APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1898. *February* 21.

APPAYA AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* PADAPPA (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Jurisdiction of Civil Courts—Caste question—Excommunication—Court's power to inquire into the validity of the order of excommunication—Burden of proof.

The plaintiff, who was *a pujári* of a Jain temple, sued for an injunction to restrain the defendants from entering the temple and worshipping the idol, on the ground of their excommunication by the Swámi for misconduct. Defendants pleaded that they had been guilty of no offence for which a sentence of excommunication could properly be passed, and that the inquiry into their conduct was held by the Swámi *ex parte* and without any notice being given to them.

Held, that the Civil Court had jurisdiction to inquire into the validity of the sentence of excommunication, and that it lay on the plaintiff, who sought to enforce the sentence and by virtue of it to deprive the defendants of their civil rights, to prove that it was passed on justifiable grounds and after a fair and proper inquiry.

SECOND appeal from the decision of F. C. O. Beaman, District Judge of Belgaum.

The plaintiff and defendants were *bhávbands* belonging to two different branches of a family of *pujáris*, or officiating priests, of a Jain temple at Gavan in the Belgaum District.

There were certain lands set apart for the remuneration of the *pujáris*, which were in the possession and enjoyment of the defendants.

The plaintiff alleged that the Jain Swámi, who managed the affairs of the temple, had excommunicated the defendants for misconduct, and had appointed the plaintiff as the *pujári* of the temple. The plaintiff, therefore, brought this suit, praying for an injunction restraining the defendants from entering the temple and from touching and worshipping the idol, on the ground of their excommunication.

Defendants pleaded (*inter alia*) that they had been excommunicated without sufficient reason, and that the inquiry into their

* Second Appeal, No. 895 of 1897.

conduct was held by the Swámi *ex parte* and without any notice being given to them. They also pleaded that the suit was not cognizable by the Civil Court, as it involved a caste question.

The Subordinate Judge held that the Court had jurisdiction to entertain the suit, that the sentence of excommunication was justifiable, and that the defendants had in consequence forfeited their right to the office of *pujári*. He, therefore, granted the injunction sought, and ordered the injunction to remain in force until the defendants were re-admitted to their caste.

This decision was confirmed, on appeal, by the District Judge, who was of opinion that the Civil Court had no power to inquire into the validity of the order of excommunication, though the evidence in the present case did not disclose any very definite ground for the excommunication.

The defendants preferred a second appeal to the High Court.

Setlur (with *M. V. Bhat*), for appellants (defendants):—We contend that the Court had no jurisdiction to take cognizance of this suit. The suit is brought to enforce the excommunication passed by the Swámi. The object of the suit is to give a legal sanction to the excommunication, and prevent the defendants from exercising their religious functions. The suit thus involves a caste question, and, as such, will not lie in a Civil Court. Section 21 of Regulation II of 1827 ousts the jurisdiction of the Civil Court over such a suit—*Shankara* v. *Hanma*[1]. But, if the Court has jurisdiction to take cognizance of such a suit, then we contend that the Court is bound to inquire into the validity of the excommunication. The Court will not give effect to that order unless it is satisfied that it is passed on justifiable grounds. The lower Court was wrong in holding that the legality of the order cannot be inquired into by the Civil Court. The sentence of excommunication in this case was passed *ex parte* and without giving us any opportunity of proving our innocence of the offence charged. We were condemned unheard. Under these circumstances the excommunication is absolutely invalid and will not be enforced by a Court of justice—*Vallabha* v. *Madusudanan*[2];

(1) (1877) 2 Bom., 470.

(2) (1889) 12 Mad., 495.

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Venkatachalapati v. *Subbarayadu*[1]; *Krishnasami* v. *Virasami*[2]; *Jagannath Churn* v. *Akali Dassia*[3]; *Advocate General of Bombay* v. *David Haim*[4]; *Pragji* v. *Govind*[5]; *Ganapati* v. *Bharati*[6]; *Queen* v. *Sankara*[7].

H. C. Coyaji, for respondent (plaintiff) :—The jurisdiction of the Civil Court is not ousted merely because the suit involves a caste question. The object of the present suit is not to interfere with the autonomy of a caste, but to give effect to the decision of the caste as promulgated by the Swámi, who is the spiritual head of the caste. Regulation II of 1827 does not debar the Court from taking cognizance of such a suit—*Pragji* v. *Govind*[8]. It is alleged that the sentence of excommunication was passed on insufficient grounds and without proper inquiry; but this is a mere allegation without any proof. The excommunication will be presumed to be just and proper unless and until the contrary is proved.

PARSONS, J. :—In this case the plaintiff, who is the *pujári* of a temple at Gavan, sued for an injunction to restrain the defendants from entering the temple and from touching and worshipping the idol, on the ground that they had been excommunicated by the Swámi for misconduct. The defendants, admitting the power of the Swámi to excommunicate for proper cause, disputed the fact and the legality of the excommunication.

The Judge of the lower appellate Court held that the Civil Court had jurisdiction to grant the injunction, but that it could not inquire into the validity of the order of excommunication. I do not agree with the latter proposition in this case where civil rights are at stake. The parties are Jains and the Swámi is their religious chief; as such he may have the power to excommunicate offenders against the tenets of their religion, but when it is sought to extend a civil sanction to an ecclesiastical offence, by enforcing the order of excommunication and thereby depriving persons of civil rights which otherwise they would be entitled to exercise, it must always be open to the Civil Court, whose aid is invoked to

(1) (1889) 13 Mad., 293.
(2) (1886) 10 Mad., 133.
(3) (1893) 21 Cal., 463.
(4) (1886) 11 Bom., 185.
(5) (1887) 11 Bom., 534.
(6) (1893) 17 Mad., 222.
(7) (1883) 6 Mad., 381.
(8) (1887) 11 Bom., 534.

enforce it, to inquire if the order was made by the Swámi in the proper exercise of his power.

On this point there seems to be no conflict of authority. In *Krishnasami* v. *Virasami*[1] an expulsion from caste was held invalid on the ground of the *ex parte* nature of the enquiry. In *Venkatachalapati* v. *Subbarayadu*[2] an enquiry was ordered as to whether an exclusion from caste and, therefore, from the temple shrine was justified. In *Ganapati Bhatta* v. *Bharati Swami*[3] it was held that it was only in a matter relating to caste customs over which the ecclesiastical chief has jurisdiction and exercises his jurisdiction with due care and in conformity to the usage of caste that the Civil Courts cannot interfere. In *Advocate General of Bombay* v. *David Haim Devaker*[4] the same principle was enunciated, namely, that, if the domestic tribunal has acted in a manner consonant with the ordinary principles of justice, a Civil Court has no jurisdiction to interfere, but the proceedings must have been conducted with fairness. So also in *Jagannath Churn* v. *Akali Dassia*[5] it is laid down that it is open to Courts of justice to interfere with the decision of a private association if it is shown, in the first place, that the rules of the association according to which the decision is arrived at, are contrary to natural justice, or secondly that the decision is against the rules of the association, or thirdly that the decision has not been come to *bonâ fide*. In *Pragji* v. *Govind*[6], West, J., says: "It is plain that the Civil Courts may discuss and deal even with a caste question where the membership and the character of a member have been unjustly injured. To take evidence of the customary law of a caste, to recognize the law and the vote of a majority as given effect to by the law, is not to interfere in caste questions; it is simply to recognize the existence of caste as corporations with civil rights and an autonomy suitable to the purposes of their existence." The District Judge cites *Dayaram* v. *Jethabhat*[7] as laying down a contrary proposition, but he has not correctly interpreted that decision, which was passed as was expressly stated "in the cir-

(1) (1886) 10 Mad., 133.
(2) (1889) 13 Mad., 293.
(3) (1893) 17 Mad., 222.
(4) (1886) 11 Bom., 185.
(5) (1893) 21 Calc., 463.
(6) (1887) 11 Bom., 534.
(7) (1895) 20 Bom., 784.

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cumstances of the present case" and depended upon pleading and submission and not upon general jurisdiction.

In the case we are now dealing with, the sentence of excommunication was passed, not by a caste, but by an individual, the Swámi or religious chief of the sect to which the parties belong. Its legality is disputed by the defendants, who say that they were guilty of no offence for which a sentence of excommunication could properly be passed, and that the inquiry into their conduct was held by the Swámi *ex parte* and without any notice being given to them. I think that a Civil Court has jurisdiction to inquire into that plea and that it lies on the plaintiffs, who seek to enforce the sentence and by virtue of it to deprive the defendants of their civil rights, to prove that it was passed on justifiable grounds and after a fair and proper enquiry.

We, therefore, frame an issue on that point, namely :—Was the sentence passed on justifiable grounds and after fair and proper inquiry? and ask the Judge of the lower appellate Court to find on it, taking evidence if necessary, and certify his finding to this Court within two months.

RANADE, J. :—In this case, the parties are Jains, and belong to different branches of the family of the *pujáris* of a temple. The original claim was for an injunction to prevent the appellants from entering the temple, and worshipping the idol, and the ground on which the injunction was sought was the alleged excommunication of the appellants by the Swámi of the caste, who it appears had also some hand in the management of the temple, and had appointed the respondent-plaintiff to officiate as *pujári*. The appellants denied the Swámi's right over the temple, as also plaintiff's claim to be *pujári*, and they further denied the alleged excommunication and misconduct. Finally, they urged that the claim was in the nature of a caste question, and, as such, excluded from the jurisdiction of Civil Courts.

The Court of first instance held that the Court had jurisdiction, that the plaintiff was of the *pujári* family, that the appellant-defendants had been excommunicated, and for a justifiable cause, and that the injunction sought for should be granted until such time as the appellants were re-admitted to caste. The appellants in their grounds of appeal to the District Court raised the question

of jurisdiction, as also of respondent's right to sue, and of the fact and validity of the excommunication. The District Judge, however, laid down only two issues, as to (1) whether the Civil Court had jurisdiction, and (2) whether the excommunication was justifiable. He found both these issues in the affirmative, and confirmed the decree. Though this finding on the second issue apparently suggests that the District Judge was satisfied that the excommunication was proper and justifiable, yet it is clear, from the express words used towards the conclusion of the judgment, that what the District Judge really found on this point was that the Civil Court had no power to inquire into the validity or justification of the Swámi's excommunication. If the question was one which could be considered open for inquiry, the District Judge clearly stated his view that there were no definite grounds for the excommunication, and none which the Courts would regard as adequate. In other words, while, in so far as the respondent-plaintiff's claim for injunction was concerned, the District Judge was inclined to hold that it was a matter within the cognizance of Civil Courts, yet when the factum and justification of the alleged excommunication on which the claim for injunction was based were denied, the District Judge was of opinion that the Courts could not inquire into such a defence. These two positions seem to be obviously inconsistent, and I feel satisfied that a careful consideration of the authorities does not lead to any such conflict.

If the position of the parties had been reversed, and the present appellants had brought the suit to establish their right to the office of *pujáris*, or to enter the temple and worship the idol, it is plain that they would have a perfectly clear right to require the Courts to entertain such a suit, and if the defence raised was of excommunication, to ask the Courts to inquire into the factum and binding character of that action. It has been decided in a large number of cases that a suit for restoration to caste and for obtaining a declaration that the expulsion was not justified, would lie in the Civil Courts—*Gursangaya* v. *Tamana*[1]; *Pragji* v. *Govind*[2]; *Anandrav* v. *Shankar*[3]; *Vengamuthu* v. *Pandaveswara*[4],

(1) (1891) 16 Bom., 281.
(2) (1887) 11 Bom., 534.
(3) (1883) 7 Bom., 323.
(4) (1882) 6 Mad., 151.

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Archakam v. *Udayagiry*[1]; *Srinivasa* v. *Tiruvengada*[2]; *Krishnasami* v. *Krishnamacharyar*[3]. In *Gopal* v. *Gurain*[4], the suit was brought by plaintiff to secure his restoration to caste from which he had been expelled by reason of a charge brought by defendant against him of adultery. In such a case it was held that the defendant may plead justification, and plaintiff may show that the charge was false. In *Venkatachalapati* v. *Subbarayadu*[5], it was ruled that the right to worship in a public temple is a civil right, and when it is questioned on the ground of excommunication, it is competent to the Courts to inquire into the defence and they are bound, when necessary, even to examine the religious foundations on which the excommunication is based. In such an inquiry it must be shown that the Swámi had jurisdiction, and that there was an express declaration and that the excommunication was passed in accordance with usage, and after hearing the explanation of the person charged. This same view was expressed still more strongly in *Jagannath Churn* v. *Akali Dassia*[6]. There also the plaintiff's right to enter a prayer house was resisted on the ground of an alleged expulsion by the majority of the Samaj. The Court followed the ruling in *Gopal* v. *Gurain*[7] and dissented from the Bombay ruling in *Pragji* v. *Govind*[8]. It was observed that even if this last ruling were accepted, it would be still necessary to see if the rule or order of the majority was properly arrived at in a *bonâ fide* manner, and that it was in conformity with natural justice. In *Ganapati Bhatta* v. *Bharati Swami*[9], which was also a case of expulsion from caste, it was held that a guru has, no doubt, a right to exercise his jurisdiction according to caste usage, and when he exercises his jurisdiction with due care and in accordance with custom, Civil Courts will not interfere with his action—*Murari* v. *Suba*[10]. If these limits are exceeded, there is no protection—*Queen* v. *Sankara*[11]. Similarly it was held in *Krishnasami* v. *Virasami*[12], that even when the expulsion had been ordered under a *bonâ fide*, but mis-

(1) (1869) 4 M. H. C. R., 349.
(2) (1888) 11 Mad., 450.
(3) (1882) 5 Mad., 313.
(4) (1867) 7 Cal. W. R., 299.
(5) (1889) 13 Mad., 293.
(6) (1893) 21 Cal., 463.
(7) (1867) 7 Cal. W. R., 299.
(8) (1887) 11 Bom., 534.
(9) (1893) 17 Mad., 222.
(10) (1882) 6 Bom., 725.
(11) (1883) 6 Mad., 381.
(12) (1886 10 Mad., 133.

taken, belief on a point of fact, and it was shown that plaintiff had not been guilty of the misconduct imputed to him, he has a right to have the order of expulsion set aside. Kernan, J., who decided the case, observed that 'a caste custom permitting expulsion without notice would be invalid. The caste institution is not above or outside the law. Usage and custom exist only under, and not against, the law.'

When a man had been expelled from his caste for alleged adultery, and the caste had allowed him no opportunity to defend himself, the order of expulsion was set aside—*Vallabha* v. *Madusudanan* [1]. The fact is that in such matters the Courts treat caste corporations like any other voluntary societies or clubs. If their proceedings are *bonâ fide* and fairly conducted, their action is upheld and not otherwise. The principle of the rulings in *Advocate General* v. *David Haim Devakar* [2], which was a dispute between Beni Israelite parties, and the case in *Gompertz* v. *Goldingham* [3], which related to a club, apply equally to expulsions from caste. If there is jurisdiction, and the procedure is fairly conducted and *bonâ fide*, the action of the caste, corporation, or club is upheld. If possible, for the reasons stated by the Judges who decided the case of *Jagannath Churn* v. *Akali Dassia*, the Civil Courts have to be more careful in the matter of caste expulsions than is necessary in the case of voluntary associations. It might be indeed contended that section 21 of Regulation II of 1827 imposes a special limitation on the power of the Courts of this Presidency. This contention is, however, not correct. As laid down by West, J., in *Anandrav* v. *Shankar*, and affirmed by the same Judge in *Pragji* v. *Govind*, and by Sargent, J., in *Murari* v. *Suba*, section 21 of Regulation II of 1827 only prevents such interference as is likely to affect the autonomy of caste tribunals. The section itself provides a remedy in the matter of alleged injury to caste or character in the shape of damages. This means that Courts have jurisdiction when the injury is due to the illegal or unjustifiable conduct of the other party. Such suits must be clearly distinguished from caste disputes proper. Claims between rival factions of the same caste to common caste

(1) (1889) 12 Mad., 495. (2) (1886) 11 Bom., 185.
(3) (1886) 9 Mad., 319.

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property, claims to leadership of caste, claims to require voluntary offerings and honours and presents to be paid to particular members, claims to officiate as priests against the consent of the caste, claims for compulsory invitations to dinners, &c.—*Girdhar* v. *Kalya* (1); *Dullabh* v. *Narayan* (2); *Murar* v. *Nagria* (3); *Murari* v. *Suba*; *Archakam* v. *Udayagiry*; *Gossain Doss* v. *Gooroo Doss* (4); *Krishnasami* v. *Krishnama*; *Dayaram* v. *Jethabhat*; *Mayashankar* v. *Harishankar* (5); *Karuppa* v. *Kolanthayan* (6); *Joy Chunder* v. *Ramchurn* (7); *Sudharam* v. *Sudharam* (8); *Shankara* v. *Hanma* (9); *Striman* v. *Kristna*(10).—These are matters which affect the internal autonomy of the caste and its social relations, and suits in regard to them have been properly held to be barred by section 21 of Regulation II of 1827 and similar enactments in other parts of India.

But where, as in this case, a man's character and status as a member of a caste is called in question, and on the strength of an alleged excommunication it is sought to deprive him of the use of a priestly office connected with a temple, with lands and perquisites attached to it, it is clear that the Courts must inquire into the factum of excommunication, and to see that the expulsion was in accordance with caste usage and in conformity with natural justice. It may not be possible for a Court to determine the adequacy of the religious grounds on which the excommunication is based, but it can and ought to satisfy itself that there are fair and *bonâ fide* grounds for such action. There is nothing in the record to show that the excommunication in the present case fulfilled this character. It appears that the misconduct attributed to the appellants is that they did not attend upon the Swámi, and that they refused to allow a share in the temple lands in their possession to the other sharers. The District Judge himself states that there are no adequate grounds for the alleged expulsion. It is also not clear whether the Swámi has a right of dismissing or employing the *pujári* in the temple, or whether the

(1) (1880) 5 Bom., 83.
(2) (1867) 4 Bom. H. C. Rep., A. C. J., 110.
(3) (1869) 6 Bom. H. C. Rep., 17.
(4) (1871) 16 Cal. W. R., 193.
(5) (1886) 10 Bom., 661.
(6) (1883) 7 Mad., 91.
(7) (1866) 6 Cal. W. R., 325.
(8) (1869) 3 Beng. L. R., 91.
(9) (1877) 2 Bom., 470.
(10) (1863) 1 Mad. H. C. Rep., 301.

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excommunication has been resorted to in order to compel obedience to the wishes of the *bháubands* for a share in the temple lands.

If the appellants as plaintiffs had a right to require the Courts to make an inquiry into the factum and regularity and *bona fides* of the excommunication proceedings, it is clear they have a stronger right as defendants to insist upon such inquiry before an injunction is given against them.

We must, therefore, remand the case for a finding upon the issue about the regularity and *bona fides* of the excommunication.

Case remanded.

N. B.—Upon remand the District Judge found that the sentence of excommunication was not passed on justifiable grounds after a fair and proper inquiry.

On this finding the High Court reversed the decree of the lower Court and dismissed the suit.

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Before Mr. Justice Parsons and Mr. Justice Ranade.

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RAJARAM AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, *v* GANESH (ORIGINAL PLAINTIFF AND DEFENDANT NO. 4), RESPONDENTS.*

Gift—Revocation of gift—Vritti—Gift of vritti—Validity of such gift—Compulsory alienation of vritti invalid—Private alienation not absolutely prohibited.

When a gift is made, the donor taking all the steps in his power to give effect to it, it is complete, and he cannot revoke it by a subsequent will.

A *vritti* cannot be sold in execution of a decree. Such a compulsory alienation is not only opposed to the Hindu law and public policy, but is also against the provisions of section 266 of the Code of Civil Procedure (Act XIV of 1882). But private alienations are not absolutely prohibited. No general rule can be pleaded in such matters. The rules of succession depend upon each particular foundation or office, and in respect of it, custom and practice must govern and prevail over the text law which prohibits both partition and alienation.

SECOND appeal from the decision of Ráo Bahádur D. G. Gharpure, Additional First Class Subordinate Judge at Násik.

*Second Appeal, No. 948 of 1897.