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was not public property, but on the contrary was his own ancestral property. He also raised the technical objection that, if it were public land as alleged by the plaintiffs in their plaint, the suit ought to be dismissed, as it was not brought by all the villagers. The Subordinate Judge held that the plaintiffs alone were not competent to bring the suit upon the allegation contained in the plaint. On the merits, he held the land to be the property of the defendant Ganpati. In appeal the District Judge raised only one issue, viz., whether the plaintiffs alone could bring the action, and decided it in the negative and against the plaintiffs.

The special appeal was argued before Westropp, C.J., and Nánábhái Haridás, J., on the 12th August 1875.

Shivshankar Govindrám, for the special appellant, referred to *Jiná Ranchod* v. *Jodhá Ghelá*, (1) and contended that, according to that ruling, the action could be maintained by his clients alone.

Vishnu Ghanashám, for the special respondent, was not called upon.

WESTROPP, C. J. :—In order to sustain this action, the plaintiffs were bound to show that they themselves had suffered some particular inconvenience by the conduct of the defendants: *Barodá Prasád* v. *Gorá Chand*, (2) per Peacock, C.J., followed in *Ráj Luckhee Debiá* v. *Chander Kant Chawdry*. (3) The case of *Jiná Ranchod* v. *Jodha Ghela* (4) does not seem to be inconsistent with this. The statement of facts in the report of that case is meagre, but we gather from the argument that some injury to the plaintiff, personally arising from the obstruction complained of, must have been alleged. The plaint in the present case having been read to us, we fail to perceive that any particular injury, resulting to the plaintiffs themselves, is alleged on their behalf; we must, therefore, affirm with costs the decrees of the Courts below which rejected their suit.

(1) 1 Bom H. C. Rep. 1.
(2) 3 Beng L. R. 295 A. C. J.; S. C. 12 Calc. W. R. 160 Civ. Rul.
(3) 14 *Ibid.* 173. (4) 1 Bom. H. C. Rep. 1.

[APPELLATE CIVIL.]

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

December 6.

SHANKARA BIN MARABASA'PA' (ORIGINAL PLAINTIFF), APPELLANT *v.* HANMA' BIN BHIMA' AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Chalvadi, office of—Disturbance of office—Gratuities received by intruder, action to recover—Caste question—Regulation II. of 1827, *Section* 21.

Plaintiff was the hereditary holder of the office of *Chalvadi*, or bearer, on public occasions, of the insignia or symbols of the Lingayet caste of Bágalkot, in the district of Belgaum. No fees as, of right, were appurtenant to that office, but voluntary gratuities might be given to the *Chalvadi*. In an action brought by plaintiff against defendant as an intruder upon his (plaintiff's) office,

Held that the action would not lie, if brought merely for the gratuities as moneys alleged to be received by defendant to the use of plaintiff.

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Held, also, that the plaintiff's claim to be *Chalvadi* of the Lingayet caste at Bágalkot was a caste question, within the meaning of the unrepealed portion of clause 1, section 21, of Regulation II. of 1827.

Sri Sankar Bharti Swámi v. *Sidhá Lingáyá Charanti* (1) mentioned.

THIS was a special appeal from the decision of E. Hosking, Acting Senior Assistant Judge at Kaládgi, in the district of Belgaum, in regular appeal No. 53 of 1876, affirming the decree of the Subordinate Judge of Bágalkot in original suit No. 847 of 1870.

The plaintiff, Shankara, brought this suit against Hanmá and seven others to establish his right to perform the duties of *Chalvadi*. He alleged that the office had belonged to his family for a long time, but that it had been wrongfully taken possession of by the defendants. He also claimed damages on account of the loss of his income. The Subordinate Judge threw out the claim, on the ground that it involved a caste question. His decision was upheld on appeal. The High Court, on special appeal, however, remanded the case for further investigation. On remand, the Subordinate Judge adhered to his former decision, and the Assistant Judge confirmed it on appeal.

Shántárám Náráyan appeared for the appellant.

Nánábhái Haridás, *Pánduráng Bhalibhadra*, and *Manekshán Jehangirshán* appeared for the respondent.

WESTROPP, C. J.:—The Assistant Judge has found in substance that the plaintiff is the hereditary holder of the office of *Chalvadi*, or bearer, on public occasions, of the insignia or symbols of the Lingayet caste at Bágalkot; but that, though members of the caste may bestow voluntary gratuities on the *Chalvadi*, there are not any fees as, of right, appurtenant to that office. It is, therefore, clear that an action by the plaintiff against an intruder upon his office, who has been paid such gratuities, if the action be brought merely for moneys received by the defendant to the use of the plaintiff, will not lie—*Boyter* v. *Bodsworth*, (2) *Muhammad Yussub* v. *Sayad Ahmed*, (3) *Sitárámbhat* v. *Sitárám Ganesh*, *per Couch*, *C.J.*, (4) *Vithal Krishna Joshi* v. *Anant Rámchandra*. (5) So far, therefore, as the plaintiff seeks to recover

(1) 3 Moore's Ind. App. 198. (2) 6 Term. Rep. 681.
(3) 1 Bom. H. C. Rep., Appx., xviii. (4) 6 Bom. H. C. Rep., A.C.J., 250, 253.
(5) 11 Bom. H. C. Rep. 6.

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moneys paid to the defendant in his usurped character of *Chalvadi* by members of the caste, this action will fail. Whether, under such circumstances, a plaintiff might recover nominal damages from a defendant in a suit in the nature of an action on the case, and also (except in the case of a mere caste dispute) obtain, under the equitable jurisdiction of our civil Courts, substantial relief by getting an injunction restraining the defendant from further intrusion, is a question of some nicety. It might, perhaps, be contended that an office, unaccompanied by emoluments, fees, or salary payable as of right, is a mere dignity, and, therefore, falls within the scope of the case of *Sri Sunkar Bharti Swámi* v. *Sidhá Lingáyá Charanti*,[1] which was a claim by the *Swámi*, or chief 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 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." Their Lordships of 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, having taken the case into their consideration, and, in the first instance, assumed the case as stated on behalf of the *Swámi* to be true in fact, held, nevertheless, on the 6th February 1845, that he could not maintain his action—and their decision would appear to have been acquiesced in, and the case was carried no further.[2] Whether the office of *Chalvadi* at Bágalkot—dissociated as it has been found to be from any emoluments receivable as of right—is a mere dignity like the honour claimed by the *Swámi*, and, therefore, not a fit subject for an action against an intruder for his disturbance of the party entitled, is a question on which we do not purpose to

(1) 3 Moore's Ind. App. 198.

(2) See note on next page for minutes of the Judges on this case.

give an opinion, for we think that the claim of the plaintiff to be *Chalvadi* of the Lingayet caste at Bágalkot is a caste question within the meaning of so much of the first clause of the twenty-first section of Regulation II. of 1827 as remains unrepealed by Act X. of 1861, and prohibits interference on the part of civil Courts in caste questions. The alleged duty of the *Chalvadi* being to carry the insignia of the caste at public ceremonials, without any right to levy fees or receive salary for the performance of that duty, is essentially a matter which concerns the caste exclusively, and, therefore, one which we think the Bombay Legislature intended to leave to the caste.

For these reasons we affirm the decrees of the Courts below, except so far as they relate to costs, and we direct that the parties, respectively, do bear their own costs of the suit and of all of the appeals.

It was not the intention of this Court, when remanding this case in August 1874, to decide whether or not the question involved in it was a caste question. The remand was made simply in order that the facts should be more fully investigated.

Decree affirmed.

NOTE.—

Copy of the Minute recorded by A. Bell, Esq., Puisne Judge of the late Sadr Adálat at Bombay, dated the 6th February 1845, in appeal of *Sri Sunkar Bharti Swámi* v. *Sidhá Lingáyá Charanti*. On remand by the Privy Council.

Note.—The Privy Council have, in this appeal, passed an interlocutory decree, reversing the Sadr Divani Adálat's decision, and remitting the cause back to this Court, without prejudice to any question in the suit, and directing the Court first to consider and adjudicate whether, supposing the allegations of the appellant to be substantiated by proof, he is entitled by law to maintain this suit, and if this Court is of opinion that appellant is so entitled, then, that there ought to be a new trial by the said Court of Sadr Divani Adálat.

The Privy Council's judgment goes on to say "that the said Court of Sadr Divani Adálat ought to be at liberty to give such direction as to them shall seem fit to the Zillah Court of Dharwar to take evidence in the said suit for the consideration of the said Court of Sadr Divani Adálat, by whom this suit is to be adjudicated.

The decree further directs that the costs, charges, and expenses of bringing this appeal to a hearing be paid by the parties in the following proportions. By appellant the sum of one thousand and ninety-two pounds, eleven shillings and five pence, and by respondent nine hundred and fifty-five pounds, four shillings and five pence for costs incurred in their behalf respectively.

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The first point for our consideration is whether, supposing appellant possesses the privilege of riding in a palanquin carried cross-wise, he is entitled by law to maintain this suit.

Mr. Greenhill's remarks of the 23rd of February 1838 so clearly express my sentiments on this point that I strongly urge them on the consideration of my colleagues.

Admitting, then, the allegations advanced by appellant to be susceptible of proof, I am not prepared to allow that the appellant is entitled to maintain an action against another who assumes a similar pageantry.

The reigning Government is the authority to whom the appellant should have applied to support him in his rights, and which alone can permit or withhold the use of honors of this and every other kind; but our Courts should discourage as much as possible claims of so unsubstantial and objectionable a nature as the one now brought under consideration. I am, therefore, of opinion that this suit should not be maintained. The costs as set forth in the Privy Council's judgment having been recovered from the parties, no further order is necessary.

Should the above view, however, not be concurred in, it will be necessary, under the provisions of clause 1, section XCI., Regulation IV., 1827, to remand the suit to the Court where it was originally tried, to take additional evidence as to the exclusive right set up by appellant, and to pronounce judgment anew; the jurisdiction of the Sadr Diwani Adálat being exclusively appellate, all costs, which may have occurred subsequent to the Privy Council's decision, to be borne by appellant.

Copy of the Minute recorded by W. Simson, Esq., Puisne Judge of the late Sadr Adálat at Bombay, dated the 6th February 1845, in appeal of *Sri Sankar Bharti Swámi* v. *Sidhá Lingáyá Charanti.*

I am disposed to think that privileges, such as that now claimed by the high priest the Brahmins, do constitute good cause of action for damages, in case they are infringed by other parties belonging to the same caste or sect; but in this instance I believe the opposite party belongs to a different and a hostile sect; at least, I have always understood that virulent enmity exists between Brahmins and Lingayets; and granting that a Brahmin prelate would have good cause of action against a Brahmin usurping his privilege, I consider it doubtful whether the like ground could be maintained against one of a sect yielding no religious obedience to a priest of a separate order.

Again, besides the question of a Lingayet's subordination or dependence in any matter, spiritual or religious, upon a Brahmin priest (which I am clearly of opinion must be negatived), there remain to be substantiated and defined, *first*, the genuineness and, *next*, the purport and intent of the copper-plate grant brought forward *after* the decision on the original by the Judge.

I should be disposed to question the authenticity of the grant itself; but, even granting it to be a genuine deed, it only confers the right of being carried in a palki cross-wise along with other honorary privileges, such as using an umbrella, employing an elephant on state occasion, &c., &c., which any other indifferent person might assume (at least under the present Government) without question or offence.

Again, the grant in its terms is not exclusive, and the Lingayets claim usage for their "Guru," also, in regard to this particular ceremony of the palki carried cross-wise. These points were suggested by Mr. Greenhill on the appeal to the Sadr Adálat, and appear to me to be deserving of great consideration.

The wording of the Judge's decree has been taken hold of by the Brahmin party, and construed into a declaration that the decision was founded on the absence of all *sanad*, or grant, conferring the privilege contended for; but though this circumstance may have been considered a capital defect in the case, and have had great weight with the Judge, yet it is by no means to be inferred that the Court would either have admitted the authenticity of the deed produced afterwards, or have held it to be decisive evidence of the *exclusive* privilege claimed by the Brahmin priest.

Without further information, touching the subordinate condition of Lingayets to the heads of the Brahmin priesthood, I am not prepared to declare at once that in this case the Brahmin priest has not a cause of action, supposing the allegations brought forward in his behalf can be substantiated, and I am of opinion that the case should be remitted for trial anew by the judicial authorities of Dharwar (in the mode suggested by the Privy Council for the guidance of the Sadr Adálat), the evidence already recorded being received, and any new points, such as the authenticity and the purport of the copper grant, the supremacy or otherwise of Brahmin priests over the Lingayet population, the usage contended for during many years past on behalf of the *guru* of the Lingayets, or any other point material to the question, being thoroughly examined and ascertained.

COPY of the Minute recorded by H. Brown, Esq., Acting Puisne Judge of the late Sadr Adálat at Bombay, dated the 6th February 1845, in appeal of *Sri Sunkar Bharti Swámi* v. *Sidhá Lingáyá Charanti*.

This is an interlocutory decree passed by Her Majesty in Council, bearing date the 15th of July 1843, wherein the decree of the Sadr Divani Adálat, dated the 23rd of February 1838, has been reversed, awarding costs on appellant and respondent, and the case remitted to the Sadr Divani Adálat without any prejudice to any question in the suit, with directions that the Court ought first to consider and adjudicate whether, supposing the allegations of the appellant to be substantiated by proof, he is entitled by law to maintain this suit. The point, therefore, for our consideration is, whether the cause of action is of such a nature and character that it can be maintained by law in a civil Court, the subject-matter under litigation being to prohibit the respondent from riding in a palanquin carried cross-wise, the exclusive right of such a distinguished privilege, the appellant avers, having been solely conferred on him, and which he has attempted to support by two almost illegible copper-plates alleged to have the same effect as *sanads*. I am of opinion that our regulations do not sanction the recognition of suits of the character of the one remanded for our consideration, and, therefore, I conceive the cause of action cannot be maintained by law in our Courts of Civil Judicature. The right of riding in a palanquin, carried cross-wise, conveys with it so much absurdity that, if judgment be required on

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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.