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The exigencies of the case now in hand emphatically call for the interference of this Court, and my opinion is that the conviction and the sentence should be set aside and the accused acquitted, and the fine (if paid) refunded.

Though at one time I thought otherwise, on further reflection I think the decision of the Full Bench of this Court consisting of Sir Charles Sargent, C.J., and Telang, Candy and Fulton, JJ., in *Queen-Empress* v. *Mugapa* (1) does not cover this case.

(1) (1893) 18 Bom. 377.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

1904. *March* 30.

KUNJ BIHARI PRASADJI PURSHOTTAM PRASADJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* KESHAVLAL HIRALAL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Specific Relief Act (I of 1877), section 42—Declaratory Suit—Declaration—Further Relief—Court—Jurisdiction.

Section 42 of the Specific Relief Act enacts that no Court shall make a declaration in a suit in which the plaintiff being able to seek further relief omits to do so. The section does not empower the Court to dismiss such a suit.

An injunction is a "further relief" within the meaning of section 42 of the Specific Relief Act.

Farasram v. *Bhimbhai* (1) followed.

SECOND appeal from the decision of Mr. S. L. Batchelor, District Judge of Ahmedabad, confirming the decree passed by Chandulal Mathuradas, First Class Subordinate Judge of Ahmedabad.

Suit for declaration and injunction.

One Purshottam Prasadji, who was the last owner or *gadipati* of the Swaminarayan's temple at Ahmedabad, died on the 10th December, 1901. Previously to his death Purshottam Prasadji made a will on the 21st April, 1901, whereby he adopted defendant No. 14 as his adopted son, and appointed defendants

* Second Appeal 593 of 1903.

(1) (1903) 5 Bom. L. R. 195.

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Nos. 1—13 as the trustees (executors) to manage the property on his behalf during his minority. In this will he (the testator) strictly enjoined his two wives not to make any other adoption. Accordingly, when Purshottam Prasadji died on the 10th December, 1901, the defendant No. 14 was, on the 18th December, 1901, installed on the *gadi* as his adopted son, and the defendants 1—13 began to manage the property and continued in possession of it. Soon after this the plaintiff made a claim to the *gadi* and to the property belonging to Purshottam Prasadji, alleging that he was adopted as a son to the deceased by his senior widow on the 15th December, 1901.

On the 27th December, 1901, the plaintiff filed this suit, wherein he claimed the following reliefs:—

"(1) A declaration that the will of the last Acharya is null and void.

"(2) A declaration that, being the nearest relative of the deceased Acharya, he is according to the *Dharma Shastras* and principles of Hindu Law entitled to be the Acharya in his stead, and that he has been placed on his seat by the eldest wife of the late Acharya and Sadhus of the Swaminarayan sect, and that he is therefore the sole '*gadipati*' or owner and holder of the position of such Acharya.

"(3) To obtain a perpetual injunction restraining the defendants from offering any obstruction to his occupying the *gadi*.

"(4) To obtain a perpetual injunction restraining the defendants from placing anybody else on the *gadi*."

The defendants contended, among other things, that plaintiff's claim was barred by the provisions of section 42 of the Specific Relief Act (I of 1877).

The Subordinate Judge was of opinion that the plaintiff's claim was barred by section 42 of the Specific Relif Act (I of 1877), and he dismissed the suit.

On appeal, the District Judge confirmed this decree. The following were his reasons:—

"Numerous rulings under this section have been quoted at the bar, but, unless I am mistaken in my general estimate of this suit, it will not be necessary to protract this judgment by a detailed consideration of these authorities, for to me at least the question seems hardly to admit of doubt. Plaintiff claims relief by way of declaration and permanent injunction. The question is whether, if he succeeded, he would be entitled to any, and what, consequential relief. Upon this question I am content to take plaintiff's case as he himself puts it, and in accordance with facts established beyond dispute by the evidence. Plaintiff in

his deposition (Exhibit 125) says: 'I want to have the position of Acharya and all that is connected with that position; I want all the rights which an Acharya enjoys. I want the rights which the deceased Purshottam Prasad enjoyed in the property. The deity is the owner of the property. The Acharya is the owner of the property for the deity.' Now, even assuming that the full ownership of this property belongs to the general Swaminarayan community, the evidence appears to me to prove beyond doubt, first, that the Acharya is and must be in possession, and, secondly, that he has the management—the almost uncontrolled management—of the temple assets, which exceed 6 lakhs of rupees in value. Admittedly the present defendants are now in possession on behalf of a minor by virtue of a will left by Purshottam Prasad. I infer, therefore, that plaintiff was bound to seek the relief of ousting the defendants and placing himself in possession and management, for this relief would be a necessary consequence of the declarations which he does seek. In support of this view I rely on the decisions of the Madras High Court cited in the margin. I do not analyse them more particularly, because, as I have said, the point does not appear to me to need any very exhaustive discussion. I take note, however, of certain cases which Mr. Sankalchand has quoted for plaintiff, and which, in my Judgment, are distinguishable from the present facts. The unreported case quoted from the Madras Law Journal, Vol. X, p. 54, does not assist plaintiff, for that was a suit between two opposing sections of trustees regarding the appointment of a mere servant who had no power over the property. So in I. L. R. 10 Bom. 60, there was no property apparently in litigation, and the decision was confined to the point of the Court-fees leviable. In I. L. R. 22 Mad. 270, the cancellation of an order was all the relief that was needed. Other decisions are also quoted in connection with suits for declaring an adoption valid or invalid, and the Courts have held that they were not then concerned to speculate as to any future manner in which property might change hands; but these decisions seem to me to have no bearing on this case, where the order now sought is an order which would have the immediate effect of transferring from defendants to plaintiff the possession and the almost unfettered management of over 6 lakhs of rupees."

I. L. R. 13 Mad. 75.
" 14 Mad. 267.
" 15 Mad. 186.
" 15 Mad. 15.
" 16 Mad. 31.
" 18 Mad 405.

The plaintiff preferred a second appeal, contending that the lower Courts erred in holding that the suit was barred under section 42 of the Specific Relief Act (I of 1877).

G. S. Rao for the appellant (plaintiff).

Scott (Advocate General), with *Ratanlal Ranchhoddas*, for respondents Nos. 1—3 and 5—7.

Phirozshah M. Mehta, with *Ratanlal Ranchhoddas* for respondents Nos. 10—13.

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The following cases were cited in arguments :—*Parasram* v. *Bhimbhai*[1]; *Sakharam* v. *The Collector of Thána*[2]; *Narayana* v. *Shankunni*[3]; *Abdul Kadar* v. *Mahomed*[4]; *Muttakke* v. *Thimmappa*[5]; *Krishnabhupati* v. *Ramamurti Pantulu*[6]; *Suryanarayanamurti* v. *Tammanna.*[7]

JENKINS, C.J.:—The plaintiff brings this suit alleging in effect that on the death of the late Maharaj Shri Purshottam Prasadji Keshaw Prasadji he was installed on the *gadi* of the God Shri Nar Narayan and claiming that he, as its *gadipati*, and nobody but himself has any right to the same.

He charges, however, that a will purporting to be that of the late Acharya Maharaj Shri Nar Purshottam Prasadji, is wrongly being set up, and that the defendants "relying on the aforesaid will, which is fruitless and invalid, are without any authority or any right attempting to place some other person on the *gadi*, and that there is great likelihood of injury to his rights in respect of the Acharyaship, which he therein described."

Accordingly he seeks in effect (1) a declaration that a will set up by the defendants as having been executed by the late Acharya was not executed by him, and that, if it be established, it is not binding; (2) a declaration that the right to become Acharya is his, and he is the owner of the *gadi*; (3) an injunction restraining the defendants from obstructing or causing obstruction to the plaintiff in occupying the *gadi*; and (4) an injunction restraining the defendants from placing any other person on the *gadi*.

His suit, however, has been dismissed, both Courts thinking it was barred by section 42 of the Specific Relief Act.

That section is in these terms:—

"Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

(1) (1903) 5 Bom. L. R. 195.
(2) (1904) 6 Bom. L. R. 124.
(3) (1891) 15 Mad. 255.
(4) (1890) 15 Mad. 15.
(5) (1891) 15 Mad. 186.
(6) (1894) 18 Mad. 405.
(7) (1901) 25 Mad. 504.

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"Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

Nothing is said here about dismissing his suit: all that is enacted is that no Court shall make a declaration where the plaintiff, being able to seek further relief, omits to do so.

But the prayer in this suit is not limited to one for a declaration; an injunction is sought and that is described in section 52 of the Specific Relief Act as a form of relief, so that even if the words of section 42 could be given the meaning that the plaintiff must ask for all the relief that he is entitled to—a view opposed to the decision of this Court in *Parasram* v. *Bhimbhai*[1]—still there is no warrant for the conclusion that a plaintiff merely by seeking a declaration becomes disentitled to such relief as he has prayed, provided he makes a case showing his right thereto.

On examination it will be seen that the plaint, though meagre and wanting in precision, is not so far beside the mark as has been supposed. The plaintiff's view is that the temple's ináms and other property said to be involved in this suit are the endowed property of the deity to whom they have been dedicated, and that to this deity the endowed property belongs, though the affairs of the endowment have to be administered by human agency, and this, the plaintiff claims, is vested in him as the Acharya. The suit, therefore, in the plaintiff's view is not one for the possession of land, but to determine who is to occupy the *gadi*, and thus as *gadinashin* become the human agent of the deity.

If that be so, then an injunction restraining all interference with the occupancy by the plaintiff of the *gadi* secures in the most complete manner to him the rights he claims. We do not say that the plaintiff might not in terms have asked for possession of the office he says is his; we will assume he could, but how would practical effect be given to an award of possession of an office otherwise than by preventing interference with the rights of which it is made up?

We therefore cannot see why the relief of an injunction should not be given if the right claimed be established.

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But if the plaintiff is able to make out a case entitling him to an injunction, it means that he will have established (1) that he has a title to succeed Purshottam as *gadipati* and (2) that Purshottam's alleged will is of no avail against that title.

From this it becomes apparent that the declarations sought are merely a statement of the grounds on which he is able to succeed, the declaration in respect of the will being in anticipation of the plea founded on the will.

Therefore the awarding of the injunction would actually involve findings by the Court in the terms of the declaration sought, so that at present we fail to see why any construction should be placed on section 42 other than that expounded in *Farasram* v. *Bhimbhai*.[1]

But this point hardly arises at present; we are only concerned with the dismissal of the suit, and that (in our opinion) cannot be supported on the ground that has prevailed in the lower Courts.

It has been suggested that this is an attempt to evade the Court Fees Act, but if a plaintiff can evade that Act, he may; the remedy for that lies not in withholding a relief to which he is entitled as of right, but in procuring an amendment of the Act. If it is within the discretion of the Court whether it will grant a plaintiff's prayer or not, then it may be legitimate to consider whether an evasion of the Court Fees Act has been attempted. This suggestion of attempted evasion, however, proceeds on a misconception of the position. Though the property is of great value, it will not, on the theory propounded by the plaintiff, become his, and we will not presume that by malversation he would make it his. If he acts improperly in his office he can be called to account.

The Advocate General has suggested that there is no allegation of obstruction, but mofussil pleadings are not construed strictly, and though the plaint is imperfect as a statement of the plaintiff's case, we think obstruction is involved. The defendant's written statement goes a long way to remedy this defect and the matter is made still clearer by the attitude assumed by the defendants here.

(1) (1903) 5 Bom. L. R. 195.

To avoid any question, however, it will be better that the plaintiff should amend his plaint in this respect, and also by defining more precisely the terms of the injunction he seeks.

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We, therefore, reverse the decree and remand the case for re-trial. The costs will abide the result.

Decree reversed. Case remanded.

PRIVY COUNCIL.

TURNER AND ANOTHER (DEFENDANTS) v. GOOLAM MAHOMED AZAM (PLAINTIFF).

P. C.*
1904.
May, 17, 18, 31.
June 22.

[On appeal from the High Court of Judicature at Bombay.]

Charter-party—Power to sublet—Sub-charter—Goods shipped under sub-charter and bills of lading authorized by time charter—Liability of such goods for lien given by time charter—Notice of time charter—"without prejudice to this charter," meaning of—Form, construction, and effect of bills of lading—Lien for hire of vessel.

A vessel was chartered by a firm of merchants in Bombay for six months from 20th August, 1898, at a rate of freight which came to Rs. 18,000 a month, payable in advance. By the charter-party the charterers had the option of sub-letting the vessel, and it was provided that bills of lading were to be signed at any rate of freight the charterers or their agents might direct "without prejudice to this charter," and that the owner was to have "a lien upon all cargoes for freight or charter money due under the charter. On 26th August the vessel was sublet by the charterers to the plaintiff for a sound voyage from Saigon to Réunion and back from Mauritius to Bombay. The vessel completed the voyage and on 2nd February, 1899, arrived at Bombay with sugar put on board by the plaintiff as sub-charterer, at Mauritius, for which he had received bills of lading from the Captain who signed them without obtaining payment of the month's freight then due under the time charter. The freight on the sugar was prepaid at Mauritius by the plaintiff's agents, so that on the arrival of the vessel at Bombay nothing remained to be paid by the plaintiff to the shipowner in respect of the bills of lading freight. Delivery of the sugar was, however, refused, the shipowner claiming a lien on it for the Rs. 18,000 due under the time charter. In a suit against the owner and the Captain of the vessel to recover the sugar, or its value and damages for its detention, the defendants relied on the lien under the time charter, and alleged that the Captain had been induced to sign the bills of lading as he did by misrepresentations of the plaintiff's

* *Present* :—Lord Macnaghten, Lord Lindley, and Sir Arthur Wilson.