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GAJADHAR PRASAD RAM NATH v. LADORAM GAJANAND

The transaction between the parties was in the nature of principal to principal. The name of the person from whom the plaintiff purchased the bars of silver was never disclosed to the defendants, and there was no indication that the plaintiff would not himself be liable to make good the loss to the defendants. The parties, therefore, dealt with each other as principal to principal. The plaintiff can only recover the difference between the actual contract price and the sale price and not necessarily any loss which he may have suffered on account of his own private transaction with a third party in Calcutta. As pointed out above, the contractual rate was only Rs.47-5 and not Rs.63-11. The plaintiff has by realising Rs.54-6 per 100 tolas made a profit and not suffered any loss. The plaintiff's claim in respect of this transaction is, therefore, not maintainable and should be dismissed.

We accordingly allow this appeal and modifying the decrees of the courts below dismiss the claim for Rs.369-0-6 in respect of the second transaction. The parties will receive and pay costs in proportion to their success and failure in all courts.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Justice Sir Lal Gopal Mukerji

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February, 2

HANSO PATHAK (PLAINTIFF) *v.* HARMANDIL PATHAK AND ANOTHER (DEFENDANTS)*

Hindu law—Joint ancestral property—Income derived from profession of a priest is self-acquired property—Gains of science—"Hereditary priests"—Custom.

Although in the Bombay presidency there might be "hereditary priests" maintained by certain castes and such priests might have a right to force their services on the members of those castes and the right to receive the income therefrom would be a part of the family property, a claim to force one's services as

*Second Appeal No. 353 of 1932, from a decree of Rup Kishan Agha, District Judge of Azamgarh, dated the 19th of February, 1932, reversing a decree of Syed Ejaz Husain, First Additional Munsif of Azamgarh, dated the 23rd of February, 1931.

a priest on any one has never been recognized in these provinces.

The income received by a person by rendering religious ministration to those who wanted it is his personal property and not the property of his joint family. The mere fact that most of the patrons of the priest might have been members of the families which had previously patronised his father or his grandfather does not create any vested interest in the priest's family to force their services upon such patrons, and the income received by the priest can not be deemed to be ancestral joint property.

Per SULAIMAN, C.J.—If the right to receive offerings were connected with any land in the occupation or user of the family or with any temple at which they were officiating, the right might possibly be a family property. Further, the question whether the income of the priest in the present case could be treated as "gains of science" so as to become joint family property did not arise as there was no suggestion that he had received any special training at the expense of the family.

Mr. *B. Malik*, for the appellant.

Mr. *N. Upadhiya*, for the respondents.

MUKERJI, J.:—In this case a nice point of law has been urged, but strictly speaking it does not arise on the facts of the case.

The suit out of which this appeal has arisen was instituted by one of the four sons of the defendant No. 1, Harmandil Pathak, for partition of family property. The plaintiff claimed a fifth share, which would be his if there was no mother alive. The question that was in dispute between the parties in the court of first instance and in the lower appellate court was which of the properties in suit were ancestral and which were the self-acquired properties of Harmandil Pathak, the father. The court of first instance decided that all the properties were joint family properties and accordingly a fifth share was allowed to the plaintiff. On appeal the learned District Judge held that two of the items, which were acquired in 1919 and 1924, were the self-acquired properties of the father, and the plaintiff could not share in them. The plaintiff has filed this second appeal.

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It appears that Harmandil carries on the profession of a priest and so did his father, Binda Pathak. It is urged by Mr. *Malik* on behalf of the plaintiff that Binda Pathak and Harmandil Pathak were "family priests" within the meaning of some Bombay rulings which I shall mention later on; that the profession they followed was in the nature of an immovable property; that, as the profession was followed by Binda Pathak and Harmandil Pathak, all the gains in that profession in the hands of Binda Pathak were ancestral immovable property; and further that whatever was acquired by Harmandil Pathak with the funds so earned became immovable property for the purposes of partition.

To start with, the difficulty is that it has not been found that Binda and Harmandil were hereditary priests in the sense that they were appointed by any caste or community and that they could force their services on the members of that caste and community. It appears that in Bombay there are "hereditary priests" maintained by certain castes and the hereditary priests have a right to force their services on the members of the caste. A case like this arose in *Ghelabhai Gavrishankar* v. *Hargowan Ramji* (1), where a priest sued one of his *yajmans* to establish his right "as the hereditary priest of the Kachhia Kunbis of the Kasba section of Surat to officiate as family priest in the family of the defendant No. 1". No facts have been alleged or found that Binda or Harmandil were family priests in the sense in which that term was used in the Bombay case. Thus, in the absence of any finding of fact to that effect, it is impossible to say that Harmandil's profession was immovable property, and further that it was ancestral immovable property, and the plaintiff is entitled to share in whatever was acquired by Harmandil.

This would be enough to decide the appeal. But in view of the fact that the learned counsel for the appellant has bestowed a good deal of labour and

(1) (1911) I.L.R., 36 Bom., 94.

research on the question, I may express some opinion on the point. Apart from the question of custom and practice obtaining in communities, it is not permissible for any person to force his services on another. In this part of the country, at any rate, I have never known a priest who can say that he can force his services on any *yajman*. No doubt it does happen that in India the profession of the father is very often followed by the son and by the grandson, but it does not follow that that fact alone entitles them to force their services on any particular body or person. In villages one finds a carpenter or a blacksmith plying his profession and his son or grandsons would follow the same profession. People residing in villages go to those people for services. But we have not heard a single case in which the carpenter or the blacksmith can say that he is entitled to force his services and, if a resident of the village went to another carpenter or blacksmith, he would be entitled to recover any damages from the man who took recourse to another professional man. The learned counsel for the appellant has quoted from Colebrooke's Digest the following sentence which occurs at page 377: "If the sacrifice have been uninterruptedly performed by father and son, as family priest, without an express appointment in this form: 'Be my family priest', what is the consequence? Even in this case the law concerning hereditary priests is apposite, since such an appointment of father and son is admitted by implication." This paragraph has been quoted in Bombay cases. It may be as I have said, that according to the practice in some castes in the Bombay Presidency the institution of "hereditary priests" obtains. But there are texts which negative the idea that the earnings of a priest should be treated as shareable by his coparceners. Daya Sangraha (Colebrooke's Translation, at page 420, dealing with gains of science) puts the income of a priest as being not shareable by his coparceners. The expression "officiating as a priest (*purohit*)" is explained as "that

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is what has been received as a fee for having performed for a person the duties of a family priest". This is classed among the gains of science and is not partible. Again the same view is to be found in the text of Manu, chapter 9, verse 206. It has been translated by Dr. Ganga Nath Jha in his book, Hindu Law in its Sources, volume II, as follows: "The gains of learning shall be the sole property of the man by whom they have been acquired, as also friendly presents, marriage presents and presents in connection with priestly functions."

Again we have got a text of Katyayana translated by Mr. Kane of Bombay at page 303 (first edition). The following is laid down as the law of Katyayana: "What is acquired from pupil, that is (by the profession of teaching), by performing the work of a priest at a sacrifice, etc. etc." All this is declared to be "Vidyadhana", and it is not divided at partition. The expression "Vidyadhana" means the same thing as "gains of science" or what has been acquired by exercise of learning.

For the reasons given above, the appeal cannot be sustained, and I would dismiss it with costs.

SULAIMAN, C.J.:—The claim put forward by the plaintiff is that he is entitled to a share in the house built by his father out of his income as a *Pandit*, inasmuch as the same work had been carried on by his grandfather and, therefore, the right to receive such income is a part of the family property. No doubt it has been found that the plaintiff's grandfather was a Brahmin who officiated as a *Pandit* in the houses of his clients and received some income and that after his death the plaintiff's father carried on the same work. But the learned Judge has pointed out that his profession consisted of going from house to house for picking up such work as he might come across and for rendering religious ministration to those who wanted it. The mere fact that most of the patrons of the father might have been members of the families which had previously patronised the grandfather, does not create any vested

interest in the plaintiff's family to force their services upon such patrons. If the right to receive offerings were connected with any land in the occupation or user of the family or with any temple at which they were officiating, the right might possibly be a family property; or again if there were a service which could be rendered even against the will of others, on whom it is to be imposed, it might be claimed as of right. But the income received as amounts paid by people at their discretion, either by way of charity or by way of remuneration for personal services rendered, cannot be claimed as of right, and can not, in my opinion, amount to a family property.

Sulaiman, C.J.

No doubt in some cases in the Bombay High Court referred to by my learned brother the opinion has been expressed that hereditary priests can force their services upon members of a caste. It may be that there are some peculiarities in the customary law of Bombay with which I am not familiar. It is therefore not necessary for me even to suggest that these rulings require reconsideration. But I would certainly say without hesitation that a claim to force one's services as a priest on other families would never be tolerated by the Hindu community, or for the matter of that by any other community, in these provinces. The income received in such a way must be treated purely as the personal property of the *Pandit* concerned and not the property of his joint family. As there is no suggestion that the father had received any special training at the expense of the family, the income received by him cannot be treated as "gains of science" so as to become a joint family property.

I would, therefore, dismiss the appeal with costs.

BY THE COURT: The appeal is dismissed with costs