

APPELLATE CIVIL.

Before Sir Grimwood Maars, Knight, Chief Justice, and Justice Sir
 Pramada Charan Benarji.

SURAJ PRASAD (PLAINTIFF) v. GANESH RAM AND OTHERS
 (DEFENDANTS).*

1921
 April, 12.

Hindu law—Gangaputra—Right to place platforms on ghats for helping pilgrims—Rights of a ghatiya heritable under the Hindu law.

Held that the rights of a *ghatiya*, that is, the right to place platforms on a *ghat* and to use such platforms for the purpose of helping bathers and assisting them in their religious performances is a right to property and is heritable under the Hindu law. *Sukh Lal v. Bishambhar* (1) and *Rajhoo Pandey v. Kassy Parey* (2) referred to. *Bansi v. Kanhaya* (3) distinguished.

THE facts of this case were as follows :--

One Chedi Tiwari was the owner of a house and was also a *ghatiya* of four ghats on the Ganges at Benares. He died 55 years ago leaving him surviving his widow Musammat Parbati who entered into possession of her husband's property including the ghats. Musammat Parbati died on the 13th of April, 1910. The plaintiff, who is Chedi's daughter's grand-son, instituted this suit in September, 1917, as the nearest reversioner of Chedi Tiwari for declaration, possession and mesne profits of the house and the ghats on the allegation that the defendants were mere trespassers and had wrongfully taken possession of the property in suit. The defendant resisted the suit on the ground that the plaintiff was not the nearest reversioner of Chedi Tiwari, that the suit was barred by time, as Chedi had in his life-time given possession of the property in suit to one Sumer Pande, predecessor in interest of the defendants, that the suit in respect of the ghat rights was not maintainable, as Chedi was not the owner of the land of the ghats, and that the defendants were in possession as trustees under a will, dated the 21st of July, 1916, from Sumer Pande. The lower court held that the plaintiff was the nearest reversioner of Chedi and he decreed the claim for possession of the house and mesne profits but dismissed the claim as to the ghats.

* First Appeal No. 330 of 1918 from a decree of P. K. Roy, Additional Subordinate Judge of Benares, dated the 25th of April, 1918.

(1) (1916) I. L. R., 39 All., 196. (2) (1888) I. L. R., 10 Calc., 73.

(3) (1920) 18 A. L. J., 933.

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It held "there is no satisfactory evidence to prove that Chedi was the owner of the ghats in suit. Further, in my opinion the so-called ghat rights, which are nothing more than receiving alms are not legal enforceable rights and are not transferable and not heritable."

Both the parties appealed to the High Court, who dismissed the defendants' appeal (F. A. 292 of 1918) holding that it was established that the plaintiff was the nearest reversioner of Chedi.

On the plaintiff's appeal.—

Dr. *Kailas Nath Katju* (with Mr. *B. E. O'Connor*) for the appellant, after submitting that the evidence on the record proved that Chedi had been in possession of the four ghats in dispute and his widow had succeeded after him, contended that the ghat rights were valuable property and were both heritable and transferable. It was a pure mistake to suppose that a ghatya was a sort of a beggar and the offerings that he received from the pilgrims were nothing more than alms. The ghatya rendered important services to the pilgrims at the sacred river, looked after their comforts and convenience, assisted them in the performance of their worship and the offerings received by him were really remuneration for services rendered. The matter must be approached from a Hindu point of view. On every sacred river throughout India the public bathing ghats were occupied in definitely specified portions by communities of people known as gangaputras, pragwalas etc., from generation to generation, and it would be startling to hold that such long occupation gave no right of any kind. The Hindu Law recognizes the validity of numerous intangible rights and classes them as immovable property, e.g. *Maha Brahmani* rights which have been recognized by the court; *Sona Dei v. Fakir Chand*, (1) and *Raghoo Pandey v. Kassy Parey* (2).

Again, in this case the question was as to which of the parties was a rightful successor to Chedi. Plaintiff claimed as an heir and the defendants claimed through Sumer under an alleged gift from Chedi. Moreover, possession of an immovable property

(1) (1918) 1. L. R., 35 All., 412.

(2) (1888) 1. L. R., 10. Cal., 73.

including definite portions of public bathing ghats gave a good possessory title against all the world excepting the true owner.

Dr. *Surendra Nath Sen* (with him *Munshi Badri Narain*) for the respondents, submitted that the right claimed by the plaintiffs in respect of the ghats was no legal right at all. To entitle the plaintiffs to the relief claimed they must either have a legal character or a right to some property. To sit at the ghats and to receive whatever was given by charitably disposed bathers did not give any legal character to the plaintiffs. Nor could it be said that the plaintiff's right to receive gifts from persons going to their ghats was a right to any property. Ghat rights were not immovable property and they stood on quite a different footing from the *birt jajmani* rights; *Bansi v. Kanhaiya* (1).

Moreover, the sites of the ghats having been dedicated to the public no particular member of the public had a right to put up a platform on any portion of the land and to sit there to the total exclusion of every other member of the public. Every member of the public had as good a right to receive alms on the ghats dedicated to the use of the public as any other member. Furthermore, no member of the public could claim an exclusive right to any particular parcel of land as the the rivers were changing continually their course.

Dr. *Kailas Nath Katju* replied.

MEARS, C.J., and BANERJI, J.:—This is the plaintiff's appeal in the suit which gave rise to First Appeal No. 292 of 1918, just now decided by us. In this appeal the plaintiff contends that the court below has erred in refusing to decree the claim in respect of the four ghats claimed by the plaintiff. As regards those four ghats the defence was that the site of the ghats did not belong to Chedi Tiwari and that the claim was not maintainable in regard to them. It has, however, been proved beyond controversy that Chedi Tiwari owned eight ghats, four of which are now in the possession of the plaintiff. The remaining four ghats are in the possession of the defendants. They were admittedly in the possession of the widow of Chedi Tiwari; and it is also admitted that Sumer, from whom the defendants

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derived title, was managing those ghats on behalf of the widow of Chedi Tiwari. The main ground upon which the court below has dismissed the claim in regard to the ghats is that the right claimed in respect of the ghats is not such a right as can be held to be property subject to the ordinary rules of inheritance. Admittedly the site of the ghats did not belong to Chedi Tiwari and it is not claimed by the plaintiff. The right which he claims is a right to place platforms on portions of the ghat for the purpose of helping pilgrims who come to Benares to bathe in the Ganges, and to enable the plaintiff to obtain remuneration for services which are rendered to the bathers. This is a sort of right which has been recognized for a great length of time and has been exercised admittedly in this case by Chedi Tiwari and his successors in title until the defendants took possession; and the defendants have also been exercising those rights. It cannot be said to be a mere right to obtain alms—it is a right which is limited to particular portions of the site of the ghats, to place platforms on those sites, and to use such platforms for the purpose of helping bathers and assisting them in their religious performances. This right seems to us to a great extent to be analogous to the right of *mahabrahmans* which has been recognized in various decisions of this Court and other High Courts. We may refer to the case of *Sukh Lal v. Bishambhar* (1), and also the case of *Raghoo Pandey v. Kussy Parey* (2). Reference was made on behalf of the respondents to the recent decision of this Court in *Bansi v. Kanhaiya* (3). That case in our opinion is distinguishable from the present. There the right which the plaintiffs claimed was no higher than that of an ordinary beggar seeking to get alms at a particular ghat on the banks of the Ganges as against defendants who were *gangaputras*. That case does not seem to us to bear any analogy to the present. In the case of ghats, like those claimed in this suit, the evidence on behalf of the defendants themselves shows that such ghats have been let to lessees who have paid rent, thus recognizing the existence of a right which would form the subject of a lease. According to one of the witnesses of the defendants a lease of one

(1) (1916) I. L. R., 3 All., 193.

(2) (1333) I. L. R., 10 Cal., 173

(3) (1920) 18 A. L. J., 932.

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of the disputed ghats was granted by Sumer from whom the defendants claimed title. In our opinion the right which the plaintiff claimed in respect of the ghat is a right to property and is a right which is heritable under the Hindu law. The plaintiff is therefore entitled to the four ghats which he has claimed. The widow of Chedi Tiwari made a will in respect of these ghats in favour of Sumer, but this will could not have any effect after her death, and therefore under the will the defendants cannot be held to have acquired any title. The will, however, proves one fact, namely, that the ghats belonged to Chedi Tiwari and were subsequently in the possession of Musammat Parbati, his widow.

In these circumstances we are of opinion that the court below ought to have decreed the plaintiff's claim in respect of the four ghats in addition to his claim in regard to the house. The plaintiff is also entitled to mesne profits in respect of the ghats and those mesne profits should, we think, be determined in further proceedings under order XX, rule 12, of the Code of Civil Procedure.

We accordingly allow the appeal, modify the decree of the court below and grant a decree to the plaintiff for possession of the four ghats claimed by him and also for mesne profits to be determined as aforesaid under order XX, rule 12. The appellant will have his costs of this appeal and also in the court below as regards this part of the claim.

Appeal decreed.

Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.

SRI NEWAS (PLAINTIFF) v. RAM DEO (DEFENDANT)*

Contract—Wagering contract—Criteria for determining whether a speculative contract is also a wagering contract.

 1920
 April, 14.

When persons who are in a position to carry out a contract at the time of making the contract or can reasonably be expected to be in that position when the time of performance falls due, contract to receive or deliver goods at a future date, such contracts are not necessarily wagering contracts because an element of speculation enters into them, even if the contract provides for the

* Second Appeal No. 561 of 1919 from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 30th of January, 1919, confirming a decree of Kshirod Gopal Mukerji, Subordinate Judge of Cawnpore, dated the 21st of May, 1919.