

1897

KASHI  
PRASAD  
v.  
KEDAR NATH  
SAHU.

When credit is given him for this, the amount due to the plaintiffs is reduced to Rs. 287-8-0. The result of the above findings is that the plaintiffs' suit for possession of the *sir* land and mesne profits should be dismissed, and a decree passed for Rs. 287-8-0, instead of Rs. 3,009-8-0, with costs proportionate to their success.

I would allow the appeal and vary the decree of the lower Court as set forth above. But, to mark our sense of the bad faith displayed by the defendant, I would not allow him any costs here or in the Court below.

BY THE COURT:—The appeal is allowed; the decree of the lower Court is varied, and the plaintiffs' suit dismissed, except as regards the sum of Rs. 287-8-0. The plaintiffs will get costs in this Court and the Court below proportionate to their success. The defendant will pay his own costs throughout.

*Decree modified.*

## APPELLATE CIVIL.

1898

January 18.

*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.*

OOCHI AND ANOTHER (DEFENDANTS), v. ULFAT AND OTHERS (PLAINTIFFS).

*Maha-brahmans—Agreement as to distribution of offerings—Contract—Cause of action.*

Amongst the Maha-brahmans of a particular village an agreement obtained that some of them should collect and receive offerings during certain months; that during those months the others should refrain from receiving any offerings, and that in certain other months the other Maha-brahmans should collect and receive the offerings and they should refrain from collecting offerings.

*Held* that this was a good agreement and sufficient to support an action for damages by the persons entitled to the offerings in a particular month as against the persons who had received those offerings contrary to the agreement.

THIS was a suit of the nature of a suit for damages for breach of contract. The parties to the suit were Maha-brahmans. The plaintiffs' case was as follows:—They alleged that at a time long anterior to suit an arrangement had been come to amongst the

\* First Appeal No. 59 of 1897, from an order of Maulvi Muhammad Mazhar Husain Khan, Subordinate Judge of Mainpuri, dated the 29th June 1897.

1898

---

 OCHI  
 v.  
 ULFAT.

Maha-brahmans of Mainpuri by which each of them took it in turn to receive the offerings made on an *ekadasha* (eleventh day ceremony), that is to say, if such a ceremony took place during the turn of a particular Maha-brahman the offerings made were taken by him. The turn of the plaintiffs' maternal grandfather as Maha-brahman fell in the months of Jeth, Bhadon, Aghan and Phagun and he used to receive the Maha-brahman's dues in respect of any *ekadasha* occurring during those days. After his death his widow Mithua continued to receive the dues which had fallen to his share. By a deed of gift of the 9th of December 1885 she gave that right of a Maha-brahman to the plaintiffs who held it since then. The plaintiffs further alleged that in the village of Deopura, which is attached to Mainpuri, one Thakur Tribhawan Singh died, and his *ekadasha* was performed on the 8th Jeth Badi, Sambat 1953, corresponding to the 5th of May 1895. That day belonged to the plaintiffs' turn as Maha-brahmans, but the defendants took without any right the offerings made on that occasion to the value of some Rs. 200. The plaintiffs therefore sued to recover the offerings or their value.

The defendants pleaded, *inter alia*, that such a suit would not lie.

The Court of first instance (Munsif of Mainpuri) upheld this contention and dismissed the suit on the ground that it was not cognizable by a Civil Court.

The plaintiffs appealed. The lower appellate Court (Subordinate Judge of Mainpuri) held that the suit would lie, and made an order of remand under section 562 of the Code of Civil Procedure. From that order the defendants appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellants.

Pandit *Sundar Lal*, for the respondents.

EDGE, C. J. and BURKITT, J.:—The plaintiffs sued the defendants to recover money and offerings received by the defendants in breach of an agreement between the parties. The parties were *Maha-brahmans*, and it is alleged that an agreement

1898

OCHI  
v.  
ULFAT.

had been come to between the predecessors of the parties, the effect of which now, as applied to the present parties, is that the plaintiffs should collect and receive offerings during certain months; that during those months the defendants should refrain from receiving any offerings, and that in certain other months the defendants should collect and receive the offerings and the plaintiffs should refrain from collecting offerings. The first Court dismissed the suit on the ground that such a suit would not lie. The second Court set aside the decree of the first Court, and made an order of remand under section 562 of the Code of Civil Procedure. From that order of remand this appeal has been brought.

In the course of the argument we have been referred to *Doorga Parshad v. Budree* (1); *Lala v. Guneshee* (2); *Durga Prasad v. Genda* (3); *Jhummun Pandey v. Dinoo Nath Pandey* (4), *Har Lall v. Jeorakhun Lall* (5); *Deonath v. Mussumat Guneyshee* (6); *Bindhu Lal v. Sampat Misr* (7) and *Muddun Mohan Ghossal v. Nuboram Chuckerbutty* (8).

Few of these authorities have any bearing on this case. The decisions in others of them, so far as they would apply here, were *obiter*. This suit is based on an alleged contract, which of course must be proved. For present purposes, and those only, we assume that the alleged contract can be proved. It is not against public policy that such a contract should be entered into, and we know no reason in law which would make such a contract bad. The cause of action would apparently be for damages for breach of the contract. The measure of these damages probably would be the amount proved to have been received by the defendants in breach of the contract. We dismiss this appeal with costs.

*Appeal dismissed.*

(1) G N.-W. P., H. C. Rep., 189.

(2) S. D. A., N.-W. P., S. C. Vol. 2, p. 448.

(3) Weekly Notes, 1889, p. 169.

(4) 6 W. R., 171.

(5) S. D. A., N.-W. P., 1862, p. 314.

(6) S. D. A., N.-W. P., 1860, p. 78.

(7) Weekly Notes, 1883, p. 163.

(8) 2 W. R., C. R., 69.