Before Mr. Justice Mitter and Mr. Justice Maclean.

MADARY (ONE OF THE PLAINTIFFS) *v.* GOBURDHUN HULWAI (DEFENDANT).*

1881
July 18.

Liberty to erect Places of Worship—Irregularity in Place of Trial—District Judge holding his Cutcherry in a Munsif's Court.

In India, the members of a sect are at liberty to erect a place of worship on their own property, although it is more or less contiguous to a place already occupied by a place of worship appertaining to another sect. The people of any sect are at liberty to erect on their own property places of worship, either public or private, and to perform worship, provided that, in the performance of their worship, they do not cause material annoyance to their neighbours.

Seshayyangar v. *Seshayyangar* (1) followed.

Where a District Judge took advantage of his presence in the locality, and heard and decided a suit in the Munsif's Court, which had originally been instituted in that Court, but subsequently transferred to the Judge's Court for trial, and it appeared that the course taken was with the consent, implied, if not express, of both parties, who were represented at the hearing,—

Held, that the District Judge was justified in taking the course he had done.

THIS suit was originally instituted on the 28th March 1876 by three plaintiffs, the plaint being filed in the Court of the Munsif at Aurangabad. The object of the suit was to have a shivali and thakurbari erected by the defendant demolished, on the ground that it had been erected close to a mosque, and was therefore prejudicial to the plaintiffs' religion. The plaintiffs stated that the cause of action accrued on the 15th Mohorrum 1293 Hijri (corresponding with 12th February 1876), the date on which the foundations of the shivali and thakurbari were commenced; and they prayed that it might be demolished, and the defendant prohibited from doing any new act contrary to the old usual practice, and thereby causing harm to their religious rites.

The defendant stated in his written statement, that the plaintiffs were only ryots, and therefore not entitled to bring the

* Appeal from Original Decree, No. 34 of 1880, against the decree of G. Porter, Esq., Judge of Gya, dated the 27th December 1879.

(1) I. L. R., 2 Mad., 143.

suit; that, on the 17th Sawan 1278 F. (corresponding with the 19th July 1871), he had taken the lands in question from the proprietors of the mouza, and erected the shivali and thakurbari, as well as sunk a well and planted trees, and that no one had till now raised any objection thereto; and that, in addition, the mosque was never used, and consequently there could be no objection to his acts, on the ground of their interfering with the plaintiffs' religious rites.

On the 1st May 1876, the following issues were settled by the Munsif:—

1*st*. Is the cause of action alleged by the plaintiffs dated correctly?

2*nd*. Are the shivali and thakurbari erected by the defendant, likely to cause any interruption to the plaintiffs' offering prayers in the mosque? If so, should the walls of the shivali and thakurbari be demolished?

On the 27th June 1876, the Munsif held a local investigation, and found that the shivali and thakurbari were about forty yards distant from the mosque.

On the 17th July 1876, the defendant applied for the transfer of the case from the Court of the Munsif, on the ground that he being a Mahomedan would not adjudicate fairly on a matter relating to his own religion; and on the 18th August 1876, the case was accordingly transferred to the Judge's file.

Subsequently, in December 1879, the District Judge took advantage of his being at Aurangabad, and directed the parties to be present in the Munsif's Court, and proceeded to dispose of the case.

It appeared that, while the suit was thus pending, two out of the three plaintiffs had died, as well as the defendant, who was now represented by his widow.

The District Judge took the deposition of the surviving plaintiff, and then finding that the facts of the case were undisputed held, that the litigation had originated out of a quarrel between the plaintiffs and the defendant, whose house was situated next to the mosque, and that the mere erection and construction of a shivali and thakurbari at a distance of forty yards from the mosque was not opposed to the Mahomedan

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religion, and could not, in any way, disturb or interrupt the plaintiffs' prayers. He accordingly dismissed the suit.

The plaintiff now appealed to the High Court against that decree, on the grounds that the Judge had no right to hold his cutcherry in the Munsif's Court, but should have tried it in his own Court, and that he was wroug in dismissing the suit without summoning and hearing the plaintiff's witnesses, and that the proper issues had not been raised and tried in the case.

Mr. *Sandel* for the appellant.

No one appeared for the respondent.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—The first objection taken before us is, that the District Judge was not authorized by law to hold his cutcherry in the Munsif's Court, but we do not think that there is any force in this objection. We find that this course was taken with the consent, if not express, yet implied, of both parties. The Judge says, he took the opportunity of his visit to Aurangabad to direct the parties to be present, in order that the cases might be decided, and then we find that the plaintiffs were represented by their pleaders, and probably this course was to the advantage of the plaintiffs, as they had probably already engaged their vakils in the Munsif's Court, where this suit was originally instituted.

The next objection taken to the Judge's judgment is, that he is not right in holding that the plaint discloses no cause of action. We think that the view which the Judge has taken of the plaint is correct. Taking all the allegations stated in the plaint as established by evidence, we are of opinion that the plaintiffs were not entitled to any of the reliefs expressly mentioned in the plaint, or to any cognate relief which the plaintiffs might have asked the Court to grant upon the plaint. Our view is supported by a recent Madras case of *Seshayyangar* v. *Seshayyanggar* (1). The ruling in that case is to the following

(1) I. L. R., 2 Mad., 143.

effect: "In India, the members of a sect are at liberty to erect a place of worship on their own property, although it is more or less contiguous to a place already occupied by a place of worship appertaining to another sect. The people of any sect are at liberty to erect, on their own property, places of worship, either public or private, and to perform worship, provided that, in the performance of their worship, they do not cause material annoyance to their neighbours."

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We, therefore, dismiss this appeal without costs, as no one appears for the respondent.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Field.

NOBIN CHUNDER DUTT AND OTHERS (DEFENDANTS) *v.* MODUN MOHUN PAL (PLAINTIFF).*

1881 *July* 1.

Sale in Execution — Arrears of Rent — Under-tenure—Service Tenures—Permanent Tenures—Tenure-at-Will—Long Possession—Presumption.

The plaintiff purchased a maurasi taluq at a sale in execution of a decree obtained against the taluqdar for arrears of rent of the taluq, and then sued to recover possession of certain lands held by the defendants within the taluq. The defence was, that the lands in question were held by the defendants under a patta which had been granted to their ancestor, in 1733, by the then taluqdars in respect of certain services to be performed by the grantees and their descendants. The Court of first instance found that the patta was genuine, and dismissed the plaintiff's suit. On appeal the Subordinate Judge found that the patta was a forgery; and that although the lands had been granted to the defendants' ancestor in respect of services, yet the plaintiff was entitled to khas possession, as he did not require the services to be performed. He, therefore, decreed the plaintiff's claim.

Held, that the decree was right, for having found that the patta on which the defendants chiefly relied was a forgery; the Subordinate Judge was not bound, as a matter of law, to presume that the tenure was a permanent one merely from the fact of long possession of the lands.

THIS was a suit brought by the purchaser of a maurasi taluq, which had been sold in execution of a decree for its arrears

* Appeal from Appellate Decree, No. 418 of 1880, against the decree of Baboo Kishen Chunder Chatterjee, Officiating Subordinate Judge of Nuddea, dated the 27th of December 1879, reversing the decree of Baboo Annud Mohun Surbadhicary, Munsif of Ranaghat, dated the 23rd of March 1878.