

shown that the appellant's brother left any debts. The prior mortgage would of course be liable in the hands of the appellants for the debts of his brother. There could be no question of merger to the prejudice of the brother's creditors.

The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Chumier and Mr. Justice Piggott.*

MAHARAJ NARAIN SHEOPURI AND ANOTHER (DEFENDANTS) v. SHASHI SHEKHARESHWAR ROY (PLAINTIFF)\*.

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March, 16.

*Civil Procedure Code (1908), section 9—Act No. I of 1877 (Specific Relief Act), section 42—Suit for declaration that the plaintiff is the Honorary Secretary of an association—Suit maintainable—Jurisdiction.*

Although the fact that an office is of a purely honorary nature may not by itself be sufficient to render a suit respecting such office unmaintainable in a Civil Court, yet where a plaintiff complained of his eviction from the office of secretary to a society, which was an honorary office and his continuance wherein depended upon rules which the society had power to alter at any moment, it was held that a Civil Court ought not to entertain a suit for a declaration that the plaintiff had been illegally deprived of such office, inasmuch as such Court could not give any decree in his favour which might not be immediately rendered nugatory by the action of the society. *Chunnu Datt Vyas v. Babu Nandan (1)* referred to.

THE facts of this case were as follows :—

The plaintiff was the Chief Secretary of the Pratinidhi Sabha (Board of Representatives) of a registered Association called the Sri Bharat Dharma Mahamandal. His office was purely honorary. He brought the present suit for a declaration that a certain meeting of the Association had been convened in a manner contrary to the rules and constitution of the Association and that the resolution passed by the meeting removing him from office was null and void. During the pendency of the suit the Association appointed another Chief Secretary in his stead. The court of first instance held that the suit did not come within the provisions of section 9 of the Civil Procedure Code and was not cognizable by a Civil Court. In appeal before the District Judge the defendants raised a further objection that the suit was barred by section 42 of the Specific Relief Act inasmuch as the plaintiff had not claimed any injunction against the newly appointed Chief Secretary who had been added

\* First Appeal No. 135 of 1914 from an order of B. J. Dalal, District Judge of Benares, dated the 29th of June, 1914.

(1) (1910) I. L. R. 32 All., 527.

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as a defendant. The District Judge reversed the decision of the first court and remanded the suit with directions to give the plaintiff an opportunity to amend the plaint by the addition of a prayer for injunction. Against this order of remand the defendants appealed to the High Court.

Babu *Sarat Chandra Chaudhri*, (with him Dr. *Satish Chandra Banerji*), for the appellants.

The suit is not cognizable by a Civil Court because the office which the plaintiff was holding was an honorary one carrying no emoluments or pecuniary gain with it. In order to determine whether a suit relating to an office comes within the jurisdiction of a Civil Court the ordinary test is "whether there is any specific pecuniary benefit attached to the office claimable in the nature of wages, however small that benefit may be." *Srinivasa v. Tiruvengada* (1). This principle is approved of in *Chunnu Datt Vyas v. Babu Nandan* (2). Even if the pecuniary test be not conclusive, yet the plaintiff has got to show that some civil right to which he is entitled has been infringed by the act of the defendant. In the present instance the plaintiff's office is not in the nature of a trust. It simply confers a mere dignity on him, the loss of which does not give a cause of action. The plaintiff's position is that of an unpaid servant of a religious and charitable Association which may or may not choose to retain him. The plaintiff cannot complain if all the members of that body are not satisfied with him. The plaintiff has, in fact, been superseded by another Secretary, and the decree of the court will be *brutum fulmen* because an Association which is guided by its own rules liable to be changed at any moment cannot be bound down to accept, against its wishes, a person whom it has dismissed from an honorary office. The case of *Mamut Ram Bayan v. Bapu Ram Atai* (3) relied on by the District Judge is distinguishable because it was found there that the office was in the nature of a trust attached to a particular temple. In this case the office is a purely personal one. The *ratio* of the ruling in *Tholappala Charlu v. Venkata Charlu* (4) is in my favour. Lastly, a claim for declaration or injunction is within the discretion of the court to grant. A court is

(1) (1888) I. L. R., 11 Mad., 450.

(3) (1887) I. L. R., 15 Calc., 159.

(2) (1910) I. L. R., 32 All., 527.

(4) (1890) I. L. R., 19 Mad., 62.

always slow to grant such relief when it is called upon to investigate the propriety or otherwise of the rules and constitution of a private body like the Bharat Dharma Mahamandal. Consequently on all grounds the suit should fail.

Mr. A. E. Ryves (with him Babu Harendra Krishna Mukerji, and Babu Amullya Charan Mitra), for the respondent :—

The contention for the appellants that the suit is not cognizable by a Civil Court on the ground that no pecuniary gain accrues to the plaintiff from his office is not warranted by the plain language of section 9 of the Civil Procedure Code. What that section contemplates is, that the suit must relate to an office whatever may be its nature. The Vice Chancellor of the University of Allahabad holds an office which is as much honorary as that of the plaintiff in the present case, and it could hardly be contended that if the Vice Chancellor was removed from his position as such in contravention of the constitutional rules of the University, no suit could be maintained by him for restoration to that office. The leading case on the subject of such suits is that of *Mamat Ram Bayan v. Babu Ram Atai* (1) which goes the whole length of holding that an office for the loss of which a suit will lie may not only be honorary but may even entail some expenditure on the part of the incumbent. The test as laid down in the Madras cases cited by the appellants is opposed to authority and principle and does not form the basis of the decision in the case of *Chunnu Datt Vyas v. Babu Nandan* (2). Read as a whole that case shows that the ground for the dismissal of the suit was the plaintiff's tender age and his incapacity for organizing and managing the pageants in respect of which he asserted his own right. The particular observations in that case to which the appellants have referred have no higher force than that of *obiter dicta*. No doubt, a relief for declaration or injunction is discretionary with the court to grant or refuse; but in a case like the present where the respondent's legal status has been invaded he is entitled to seek the protection of the court, and it is out of place at this stage to enter into the question how far its decree will avail the respondent.

(1) (1887) 1. L. R., 15 Cal., 159.

(2) (1910) I. L. R., 32 All., 527.

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Babu Sarat Chandra Chaudhri was not heard in reply.

PIGGOTT, J.—In this case the plaintiff, Raja Sashi Sekharaeshwar Roy, Rai Bahadur, describes himself as the Chief Secretary of the Board of Trustees, otherwise known as the Pratinidhi Sabha, of an Association known as the Sri Bharat Dharma Mahamandal, registered under Act XXI of 1860. He complains in effect that the two defendants, who are members of the same Association, are seeking to remove him from the post of Chief Secretary and have endeavoured to do so by measures contrary to the rules of the Association itself. He asks for a declaration that a circular convening a meeting to be held on 12th of May, 1912, was “invalid and inoperative under the rules or constitution of the said Sri Bharat Dharma Mahamandal,” and that the meeting held in consequence of this notice and the resolutions passed at the said meeting are “null and void.”

The first court held that the dispute was not one cognizable by the Civil Courts and that the plaintiff had no *locus standi* under section 42 of the Specific Relief Act to ask for a declaration; it dismissed the suit accordingly. The learned District Judge in appeal has reversed this finding and remanded the suit for trial on the merits. The appeal before us is by the defendants against this order of remand.

I think the first court was substantially right and that the learned District Judge has taken too narrow a view of the question in issue. In order to succeed the plaintiff has to satisfy the court both that the suit is one concerning the right to an office, within the meaning of section 9 of the Civil Procedure Code, and also that what he is enforcing in this suit is his right to a certain “legal character” within the meaning of section 42 of the Specific Relief Act (No. I of 1877). Of the reported cases to which we were referred in argument, the one most nearly in point is that of *Chunnu Datt Vyas v. Babu Nandan* (1). It may be that the fact that a plaintiff is claiming some position to which no remuneration attaches is not always decisive; but in the present case I think it is so. If the plaintiff was the paid Secretary of the Board of Trustees he would have certain rights founded upon contract, and he could claim the enforcement of the rules of the Society or Association as they

(1) (1910) J. L. R., 32 All., 527.

existed at the time of his appointment, in so far as those rules formed part of the essential conditions subject to which he accepted his employment. As a matter of fact the plaintiff's services are voluntary and gratuitous ; there is no question of any contract between him and the Board of Trustees. The latter have a perfect right to entrust the duties of Honorary Secretary to their body to such person or persons, willing to undertake the same, as they may from time to time approve. It would be idle for the Civil Courts to enter upon an investigation of the rules of this particular Association governing the appointment of honorary secretaries when those rules themselves could be altered at any moment by the Board of Trustees, and there is no enforceable contract in existence which could bind the Trustees to abide by the rules in existence at the time of the plaintiff's appointment in their subsequent dealings with him. That this is no merely conjectural argument is sufficiently shown by the fact that, at the hearing of this appeal, we have been handed two different sets of rules, the appellant putting in a book dated the " January 1911 " and the respondents one of 1913. The point really lies in a nutshell. The plaintiff either does or does not possess the confidence and support of a majority of the Board of Trustees. In the former case no such machinations as are alleged in the plaint could prevent the said Board from continuing to use his services as their Honorary Secretary, in the latter case no decree which any Civil Court could pass on a suit like the present could prevent the Board of Trustees from dispensing with the plaintiff's services and employing some one else.

I would set aside the order of the lower appellate court and restore the decree of the court of first instance dismissing this suit.

CHAMBER, J.—I agree.

BY THE COURT.—The order and decree of the lower appellate court are set aside and the decree of the court of first instance dismissing the suit is restored. The defendants will get their costs in all courts.

*Appeal decreed.*

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