1885.

GULIBÁI v. JAGANNÁTH GALVANKAR.

not to assist "a fraudulent combination." Such a decree can, doubtless, be impeached by a stranger to it, when it prejudices a party to a suit on the merits, as in the case of a judgment *in rem* which determines the *status* of one of the parties—a matter in issue in the suit: *Harrison* v. *Mayor of Southampton* [1]; or, again, by a purchaser for value where it is sought to use it as a shield to a sham mortgage, or purchase of earlier date, as was held in *Gopi Wásudev Bhat* v. *Márkande Náráyan Bhat*[2]. But the object of a suit brought under section 283 of the Code of Civil Procedure (XIV of 1882) is simply to determine whether the property can be taken in execution as belonging to the judgment-debtor. The question, on the merits, is not affected by the decree; and to allow the claimant to deny the plaintiff's right to bring the suit, by impeaching the decree, which the latter is seeking to execute as collusive, would be, we fear, to add to the difficulties (already very great) of judgment-creditors in enforcing their decrees, by affording additional encouragement to collusive resistance by judgment-debtors and third parties.

We must, therefore, reverse the decree, and send the case back for trial on the other issues. Costs of this appeal to follow the result.

(1) 4 DeG. M. & G., 137. (2) I. L. R., 3 Bom., 30.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1886.
June 18.

MAYA'SHANKAR, (ORIGINAL PLAINTIFF), APPELLANT, *v.* HARISHANKAR AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Jurisdiction—Caste question—Suit for damages on account of withholding a customary present from a member of a caste.

The plaintiff complained that on the occasion of the distribution of certain funeral presents by the defendant's father, in which, as a member of the caste, the plaintiff was entitled to share, he had been omitted, and had received nothing. He sued the defendants to recover damages for the injury to his character and reputation caused by such omission.

Held, that there was no legal right, in the plaintiff, to the funeral presents; and the slight, which the omission to give such presents to the plaintiff might imply,

* Second Appeal, No. 426 of 1884.

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was to be regarded as the result of a breach of social etiquette, with which the caste was exclusively competent to deal.

THIS was a second appeal from the decision of E. M. H. Fulton, Acting Judge of Surat.

The plaintiff and the defendants were members of the same caste. On the 18th November, 1879, the father of the first and second defendants distributed the customary presents, in commemoration of the death of his father, to the members of the caste, but omitted the plaintiff. The plaintiff brought the present suit to recover damages, alleging that this omission caused injury to his character and reputation. The first and second defendants were sued as the heirs of their father, who had died before the suit. The plaintiff alleged that it was at the instigation of the third defendant that he had been excluded in the distribution of presents.

The Assistant Judge, who tried the suit, awarded the plaintiff's claim as against the first and second defendants. The defendants appealed to the District Judge, who reversed the Assistant Judge's decision with the following remarks:—

* * * * * "In my opinion, this claim cannot be maintained, because there has been neither any injurious or tortious act on the part of Bhavánishankar; nor has it been proved that there has been any *dammum*, or loss, of which a Court can take any cognizance, occasioned to the plaintiff * * * The question appears to me to be one entirely within the cognizance of the caste itself, as it is only by the custom of the caste that the alleged obligation exists * * *. I also find that, even if Bhavánishankar's omission to give a present to the plaintiff were considered to be an actionable wrong, still the plaintiff could not recover in this suit, as he has not proved that, as a matter of fact, he has suffered any loss of which this Court can take cognizance. It is clear that the money value of the present, an earthen pot with some sweetmeats, is so trivial as not to constitute a cause of action. What the plaintiff really complains of, is the injury to his dignity. Doubtless, he felt very much annoyed at Bhavánishankar's conduct; but, in a case of this kind, I do not think that mere annoyance, without proof of special

damages, would constitute a cause of action * * *. I reverse the decree of the Assistant Judge, and reject the claim, with costs on the plaintiff throughout."

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The plaintiff preferred a second appeal to the High Court.

Gokuldás Kahándás for the appellant:—The omission, on the part of the defendants' father, to give the plaintiff the customary presents, lowered the plaintiff in his character and reputation. He had the right of receiving the presents, and the interference with such right was an injury for which he could sue. It was not the whole caste, but an individual member of the caste, who caused him the injury: therefore this is not a caste question so as to bar a Civil Court's jurisdiction. The suit may be regarded as one for slander.

There was no appearance for the respondents.

SARGENT, C. J.:—We entirely agree with the District Judge in his view of this case. It is plain there could be no legal right to the funeral presents, which it was said to be customary for a member of the caste on the occasion of the death of a member of his family to give to the other members of the caste. And as to the slight, which the omission to give such presents to the plaintiff might imply, it can only be regarded as the result of a breach of social etiquette, with which the caste was exclusively competent to deal. We must, therefore, confirm the decree, but without costs.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhai Háridás.

BA'LKRISHNA GOPA'L, (ORIGINAL DEFENDANT), APPELLANT, *v.* BA'L JOSHI SADA'SHIV JOSHI, (ORIGINAL PLAINTIFF), DECEASED, BY HIS WILL MORESHVAR BA'L JOSHI AND OTHERS, (RESPONDENTS).*

1886. *June* 23.

Limitation Act (XV of 1877), Sch. II, Art. 171 B—Civil Procedure Code (XIV of 1882), Secs. 368, 582—Decease of respondent after appeal filed.

The word "defendant" in article 171 B of Schedule II of the Limitation Act (XV of 1877) does not include "respondent."

Udit Nárain Singh v. *Harogouri Prosád* (1) followed.

* Miscellaneous Appeal, No. 8 of 1886.

(1) I. L. R., 12 Calc., 590.