

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Somayya.*

KHAJI DODDA KHAJI SAHIB AND SEVEN OTHERS
(APPELLANTS), APPELLANTS,

1939,
February 7.

v.

CHIGAMALLA NANJAPPA AND FIVE OTHERS
(RESPONDENTS), RESPONDENTS.*

*Injunction—Land owned by a community—Place of worship in
—Erection of—Right of that community as to—Injunction
restraining such erection—Grant of, at instance of a rival
community—Legality of.*

The Hindus of a village filed a suit for an injunction restraining the defendants, who represented the Muhammadan community of the village, from erecting a mosque on a piece of land owned by the Muhammadan community in the Hindu quarter of the village and for a declaration of the unrestricted right of the Hindus to hold religious, social, public and private processions "attended with music" along the route on which the proposed mosque was to be built. The Courts below, while allowing the construction of the new building to proceed, issued an injunction restraining the defendants from using it as a mosque but at the same time granted a declaration that the plaintiffs were entitled to take processions along the particular street. The decision of the Courts below was confirmed by a single Judge in second appeal.

Held that the injunction which had been granted infringed the rights of the defendants and must therefore be dissolved.

The Muhammadans being admittedly the owners of the site in question were entitled to use it for the purpose of a mosque. That the Hindu community of the village objected to the erection of a mosque on the site and that acute feeling would be aroused if the building were used as a mosque are not grounds which the law can recognize for the granting of the injunction. The erection of a mosque on land owned by

* Letters Patent Appeal No. 11 of 1937.

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NANJAPPA. Muhammadans cannot be regarded as constituting an injury in law to persons of another creed.

Seshayyengar v. Seshayyengar(1), *Parthasaradi v. Chinna-brishna*(2) and *Kasim Ali Khan v. Birj Kishore*(3) followed.

APPEAL under Clause 15 of the Letters Patent against the judgment and decree of the High Court, dated 2nd November 1936 and passed in Second Appeal No. 1194 of 1932 preferred against the decree of the District Court of Bellary in Appeal Suit No. 13 of 1931 (Original Suit No. 272 of 1929, District Munsif's Court, Hospet).

V. S. Narasimhachar and *Basheer Ahmed Sayyed* for appellants.

K. Umamsheswaram for respondents 1, 2, 4 and 6. Respondents 3 and 5 were not represented.

LEACH C.J. LEACH C.J.—The Muhammadan community of the village of Kunchur, Bellary District, owns a piece of land in the Hindu quarter of the village. Some years ago they proposed to erect on this land a Jumma Musjid notwithstanding that there were already two mosques in the village. The proposal was greatly resented by the Hindus of the village, and in 1929 they filed a suit in the Court of the District Munsif of Hospet for an injunction restraining the defendants, who represented the Muhammadan community, from erecting the musjid and a declaration of the unrestricted rights of the Hindus to hold religious, social, public and private processions “attended with music” along the route on which the proposed Jumma Musjid was to be built. The suit was strenuously contested. The defendants set up a contention that a mosque had been erected on

(1) (1880) I.L.R. 2 Mad. 143.

(2) (1882) I.L.R. 5 Mad. 304.

(3) (1870) 2 N.W.P.H.C. Rep. 182.

the site in 1910 but this had been demolished with a view to the construction of a new mosque. The District Munsif found that, although the Muhammadans of the village had occasionally used the site for the purpose of offering prayers, there had never been a mosque on the site and that it had never been intended that a mosque should be built thereon. In view of the feeling between the two communities he considered that it was not desirable that there should be a mosque on the site and, although he allowed the construction of the new building to proceed, he issued an injunction restraining the defendants from using it as a mosque. At the same time he granted a declaration that the plaintiffs were entitled to take processions along this particular street. The defendants appealed to the District Judge, who by a judgment, dated 7th March 1932, upheld the decision of the District Munsif. The defendants then appealed to this Court. The appeal was heard by VARADACHARIAR J., who confirmed the decrees of the lower Courts but granted a certificate under Clause 15 of the Letters Patent permitting an appeal to a Bench. The appellants do not complain of the declaration granted by the District Munsif to the respondents, but they object to the injunction restraining them from using the building as a mosque.

That the Hindu community of Kunchur objects to the erection of a mosque on the site and that acute feeling will be aroused if the building is used as a mosque are not grounds which the law can recognize for the granting of the injunction. The Muhammadans of the village are admittedly the owners of the site and they wish to utilize it for the purpose of a mosque. There is nothing unlawful in using this site for a mosque and therefore they are entitled to utilize it for the purpose. The right in the appellants to use

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this site for a mosque is so clear that authority is hardly necessary, but there is authority and authority of this Court. In *Seshayyengar v. Seshayyengar*(1) TURNER C.J. and FORBES J. held that in this country, where there is a great diversity of creeds, it would be intolerable if the members of a sect were not at liberty to erect a place of worship on their own property, because it was more or less contiguous to a place already occupied by a place of worship appertaining to another sect. The Court pointed out that 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. A decision to the same effect was given by the learned Chief Justice and MUTTUSWAMI AYYAR J. in *Parthasaradi v. Chinnakrishna*(2). In *Kasim Ali Khan v. Birj Kishore*(3) (a case decided by the High Court, North West Provinces, when TURNER C.J. was officiating as the Chief Justice of that Court) the learned Chief Justice observed :

“ The land on which the temple is erected is the property of the respondents, and they are at liberty to build what structure they please upon it. Nor can the Courts by anticipation grant a decree prohibiting them against annoying the appellants. It must be shown that some substantial annoyance, and one which the Court can recognise, has been actually committed, before the Court will interfere.”

These authorities were quoted to VARADACHARIAR J., but he did not consider that he was justified in interfering with the injunction which had been granted. In the course of his judgment he referred to the maxim *sic utere tuo ut alienum non laedas*, but this maxim

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can have no application here. A man must enjoy his own property in a manner which will not do injury to others, but the erection of a mosque on land owned by Muhammadans cannot be regarded as constituting an injury in law to persons of another creed. Of course, if the Muhammadan community utilizes the building in a manner which does in fact create a nuisance, then the law will interfere, but it cannot be said that the use of a building as a mosque will amount to a nuisance.

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Much has been said in argument with regard to the right of the Hindu community to hold processions along the street and it is said that if a mosque is erected attempts will be made to interfere with this right. This argument is really without foundation because the respondents have already obtained a declaration in their favour. The appellants have not challenged the respondents' right to this declaration and it is binding upon them. The case has to be decided from the point of view of legal right and there can be no doubt that the injunction which has been granted does infringe the rights of the appellants. It must therefore be dissolved.

I would, however, add this. The new building which has been erected on the site has up to now been used as a school. This is the result of the injunction granted by the District Munsif. The continuance of the use of the building as a school is a matter which the Muhammadan community of Kunchur might very well consider. They have, as I have already pointed out, two mosques in the village and it has not been suggested that these two mosques are insufficient for the Muhammadan community of Kunchur. The Court can, of course, give no direction

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 NANJAPPA. should receive the further consideration of the appellants
 LEACH C.J. and in the interests of good feeling between the two
 communities we trust that it will.

The decree of the District Munsif will be varied by the omission of the injunction, but the declaration in favour of the respondents will stand. The appellants having succeeded with regard to the injunction are entitled to their costs in this Court and in the District Court. So far as the first Court is concerned the parties will bear their own costs.

A.S.V.

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and
 Mr. Justice Somayya.*

KUPPAINETHU GURUVAPPA NAICKER
 (RESPONDENT), PETITIONER,

v.

M. MOUNAGURUSWAMI NAICKER
 (APPELLANT), RESPONDENT.*

*Code of Civil Procedure (Act V of 1908), sec. 110, paragraph 2
 —Irrigation right—Decision negating—Appeal to Privy
 Council from—Right of—Land actually involved less than
 Rs. 10,000 in value—Decision depending upon construction
 of agreement embodied in compromise decree—Property of
 far greater value than Rs. 10,000 affected by decision.*

Through the lands of a village of which the petitioner and the respondent were co-owners ran two water channels A and B. In 1908 the petitioner brought under wet cultivation by means of channel B fourteen kulis in addition to the area of

* Civil Miscellaneous Petition No. 5450 of 1938.