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such matters, a civil Court might be hereafter equally called on to pass a decree on any alleged privilege claimed by a devotee to stand on one leg, or to proceed by prostrations from one temple to another.

Under this view, I consider that the case should not be adjudicated in our civil Courts, and, therefore, I pass my judgment that the case be dismissed. Each party to bear his own costs.

COPY of the Resolution passed by the Judges of the late Sadr Adálat at Bombay, on the 6th February 1845, in the appeal of *Sri Sunkar Bharti Swámi* v. *Sidhá Lingáyá Charanti.*

The Court having considered, as required by the decree of Her Majesty in Council, whether the appellant is entitled by law to maintain this suit, is of opinion that he is not so entitled, and decides to dismiss the appeal, with costs in this Court on the parties respectively.

As this cause appears formerly to have excited considerable ferment in the zillah of Dharwar, the Court resolves to communicate the above decision for the information of the Magistrate, to enable him to take precautionary measures to ensure tranquillity, should such be deemed necessary.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

1878. January 9.

SANGA'PA' BIN BASLINGA'PA' (ORIGINAL PLAINTIFF) APPELLANT *v.* GANGA'PA' BIN NIRANJA'PA' AND OTHERS (ORIGINAL DEFENDANTS) RESPONDENTS.*

Suit to vindicate a right to a mere dignity.

Plaintiff sued for a declaration of his right to take a cupola to a certain temple and to place it upon the car of the idol, and to take a *nandicola* (bamboo) with tom-toms from his house to the temple, and to offer the first cocoanut to the idol at the annual festival held in honor of a certain Lingayet saint.

Held that the suit was not maintainable, as it was brought to vindicate plaintiff's right, not to an office, but to a mere dignity unconnected with any fees, profits, or emoluments.

THIS was a special appeal from the decision of E. Hosking, Senior Assistant Judge at Kaládgi, affirming the decree of Rángo Ráo Krishna, Second Class Subordinate Judge at Muddebihál.

The facts of the case fully appear from the judgment of the High Court.

The suit was dismissed by both the lower Courts as barred by the law of limitation.

* Special Appeal No. 69 of 1877.

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The principal question argued in special appeal was whether or not the suit was maintainable.

Leith (with him *Ghanashám Nilkanth Nádkarni*), for the appellant, cited *Náráyan* v. *Bálkrishná*.(1)

The Honourable Ráo Sáheb Vishvanáth Náráyen Mandlik, for the respondents, relied upon *Shankara* v. *Hanmá*.(2)

WESTROPP, C.J. :—The plaintiff, a Lingayet, by this suit claims as against the three defendants a declaration of his right (which he alleges to be hereditary) to take a cupola to a Lingayet temple and to place it upon the car of the idol, and to take a *nandicola* (bamboo) with tom-toms from his house to the temple, and to offer the first cocoanut to the idol at the annual festival held in honour of Gangápáyá Máhá Purush, a Lingayet saint. A singular circumstance is, that the second defendant is a Mussulman, and at the bar has been stated to be a species of trustee of the temple conjointly with the first defendant (who is the Lingayet *pujari* of the idol), and to be associated in the trust, because the temple has been built partly on the grave of a Mussulman *pir* or saint. The third defendant alleges the car to have been built at his expense (a disputed fact, not decided in the Courts below), and that he has the right to place the cupola upon it and to offer the first cocoanut to the idol. There would appear to have been a dispute between the plaintiff and the first and second defendants from the years 1860 to 1873 with reference to the plaintiff's alleged rights, and during that time the plaintiff was not permitted by those defendants to exercise those rights. However, on the 31st May 1873 those defendants executed an agreement in which they admitted that the plaintiff had the rights which he claims, and, accordingly, in 1874 he was permitted to exercise them, but was again in 1875 ousted from that enjoyment by the three defendants. The Courts below have held the suit to be barred by the law of limitation (Act IX. of 1871, schedule II, article 131); but were it necessary for us to decide that point, we doubt that we could concur in their view; for, even if the plaintiff's rights were in 1873 barred by the adverse possession of the first and second defendants and by interruption, yet those defendants by their agreement of 1873

(1) 9 Bom. H. C. Rep. 413 (2) *Supra*, p. 470.

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had waived any right which they might have acquired against him by lapse of time, and by their own permission he was remitted to his original right in 1874. The third defendant does not appear to have intervened until 1875 : so, until then, the plaintiff does not seem to have had any cause of action against him. However, it is unnecessary for us to decide the question of limitation, as we are of opinion that upon another ground this suit is not maintainable. It seems to us to have been brought to vindicate the plaintiff's right, not to an office, but to a mere dignity unconnected with any fees, profits, or emoluments, and that this case, therefore, falls within the scope of the decision of *Sri Sunkar Bharti Swámi* v. *Sidhá Lingáyá Charanti*,(1) which was a claim by the *Swámi*, or arch-priest of the Smartava caste of Brahmans, to the exclusive right of being carried cross-wise on the high road in a palanquin, on ceremonial occasions, in virtue of a grant from the ruling power to a predecessor in office. Lord Campbell there said that "in England, although an action may be maintained for the disturbance of an office or a franchise, an action could not be maintained by the grantee of a dignity from the Crown against a person, who, without a grant, should assume the like dignity; but it does not necessarily follow that such is the law in Bombay." The Privy Council then remanded that suit to the Sadr Adálat of Bombay, and directed that Court, in the first instance, to consider whether, assuming the case of the plaintiff there, the *Swámi*, to be true, his action would, by the law of this Presidency, be maintainable. The Sadr Adálat, on the 6th February 1845, held that, even upon that assumption, the *Swámi* could not maintain his action; and their decision was acquiesced in, no appeal having been made against it.(2) Unless we saw strong grounds for believing that decision to be erroneous, we think that we ought to adhere to the principle involved in it, and we do not perceive any such grounds for disputing the authority of that case. We cannot regard *Náráyan* v. *Bálkrishna* as an authority to the contrary, inasmuch as the question—whether the suit would lie—was not raised either by the pleaders or the Court, and the decision of the Sadr Adálat in the other case was not so much as mentioned by either.

(1) 3 Moore's Ind. App. 198. (2) See note, p. 473, *supra*.
(3) 9 Bom. H. C. Rep. 413.

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Upon these grounds we affirm the decree so far as it dismisses the suit. The first and second defendants must bear their own costs throughout, the plaintiff must pay to the third defendant his costs of the suit and of the regular appeal as directed by the Courts below, but the parties, respectively, must bear their own costs of this special appeal.

Decree affirmed.

[APPELLATE CIVIL.]

Before M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

1877. December 13.

NARSINBHAT BIN BA'PUBHAT (ORIGINAL PLAINTIFF), APPELLANT *v.* CHENA'PA' BIN NINGA'PA' (ORIGINAL DEFENDANT), RESPONDENT*

Undivided Hindu family—Ancestral property—Liability of an undivided Hindu for the debts of his deceased brother.

P, an undivided Hindu co-parcener, died on the 7th August 1874, leaving him surviving, a brother C, and a son N. N subsequently died on the 2nd July 1875. In a suit brought by plaintiff against C, on a bond executed by P as surety for one R,

Held that the family property, which on N's death became vested by survivorship in C, was not in his hands liable for the separate debts of P or N.

THIS was a special appeal from the decision of W. Sandwith, District Judge of Dharwar, in Appeal No. 37 of 1876, reversing the decree of Gopál Vináyek, Subordinate Judge at Gadag, in Original Suit No. 665 of 1874

The Subordinate Judge awarded the plaintiff's claim. In appeal, however, the District Judge, after remand, reversed the decree of the first Court on the ground that the defendant Chenápá was not the next heir to the deceased Parápá at the date of the institution of the suit, and that the property in Chenápá's hands was joint family property. The principal question raised in special appeal was whether or no Chenápá was liable for the debts of his deceased brother Parápá to the extent of the latter's share in the family property.

* Special Appeal No. 205 of 1877.