

RAJABATHNA
CHETTIAR
v.
SHAICK
MAHABOOR,
LEACH C.J.

and fifth respondents are concerned. The decree under appeal provides for a personal decree against the minors. There can be no personal decree against them. The decree which is passed will be against their properties only. In drawing up the final decree care will be taken to allocate liability to the minor respondents according to the respective shares in the estate.

In dealing with the question of costs WADSWORTH J. allowed two sets for the respondents. This has been objected to and we consider that there should only be one set. The parties will pay and receive, here and below, proportionate costs, one set, but there will be a certificate for two Counsel on each side.

Attorney for respondents: *N. T. Shamanna*,

G.R.

APPELLATE CIVIL.

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

RAMASWAMI GOUNDAN AND TWO OTHERS
(RESPONDENTS 2, 4 AND 5), APPELLANTS,

v.

LAKSHMANA REDDI AND TWO OTHERS (APPELLANTS
2 AND 3 AND THIRD RESPONDENT), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 9—Festival day in temple—Right to lead a horse—Suit of civil nature cognizable by civil Court—No compellable duty on plaintiff's part to bring a horse or to lead it on the festival day—Office—Test of.

The plaintiff sued to establish his right to lead the horse on a particular festival day in a village temple whenever that

* Letters Patent Appeal No. 53 of 1937.

festival was performed, alleging that leading the horse was an office, that he and his predecessors had been performing that office from generation to generation and that therefore he was entitled to be protected against disturbance from the temple authorities. There were admittedly no emoluments attached to the office, and there was no compellable duty on the part of the plaintiff to bring a horse or to lead it on the festival day in question.

Held that what was claimed by the plaintiff was not an office but merely an honour and that the suit was not one of a civil nature cognizable by a civil Court under section 9 of the Code of Civil Procedure.

One test which is necessary to constitute an office is a corresponding compellable duty.

Srinivasa Thathachariar v. Srinivasa Aiyangar(1) relied upon.

APPEAL under Clause 15 of the Letters Patent against the judgment of KING J. in Second Appeal No. 50 of 1933 preferred to the High Court against the decree of the Court of the Subordinate Judge of Salem in Appeal Suit No. 41 of 1930 (Original Suit No. 759 of 1927, District Munsif's Court, Salem).

S. S. Ramachandra Ayyar for appellants.

K. S. Desikan for respondents 1 and 2.

Third respondent was not represented.

The JUDGMENT of the Court was delivered by SOMAYYA J.—There is a Mari Amman temple in a village called Thammampatti and a Selli Amman temple in Koneripatti, a hamlet of the above village. The two plaintiffs claimed two different rights but we are concerned in this appeal only with the right claimed by the first plaintiff. The right claimed by him is the right to lead the horse on a particular festival day whenever that festival is performed. It is said that this festival is not performed every year or at stated

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intervals but that it is performed whenever funds permit. The right that is claimed is not a right to worship but a right to an office. It is claimed that leading the horse is an office, that the plaintiff and his predecessors have been performing this office from generation to generation and that therefore the plaintiff is entitled to be protected against disturbance from the defendants. The District Munsif of Salem decreed the suit holding that the plaintiff had established his right. On appeal the Subordinate Judge of Salem upheld the contention but he made a very important addition to the decree of the trial Court. He held in effect that the first plaintiff could not be compelled to perform this act of leading the horse and that, if he did not bring a horse at the time of the festival and was not willing to lead it, the defendants would be entitled to make other arrangements for the conduct of the festival. The decree of the Subordinate Judge accordingly directs that in the event of the first plaintiff's failure or refusal to lead the horse, the Perithanakars and Kariakars are entitled to make other necessary arrangements for the conduct of the festival. With this modification the Subordinate Judge confirmed the decree granted by the trial Court. There was a second appeal filed in this Court and the appeal was disposed of by KING J. He confirmed the decree of the Subordinate Judge but granted a certificate under Clause 15 of the Letters Patent.

We are concerned in this appeal with the question whether the right that is claimed by the first plaintiff is a right to an office which can be made the subject-matter of a suit in a civil Court under section 9 of the Code of Civil Procedure. That section says:

“The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature

except suits of which their cognizance is either expressly or impliedly barred."

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An explanation is added that 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. The point that we have got to decide is whether the suit in this case is of a civil nature and whether it is for a right to an office. There are admittedly no emoluments attached to the office. As was held by this Court in *Srinivasa Thathachariar v. Srinivasa Aiyangar*(1) the conception of an office involves a corresponding obligation to perform the duties of the office. It was pointed out by the learned Officiating Chief Justice at page 358 that

"the term office, in the sense with which we are concerned, implies, of course, a duty in the office-holder to be discharged by him as such—see, if authority were necessary, Kent's Commentaries where it is pointed out 'offices consist in a right, and correspondent duty, to execute a public or private trust and to take the emoluments belonging to it'".

In this case on the findings of the Subordinate Judge which were accepted by KING J. there is no compellable duty on the part of the first plaintiff. He cannot be compelled to bring a horse or to lead it if he chooses not to do either. Provision is accordingly made that, if he did not bring a horse or if he refused to lead it, the temple authorities might make other arrangements to bring a horse or to have it led. Mr. Desikan, the learned Advocate for the respondents, argues that this provision is only meant as a rule of suspension in case the office-holder does not do the duty properly, but how it strikes us is that this provision has an important bearing on the question whether

(1) (1899) 9 M.L.J. 355.

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there is an office at all. The evidence taken as a whole leads to the conclusion that, to start with, there was no compellable duty at all but that, if the plaintiff chose, he might bring a horse and lead it. The mere circumstance that in the past a member of the plaintiff's family was allowed to do it is not a guide or a test for deciding whether what is claimed by the plaintiff is an office. The decisions relied on by the learned Counsel for the respondents are all in cases where the right to perform worship in a temple or other religious institution was the subject of dispute. If the trustees or other persons in charge of a religious institution deny the right of worshipping to a member of the public who has a right to perform worship therein, then that member has got a right to have it declared that he is entitled to perform worship. These decisions are of no help in considering the question whether what is claimed in a particular case is an office or not. One test which is necessary to constitute an office is a corresponding compellable duty. That being absent in this case, we are of opinion that what is claimed is not an office but merely an honour.

The result is that this Letters Patent Appeal must be allowed, the decrees of the lower Courts set aside and the suit dismissed with costs throughout. It follows that the memorandum of objections must be dismissed but we do not award costs.

A.S.V.