SOMASUNDRAM AYYAR v. FISCHER.

judgment, I am not prepared to say that that alone might not have been a disturbance within the covenant."

In the present case a decree was obtained and proceedings taken in execution, and it was only on paying a sum of Rs. 3,500 to the decree-holder that plaintiffs were allowed to retain possession of the property. There was therefore such hindrance as was contemplated in the covenant.

In allowance of this appeal we modify the decree of the lower Courts by making first defendant jointly liable with the second for the amount decreed.

Appellants are entitled to their costs in this Court and in the lower Appellate Court.

APPELLATE CIVIL.

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

1895. March 18. April 25, 30.

THOLAPPALA CHARLU (PLAINTIFF), APPELLANT,

v.

VENKATA CHARLU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, *s.* 11—*Right to hereditary office of guru.*

The plaintiff as Anagundi Raja guru claimed to be entitled, and now sued for a declaration of his title, to the hereditary office of priest of Samayacharam. The defendants claimed the office and had collected voluntary contributions in the character of the holders of such office. The office was not connected with any particular temple; no specific pecuniary benefit was attached to it, and the alleged duties of the office were to exercise spiritual and moral supervision over persons wearing a certain caste mark in a certain tract of country:

Held, that the suit was not cognizable by a Civil Court.

SECOND APPEAL against the decree of L. Moore, District Judge of Bellary, in appeal suit No. 170 of 1891 reversing the decree of C. Ranga Rau, District Munsif of Naraindevarakerry, in original suit No. 33 of 1889.

Suit to establish plaintiff's claim to a hereditary office, the nature of which is stated sufficiently for the purpose of this report in the judgment of the High Court. The District Munsif passed a decree for plaintiff, which was reversed on appeal by the District

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* Second Appeal No. 321 of 1894.

Judge on the ground that the plaintiff's claim was not cognizable by a Civil Court.

The plaintiff preferred this second appeal.

V. Bhashyam Ayyengar, *Pattabhirama Ayyar* and *Desikachariar* for appellant.

Ramachandra Rau Saheb and *Kuppusami Ayyar* for respondent No. 2.

JUDGMENT.—The District Judge dismissed the plaintiff's suit on the ground that it was not maintainable. He based his decision on the ground that the suit was analogous to that decided in *Subbaraya Chetti* v. *Venkatanarasu Chetti*(1), in which it was held that a suit for a declaration that a person was entitled to the exclusive right to the office of a desayi would not lie, the right of desayi being alleged to be a right to settle caste disputes in certain villages. It is urged upon us in appeal that the right claimed by plaintiff is a right to an hereditary office, to which titles have been attached by the former ruling power; that the right of the Anagundi Raja guru carried with it a monopoly, and that it had been found by the District Munsif that defendants had been guilty of personation and deceit, assuming the hereditary titles of the plaintiff, and under such false pretences receiving fees, which would otherwise have been paid to plaintiff and not to defendants. On this state of facts, as found by the District Munsif in paragraph 99 of his judgment, it is urged that plaintiff is entitled to relief.

It is, however, necessary to refer to the plaint to see the grounds on which relief is asked for by the plaintiff himself. It is therein stated that plaintiff and his ancestors, "in consequence of their being the priests of the Anagundi royal family," have been enjoying hereditarily the Samayacharam guru office in respect of the people wearing namam mark in a certain tract of country; that defendants 2 and 3 have been claiming the right to this office, using plaintiff's titles and collecting the fees. The plaint goes on to pray for a decree to establish plaintiff's right to the priestship of Samayacharam in respect of the namam-wearing people living in the places mentioned, and for an injunction to restrain defendants from interfering in the said right and collecting the fees, &c.

It will be observed that the plaint does not ask for any injunction to restrain defendants from assuming plaintiff's hereditary

(1) Second Appeal No. 200 of 1891 (unreported).

THOLAPPALA CHARLU v. VENKATA CHARLU.

titles, or for damages caused by personation or assumption of such titles. It is a suit to establish a claim to an hereditary office, and the plaintiff alleges that the person entitled to hold the office is hereditary guru for the time being of the Anagundi royal family.

The question then is whether the priestship of Samayacharam is an office for which a suit will lie in a Civil Court. It is distinguishable from most of the cases quoted in that it is not attached to any particular temple or place; no specific pecuniary benefit is attached to the office, the only emoluments being voluntary contributions, while the duties of the office are to exercise spiritual and moral supervision over people who wear a certain caste mark in a certain tract of country. No such supervision over the members of the caste can be enforced by law, it being entirely within the option of each individual member of the caste whether he will submit to it or not. Such being the case, the office seems exactly analogous to that of a desayi, as to which it was decided in *Subbaraya Chetti* v. *Venkatanarasu Chetti*(1) that a suit would not lie. No doubt the office of hereditary guru to the Anagundi royal family may be an endowed office, and the holder thereof entitled to certain titles and distinctions, but the relief sought in the plaint is not on the ground that defendants have represented themselves to be the raja's gurus. The District Munsif has, it is true, treated it as if such was the claim, but the plaint does not ask for any declaration that plaintiff is the raja's guru, or to restrain defendants from using his titles, but merely for a declaration that plaintiff is entitled to the Samayacharam office. It is possible the plaintiff might have succeeded had the plaint been framed differently, or had it been amended, but there was no issue as to any personation by defendants, or as to any fraud in assuming the plaintiff's titles.

Under these circumstances we think the District Judge was right in holding that the suit is not maintainable, and we must dismiss the second appeal, but we make no order as to costs.

(1) Second Appeal No. 200 of 1891 (unreported).