

APPELLATE CIVIL.

*Before Sir Ralph S. Benson, Officiating Chief Justice, and
Mr. Justice Sankaran-Nair.*

COOPPOOSAMI CHETTY (PLAINTIFF), APPELLANT,

v.

DURAISAMI CHETTY AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1909.
September
3, 7.

*Defamation—Words imputing loss of caste, when actionable—Privilege—
Caste usage.*

It is open to one member of a caste to refuse to associate with another for what he considers to be an infringement of caste rules; and no Court can call upon him to assign a reason for not associating.

It is not however open to one member to call another an outcaste.

The caste or the majority of them may expel a member from the caste. The Courts will interfere if he is so expelled without being given a proper opportunity for explanation.

Words which impute unworthiness to remain a member of the caste are defamatory and give rise to a cause of action; and where the words used are ambiguous, it must be decided on evidence whether they were intended to bear a libellous meaning.

Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of the caste, will not of itself suffice to make the communication privileged.

APPEAL against the decree of C. V. Kumaraswami Sastriar, City Civil Judge of Madras, in Original Suit No. 64 of 1908.

The facts of this case are fully stated in the judgment.

The Hon. Mr. V. Krishnaswami Ayyar and C. Narasimha Chariar for appellants.

S. Subrahmania Ayyar for first to fifth respondents and T. Narasimha Ayyangar for sixth to ninth respondents.

JUDGMENT.—The plaintiff who it is alleged belongs to Vanuva class, a sub-division of the Vaisya community, married in June 1905 with the sanction of the caste Guru one of his daughters to one Venugopala Chetty, a High Court Vakil, who also is alleged to belong to the same sub-division. The plaint alleges that the defendants in collusion with others "intending to disgrace the

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plaintiff and to cause it to be believed that the marriage connection was improper and low and that the plaintiff thereby became an outcaste, falsely and maliciously from time to time performed or caused to be performed prayaschittam or purification ceremony to various persons that dined in the plaintiff's house or ousted or caused to be ousted such persons from private houses when assembled for feasts, etc.," and, after referring to a few instances, states finally on the occasion of the death of the mother of one Vilvapathi Chetti and Rukmangatha Chetti, plaintiff himself attended the karmanthiram ceremony on invitation when the defendants intending to injure the plaintiff, his name and credit, and to cause it to be believed that plaintiff became an outcaste, falsely and maliciously spoke and published of the plaintiff, the words following, "Prayaschittam must be performed as Coopposami Chetty attended the karmanthiram, and openly caused prayaschittam to be performed to Rukmangatha Chetty falsely and maliciously meaning and intending thereby that the plaintiff was an outcaste" and it is also alleged that the plaintiff has been injured in credit and reputation, and has lost his position as a kariasthan of the community. The plaintiff therefore sues for damages. The suit was dismissed by the City Court Judge on the ground that the plaint does not disclose any cause of action. The plaintiff appeals. The only question, therefore, for consideration is whether, if the facts stated in the plaint are proved, the plaintiff would be entitled to any relief.

The Judge is of opinion that every member of a caste is entitled to have his own views about the propriety or otherwise of the conduct of another person as regards real or supposed caste customs or usages, and if the defendants and certain other members of the caste 'boycott' the plaintiff and his friends for what they considered to be his transgression of caste rules, a Civil Court has no jurisdiction to interfere. This power to 'boycott' implies also the power to indicate the course which the plaintiff and others who associate with him must adopt if they wish to purge themselves of what was in the defendants' eyes a caste offence, and to associate with them. They were therefore entitled to insist upon prayaschittam by the plaintiff. The Judge further held that prayaschittam does not necessarily imply that plaintiff is outcaste. It may be required for any transgression of caste rules, and as there is no allegation in the plaint that the defendants called the

plaintiff an outcaste, he held that the suit was not maintainable and dismissed it.

The Judge is, of course, right in holding that it is open to the defendants to refuse to associate with the plaintiff, on account of what they consider to be a breach of any caste rule. In fact they might do so without being called upon by the Courts to give any reason. They might also impose any conditions they liked upon the plaintiff if the latter wished to associate with them. But the question before us is very different.

It is conceded before us and it is established by decided cases that it is defamatory to call a person an outcaste. A caste, no doubt, is a voluntary association of persons for certain purposes. It is open to a person to leave it. But every Hindu, at any rate the majority of them, are born into some caste or other. Their status and their relations towards the other castes are defined and fixed by the caste to which they belong. Their matrimonial relations, their laws of inheritance and generally their religious and social rights and duties also are determined by their caste. That many of these duties are only of imperfect obligation and not legal makes no difference so far as the question before us is concerned. A person cannot be deprived of the membership of the caste except in accordance with caste usage. The caste as a body, or the majority of them, may no doubt expel him, but if they do so without giving him an opportunity of explanation, the Civil Courts will interfere. *Krishnasami v. Virasami*(1). The decided cases show that their procedure must be in accordance with usage and that the excommunication must not be opposed to natural justice. Words, therefore, which are intended to bring about disastrous consequences resulting from the loss of caste, such as deprivation of religious and social communion, by imputing unworthiness to any person to continue a member of his caste, are *prima facie* defamatory and give rise to a cause of action. They certainly may lower him in the estimation of his own caste and of other castes. Prayaschittam by itself, it is true as stated by the Judge, may not indicate any kind of excommunication. But prayaschittam for a caste offence as a condition for readmission into religious or social communion certainly implies provisional excommunication which is removed when prayaschittam is

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BENSON, C.J., performed. Where the meaning of the imputation is ambiguous, AND SANKARAN- NAIR, J. evidence is admissible to explain its meaning. The plaintiff, in our opinion, alleges that prayaschittam was insisted upon in this case on account of the plaintiff being an outcaste and the plaintiff is entitled to prove that this is the meaning of the words used. As observed by Lord Blackburn in *Capital and Counties Bank v. Henry* (1): "If the words were reasonably capable of a meaning which in the opinion of the Court would be libellous on the plaintiffs personally, I think there can be no doubt that it ought to have been left to the jury to say whether the words bore that meaning."

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That the defendants are members of the same caste makes no difference at this stage of the suit, when we are not considering the question of privilege. A man may be excommunicated or otherwise punished for a caste offence. But that jurisdiction must be exercised only by the caste and "with due care and in conformity to the usage of the caste." If the caste by a majority arrive at a certain conclusion as pointed out by the learned Chief Justice in *Thiagaraya v. Krishnasawami* (2), it would be intolerable to allow a few dissentients to circulate defamatory statements about a person, because they believed that in a caste dispute a wrong conclusion was arrived at." The caste may delegate its powers in respect of caste offences wholly, or in part, to a Raja as in the case of *Vallabha v. Madusudanani* (3) or to a Guru, *Ganapati Bhatta v. Bharati Swami* (4), the *Qucen v. Sankara* (5) where Muthusami Ayyar, J., points out that if the majority of the caste had accepted the widow marriage as valid, there would have been no need to take the consent of the Guru. In such cases it would be in accordance with caste usage that any purely caste offence should be inquired into and dealt with by the Raja or Guru to whom the power is delegated. It is not for a Civil Court to impose an ecclesiastical head on any caste or any member of the caste. As pointed out in *Tholappalacharlu v. Venkatacharlu* (6) it is entirely within the option of any individual member of a caste and therefore also within the option of the caste whether he or they will submit to the Guru or not. But so long as he continues a member of the caste he

(1) (1882) L.R., 7 A.c., 777.

(2) (1892) I.L.R., 15 Mad., 217.

(3) (1889) I.L.R., 12 Mad., 495.

(4) (1894) I.L.R., 17 Mad., 222.

(5) (1883) I.L.R., 6 Mad., 384.

(6) (1896) I.L.R., 19 Mad., 62 at p. 64.

submits to its rules and traditions and to the jurisdiction of the caste or the Guru, to whom the powers may have been delegated to inquire into his conduct so far as caste offences are concerned. But this in no way implies that any member of a caste like the defendants is entitled to take the matter into his own hands and denounce the plaintiff as an outcaste. He has to prove that his statements were privileged communications. And for that purpose may rely upon his membership of the caste, to show his interest or duty. But that in itself does not render his statements privileged communications.

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On the ground then that the words complained of are capable of being understood to imply that the plaintiff was an outcaste, and as it is open to the plaintiff to prove that the words were, in fact, intended to convey that imputation having regard to the time and place and manner of utterance and all other relevant facts which may be duly proved, we are of opinion that the plaint does disclose a cause of action and that the suit is therefore maintainable.

We accordingly reverse the decree of the lower Court and remand the suit for disposal according to law.

Costs will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Abdur Rahim.

SIVACHIDAMBARA MUDALIAR AND ANOTHER (FIRST AND
FOURTH DEFENDANTS), APPELLANTS,

1909.
July 5, 6, 23.

v.

KAMATCHI AMMAL AND OTHERS (PLAINTIFF, SECOND AND
THIRD DEFENDANTS AND SECOND DEFENDANT'S LEGAL
REPRESENTATIVE), RESPONDENTS.*

Limitation Act XV of 1877 s. 23, Sched. II, art. 36, 115, 116—Transfer of Property Act, ss. 76, 92—Mortgagor's right to compensation for property not delivered to him is based on a continuing obligation and time does not run till redemption—Time runs under art. 36 of Limitation Act from date of loss and not from date of knowledge.

Under section 92 of the Transfer of Property Act, the mortgagor on paying the mortgage debt is entitled to be put in possession of the mortgaged properties and the obligation to do so is a continuing obligation on the mortgagee which cannot cease so long as the right of redemption is not barred.

* Civil Miscellaneous Appeal No. 155 of 1907.