APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

SUBBARAYA MUDALIAR AND TWO OTHERS (DEFENDANTS NOS. 1 TO 3), APPELLANTS,

v.

VEDANTACHARIAR AND SEVEN OTHERS (PLAINTIFFS NOS. 1 TO 6 AND DEFENDANTS NOS. 6 AND 12), RESPONDENTS.*

1904. February 25, 26.

Civil Procedure Code—Act XIV of 1882, s. 11—Suits of a Civil nature—Right to property or to an office—Jurisdiction of Civil Courts—Suit for declaration of right to recite texts—Maintainability.

A suit is not cognizable in a Civil Court where the subject of the plaintiffs' claim is confined to rights in religious ceremonies without a claim to any office or any emolument. A right to recite sacred texts in a temple is a matter of ritual or ceremony in a religious matter with which a Civil Court has nothing to do.

SUIT for a declaration and for damages. Plaintiffs, in their plaint, alleged that they and other Vadagalai Brahmins like themselves had from time immemorial been enjoying the privilege of reciting certain sacred texts in a temple and in the streets during the procession of the god and on other occasions. They alleged that they had, "in virtue of that office been receiving the honours in the form of tulasi, shadagopam, theertam, etc., as well as the distribution of prasadam, thosai, sugar and soondal." They further alleged that they had been receiving distributions of sandal, betel-nut, flowers and cash at feasts and on other occasions. They then alleged that the festivals had been suspended for a period of seven or eight years, and when they were recommenced disputes arose between the plaintiffs and the defendants, the Tengalais, as to the recital of the texts, and finally a razinamah was entered into as to the manner in which each sect should recite the texts respectively. They complained that defendant riotously obstructed them and that in order to prevent disputes the Head Assistant Magistrate had at last passed orders that the Vadagalais should establish their right in a Civil Court, and that in the meanwhile they should

* Second Appeals Nos. 516 and 517 of 1902, presented against the decree of M.R.Ry. P. S. Gurumurti Ayyar, Subordinate Judge of Kumbakonam, in Appeal Suits Nos. 1084 and 1085 of 1900, presented against the decree of M.R.Ry. V. Cuppusamy Ayyar, District Munsif of Tirutturaippundi, in Original Suit No. 22 of 1899 (Original Suit No. 339 of 1887) on the file of the District Munsif of Negapatam.

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not recite the texts, etc. They contended that this order was contrary to law; that they and other Vadagalai Brahmins had the right to recite the texts in accordance with usage from time immemorial and with the razinamah, that the curtailment of their rights was unlawful, and that they had suffered damage; and prayed for a declaration of those rights and for compensation. The District Munsif decreed in plaintiffs' favour declaring the right of the Vadagalai Brahmins represented by plaintiffs as set out in the razinamah, but dismissed the rest of the claims. Defendants appealed to the Subordinate Judge, who dismissed the appeal and (on plaintiffs' cross-appeal) awarded one anna as damages to plaintiffs Nos. 1 to 6, and in other respects confirmed the Munsif's decree.

Defendants Nos. 1 to 3 preferred this second appeal.

T. Rangachariar for appellants.

V. Krishnaswami Ayyar and *P. R. Sundara Ayyar* for respondents.

JUDGMENT.—On the question which we have first to consider, namely whether this suit is cognizable by a Civil Court, we have no hesitation in deciding that it is not.

The explanation to section 11 of the Code of Civil Procedure which governs the question runs as follows: "A suit in which the right to property or to an office is contested is a suit of a Civil nature notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."

Now, here the subject of the plaintiffs' claim was confined to rights in religious ceremonies, without a claim to any office or any emoluments. The plaintiffs did ask for damages on account of perquisites which they had been prevented from getting, but this was a mere fiction apparently put in to clothe the Court with jurisdiction for though both the Courts have declared the plaintiffs' rights in other respects neither Court has declared the plaintiffs' right to any office or to any emoluments. The Subordinate Judge has, it is true, made an addition to the Munsif's decree by giving the plaintiffs Nos. 1 to 6 one anna as nominal damages between them, but this was quite unjustifiable and is as fictitious as the plaintiffs' claim itself for damages. The plaintiffs' claim was on behalf of all the members of the Vadagalai community wherever residing, numbering many untold thousands and it is obvious that the whole of an ill-defined community cannot be

entitled to any particular office in a particular temple or to any emoluments or perquisites thereof. Hence there is no claim by the plaintiffs for an office, and their claim for damages is purely imaginary. The decree of the Courts below, after excising the hypothetical damages granted by the Subordinate Judge, is itself a confirmation of our view of what the plaintiffs' claim really was, as it only declares the right of the plaintiffs' community to recite certain sacred texts in the temple in question either after or apart from the Tengalai community. This is clearly a mere matter of ritual or ceremony in a religious matter with which a Civil Court can have nothing to do. The decree makes no declaration in respect to any "right to property or to an office" or to any general right of the Vadagalais to worship in this temple, which has never been disputed.

The mere fact that the plaintiffs have claimed the declaration they seek in the alternative under the terms of a razinamah (exhibit C) does not assist them, for this razinamah was entered into in May 1893 between the then heads of the rival sects of Vadagalais and Tengalais residing in Negapatam to enable certain ceremonies to be performed in the temple in question. That this was only a temporary arrangement, made with a view to prevent a breach of the peace, appears from the order of the Head Assistant Magistrate exhibit XVI, dated the 21st July 1893. This agreement cannot therefore be treated as a contract binding all the members of both communities wherever residing for all time. For these reasons we allow these second appeals and dismiss the plaintiffs' suit with costs throughout. The memoranda of objections that have been filed in the cases have not been argued by the plaintiffs' pleader.