

It is argued, however, on behalf of the appellants that upon the authority of *Karim Baksh Khan v. Phula Bibi*⁽¹⁾ the right of pre-emption is a right running with the land.

Whether the right of pre-emption in the present case is a right running with the land or not we do not decide, but if it is, it is not a right which will render the purchase in execution invalid. At most it would give the owner of the right a title to exercise that right as against the purchaser if the purchaser intended to sell voluntarily at some future date.

We therefore dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

(1) (1886) 8 All. 102.

1910.

VITHAL
NARAYAN
v.
MAHETTI
NABAYAN.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

BASLINGAPPA PARAPPA AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS, v. DHARMAPPA BASAPPA AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.*

1910.

June 16.

*Public road—Right of marching in procession with a car—Suit for
declaration of right—Injunction restraining interference with the right.*

Plaintiffs sued on behalf of themselves and of other members of a religious community to have a declaration of their right of marching in procession with a car along a particular public road to certain temples and for an injunction restraining the defendants from interfering with the plaintiffs. The defendants contended that the plaintiffs had no right to march along the road. The lower Courts dismissed the suit on the ground that the road being public the plaintiffs could not sue unless special damage were shown and proved.

On second appeal by the plaintiffs *held*, reversing the decree and allowing the claim, that the suit was not for removal of a public nuisance but for a declaration of the right of an individual community to use the public road. Every member of the public and every sect has a right to use the public streets in a lawful manner and it lies on those who would restrain him or it to show some law or custom having the force of law abrogating the privilege.

Sadgopachariar v. A. Rama Rao⁽¹⁾ followed.

* Second Appeal No. 346 of 1907.

(1) (1902) 26 Mad. 376.

1910.

BASLINGAPPA
PARAPPADHARMAPPA
BASAPPA.

SECOND appeal from the decision of T. Walker, District Judge of Belgaum, confirming the decree of E. F. Rego, Subordinate Judge of Saundatti.

Suit for declaration and injunction.

The plaintiffs who were members of a community called Halgars or Devangs of the village of Deshnur sued the defendants alleging that they had built a temple at Deshnur and dedicated it to the Goddess Banshankari, that they had constructed a car for procession to neighbouring temples, that in the year 1904 they had applied to the District Magistrate for the necessary permission and that the defendants having opposed the application, the Magistrate referred the plaintiffs to a Civil Court. The plaintiffs, therefore, prayed for a declaration of their right to march in procession with the car along the road which passed through two gates called the Mulla Agashi and Durga Agashi and for an injunction restraining the defendants from interfering with the plaintiffs' right.

The defendants, who were members of the Lingayat community, answered *inter alia* that the suit was not maintainable in a Civil Court, that the plaintiffs had no right to move in procession along the road mentioned in the plaint and that the plaintiffs had built the temple and constructed the car simply to annoy the defendants who had dwelling houses on both sides of the said road.

The Subordinate Judge found that the road in dispute was public, that the defendants had a right to object to the plaintiffs' passing in procession on the road and that the suit must fail as the plaintiffs had not proved any special damage to them. He, therefore, dismissed the suit.

On appeal by the plaintiffs the District Judge was of opinion that on the merits the plaintiffs were entitled to succeed but relying on the decisions in *Satku valad Kadir Sansare v. Ibrahim Aga valad Mirza Aga*⁽¹⁾ and *Kazi Sujaudin v. Madhavadas*⁽²⁾, he confirmed the decree on the ground that without proving special damage the plaintiffs could not succeed.

(1) (1877) 2 Bom. 457.

(2) (1893) 18 Bom. 693.

Weldon with *N. A. Shiveshtarkar* for the appellants (plaintiffs).

G. S. Mulgaumkar for the respondents (defendants).

SCOTT, C. J. :—In this case the plaintiffs sue on behalf of themselves and of other members of a religious community at Deshnur to have a declaration of their right of marching in procession with a car along a particular public road to certain temples, and for an injunction restraining the defendants from interfering with the plaintiffs.

The suit arises out of an application made by members of the plaintiffs' community to the District Magistrate under the local Police Rules for permission to hold the procession and to march with the car along the road. The Magistrate not being convinced of their legal right so to use the public road referred them to a Civil Court for a declaration of that right.

The members of another religious community who occupy land abutting upon the road at a point where the width of the roadway is defined by two gates called Mulla Agashi and Durga Agashi, have put in a written statement denying the right of the plaintiffs to march along the road.

In the first Court it was found that the road was a public road, but it was held the plaintiffs' suit must fail as the road being public the plaintiffs could not sue unless special damage were shown and proved, and reference was made to *Satku valad Kadir Sausare v. Ibrahim Aga valad Mirza Aga*⁽¹⁾ and *Kazi Sujaudin v. Madhavdas*⁽²⁾ in support of that decision. The suit was, therefore, dismissed and that decree was affirmed by the District Judge.

In appeal before us it was contended for the respondents that the plaintiffs wished to conduct along the road a car which was too large to pass through what was properly speaking the public road as defined by the space between the two gates which we have already referred to. We, therefore, remanded the case for a finding as to whether the car of the plaintiffs could pass through the two gates. The lower Court found that it could pass. It was then contended by the respondents that the car which had been submitted for measurement to the lower Court on this

(1) (1877) 2 Bom. 457.

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issue was not the car which the plaintiffs had originally wished to conduct in procession. We then referred that question to the lower Court and it was held that the car was the same car. The question, therefore, is whether the plaintiffs have a right to conduct in religious procession a car which is not too wide to pass along the public road.

There has been no obstruction of their right but the defendants in consequence of the course taken by the District Magistrate have denied the right claimed by the plaintiffs.

The suit is not for the removal of a public nuisance but for a declaration of the right of an individual community to use the public road. It is, therefore, a suit which raises the same question as that which was the subject of the decision in *Sadgopachariar v. A. Rama Rao*⁽¹⁾, in which the Court held that the correct view is that every member of the public and every sect has a right to use the public streets in a lawful manner and it lies on those who would restrain him or it to show some law or custom having the force of law abrogating the privilege. That case was appealed to the Privy Council and their Lordships of the Judicial Committee held that the decision of the lower Court was perfectly right that all members of the public have equal rights in public roads.

We, therefore, allow the appeal, reverse the decree of the lower Court and declare that the plaintiffs have a right to march in procession with their car along the public road referred to in the plaint and, we pass an injunction restraining the defendants from interfering with the plaintiffs in the exercise of that right.

Although we have decided the question of civil right and granted an injunction in the terms prayed for, it must not be supposed that by so doing we intend in any way to fetter the discretion of the District Magistrate in passing such orders as he may be entitled to pass with reference to the procession under the Police Act Rules or any other relevant rules for the time being in force.

The respondents must pay the costs throughout.

Decree reversed.

G. B. H.