office itself was found to consist in distributing sacred water and serving the gold crown to the adyapakais during a particular festival.

The ordinary test is whether there is any specific pecuniary benefit attached to the office claimable in the nature of wages, however small that benefit may be. If there be, the right to such benefit is a question which the courts are bound to entertain—*Narasimma Chariar v. Sri Kristna Tata Chariar*(1). This same principle was approved by the Privy Council in *Krishnama v. Krishnasami*(2).

This case came again before the High Court—*Krishnasami v. Krishnama*(3). It was there held that where the right to a particular office in a temple (there the recital of certain verses in a religious service) is established, the right should be protected by processual remedies, even though no loss of specific pecuniary benefit be established. (See I.L.R., 5 Mad., 318, 319).

In support of this contention the appellants' pleader quoted the following cases:—*Narayan Vithe Parab v. Krishnaji Sadashiv*(4), *Rama v. Shivram*(5), *Shankara Bin Marabasapa v. Hanma Bin Bhima*(6), *Karuppa v. Kolanthayan*(7), but in all these cases the claim was for a mere honor or dignity, or else for damages caused by loss of voluntary offerings.

The case recently decided in the High Court at Calcutta—*Mamat Ram Bayan v. Bapu Ram Atai Bura Bhakat*(8)—is very

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(1) 6 M.H.C.R., 449. ••

(3) I.L.R., 5 Mad., 315.

(5) I.L.R., 6 Bom., 116.

7) I.L.R., 7 Mad., 91.

(2) I.L.R., 2 Mad., 62.

(4) I.L.R., 10 Bom., 233.

(6) I.L.R., 2 Bom., 470.

(8) I.L.R., 15 Cal., 159.

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similar to the present, and it was held that a suit for the establishment of a right to an hereditary office, such office being a trust for the performance of particular duties in a temple, would lie under s. 11 of the Code of Civil Procedure, even though the right to be established brought no profit to those claiming it.

We are, therefore, of opinion that the suit is maintainable.

It was next urged that the suit is not one in which a perpetual injunction could properly be granted. It is found, however, that the plaintiffs have a status in the temple as holders of a certain hereditary office, and when that status is violated, they are entitled to be protected by such processual remedies as are available in the circumstances of the case, even though no legal dues or damages are payable to them. The decision in second appeal No. 664 of 1887^f turned upon the special circumstances of that case, and is not inconsistent with this view.

Taking this view, we are of opinion that the second appeal must fail, and we dismiss it with costs. The memorandum of objections is also dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

SESHAGIRI (PLAINTIFF), APPELLANT,

and

PICHU (DEFENDANT No. 4), RESPONDENT.*

Revenue Recovery Act, 1864, s. 35—Contract Act, ss. 69, 70—Right to contribution where part owner pays revenue due on whole estate to save his own interests.

In 1881 while the patta of certain land held on raiyatwari tenure stood in the name of defendant No. 1, the real owner being defendant No. 2, the revenue fell into arrear. Subsequently plaintiff and defendant No. 3 each bought a portion of the land, and defendant No. 3 sold his portion to defendant No. 4. After this, the land in plaintiff's possession was attached for the said arrears of revenue, and plaintiff paid the whole amount to prevent a sale. Plaintiff sued to recover from defendants 1 to 4 a portion of the arrears paid by him. He also prayed that the land in the possession of defendant No. 4 might be held liable.

The claim was decreed, but on appeal by defendants 3 and 4, the suit was dismissed as against them.

* Second Appeal No. 43 of 1887.