APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920. *August* 11.

SHREEMAN NIRANJAN JAGADGURU ANDANISWAMI GURU ANDANISWAMI, SANSTHAN-MATH MUNDARGI BY HIS VATMUKHTYAR SOLBAYA MAHALINGAYA (ORIGINAL PLAINTIFF), APPELLANT *v.* TOTADSWAMI GURU TOTADSWAMI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Civil Procedure Code (Act V of 1908), section 9—Right to be carried in procession—Claim to dignity and honour—Right claimed as Jagadguru—Alternative claim made as a member of the public—Inconsistent claim—Plaint—Amendment—Civil Court—Jurisdiction.

A suit claiming a right to be carried in a cross-palanquin procession with Panch-Kalash and Birudavali is not maintainable in a civil Court without proof of special damage.

Madhusudan Parvat v. *Shri Shankaracharya*(1), referred to.

The plaintiff alleged that he was one of the Jagadgurus of the Lingayats and as such he claimed the right of going in procession seated in a cross-palanquin adorned with and accompanied by Panch-Kalash and Birudavali. One of the issues raised in the trial Court was, "Is the right to parade in cross-palanquin as described in the plaint a general right exercisable by any subject of His Majesty?" On this issue it was contended in second appeal by the plaintiff that the lower Courts which dismissed his suit on the ground that it was not maintainable in a civil Court should have dealt with the case as if the plaintiff was suing as a member of the public claiming as such to be entitled to be carried in a cross-palanquin if he chose to adopt that method of procession. The plaintiff also asked that he should be allowed to amend his plaint accordingly.

Held, refusing the amendment, (1) that the claim made as a member of the public was inconsistent with the plaintiff's original claim that he was entitled to be carried in procession as Jagadguru, and (2) that on the pleadings the issue raised in the trial Court was irrelevant and ought not to have been admitted.

Mahomed Baksh Khan v. *Hosseini Bibi*(2), relied on.

*Second Appeal No. 822 of 1917.

(1) (1908) 33 Bom. 278. (2) (1888) L. R. 15 I. A. 81.

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ANDANI-SWAMI v. TOTAD-SWAMI.

SECOND appeal against the decision of E. Clements, District Judge of Dharwar, confirming the decree passed by H. V. Kane, Subordinate Judge at Gadag.

The facts material for the purposes of this report are sufficiently stated in the judgment of His Lordship, the Chief Justice.

Sir Thomas Strangman with *S. V. Palekar*, for the appellant.

Dhurandhar with *V. R. Sirur*, for respondents Nos. 1, 5 and 8.

MACLEOD, C. J. :—The plaintiff alleges that he is one of the Jagadgurus of the Lingayats, that he has many branch Maths in the Presidencies of Bombay and Madras, in the territories of the Patwardhan Chiefs and of His Exalted Highness the Nizam, that plaintiff's Gurus before him had and plaintiff has the right of going in procession seated in a cross-palanquin adorned with and accompanied by Panch-Kalash and Birudavali, that they had and have that right as Jagadgurus, that they have a right that their disciples should show them that honour in their own village and also when they go out visiting in public streets, that the plaintiff's Gurus had and plaintiff has exercised this their right since ancient times, that this procession in a cross-palanquin is taken out in plaintiff's village Mundargi every year on Vaishak Sud 10 and 11, last Monday and Tuesday in every Shrawana, on Ashwin Sud 10 and at the beginning of Margashirsha without fail. It is taken out also when plaintiff is called by his disciples for worshipping his feet at their homes at all times of the year, it is taken out also when the plaintiff enters villages on his tours and visits his disciples' houses for the worshipping of his feet, that the plaintiff intended to take out a cross-palanquin procession on last Monday Shrawana of Shake 1834, that the 1st defendant induced defendant

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No. 2 to make an application to the Second Class Magistrate of Mundargi on the 6th of September 1912 and the other defendants to the Sub-divisional Magistrate that there would be a breach of the peace, that the latter Magistrate stopped the plaintiff's procession on the 9th of September 1912 and that appeals were preferred, but failed and hence the suit. The plaintiff prays for an injunction against the defendants that they should not obstruct the plaintiff in going in a cross-palanquin procession with a Panch-Kalash and Birudavali on Vaishak Sud 10 and 11, on last Monday and Tuesday in Shrawana, on Ashwin Sud 10 and in the beginning of Margashirsha, in Mundargi and elsewhere at other times.

The defendants Nos. 1 and 3 contend that the civil Courts have no jurisdiction to try this suit, that the plaintiff is not a Jagadguru, but defendant No. 1's disciple, that disciples before him called Andanmaris like the plaintiff denied that they were defendant No. 1's disciples (Shishyas) and the High Court held that they were defendant No. 1's Shishyas or disciples, that the Andanmari before the plaintiff had admitted that he was defendant No. 1's disciple and had passed a registered deed to that effect, that such Maris have no such right of going in a cross-palanquin as claimed in the plaint, that they have no right to take out the procession mentioned in the Schedule attached to the plaint and that the 1st defendant alone has the right to call himself Jagadguru and go in a cross-palanquin with Panch-Kalash and Birudavali and not the plaintiff.

It may be said, therefore, on those pleadings that the plaintiff claimed to have the right of being carried in a cross palanquin in procession as Jagadguru. That was a religious dignity and privilege not for every member of the public, but for himself as Jagadguru.

It was the plaintiff who claimed to be carried in procession by his disciples in order that they might worship his feet in their homes, and to be carried in procession on particular days of the year.

The 1st issue raised in the trial Court was, "Is the right to parade in the cross palanquin as described in the plaint a general right exercisable by any subject of His Majesty"? It is difficult to see at first sight how that issue came to be raised. Certainly it is not relevant to the pleadings. But when issues are raised under Order XIV, *Rule* 1 (*5*), the Court shall, after reading the plaint and the written statement, if any, and after such examination of the parties as may appear necessary, ascertain upon what material proposition of fact or of law the parties are at variance and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend. It appears from the record that the plaintiff never attended the Court and therefore he could not have been examined by the Judge. It seems obvious that the plaintiff's pleader must have seen the danger he was in of losing his case as he insisted upon plaintiff's claiming the privilege of being carried in a cross palanquin for himself only as Jagadguru. He must have argued before the Court that the plaintiff's suit could succeed, because he, as a member of the public, had the right to use the road in any way he pleased provided he did not inconvenience the other members of the public who had equal rights themselves. But it appears to me that this issue ought never to have been admitted. It is absolutely inconsistent with the plaintiff's own case and I cannot imagine that a party in the position of the plaintiff would ever have filed this suit claiming the right to be carried in procession in a cross palanquin not because he was a Jagadguru, but because he was a member

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of the public. In *Mahomed Buksh Khan* v. *Hosseini Bibi*[1] their Lordships of the Privy Council dealt with the question of raising issues inconsistent with the case made out by the plaintiff. Their Lordships at page 86 said : " On the 16th of March, 1882, issues were settled. Amongst the issues was this : ' 2nd. Whether the Hibbanama on behalf of Shahzadi Bibi is genuine and valid and executed with her knowledge and consent, or whether it was manufactured without her knowledge and consent, or whether it was executed under undue influence ? ' In their Lordships' opinion the latter part of that issue ought not to have been admitted. It was absolutely inconsistent with the case made by the plaintiff. It only becomes possible on the assumption that the alleged cause of action is unfounded. There was another issue which also was admissible on that assumption, namely : ' 3rd. Whether in case the said Hibbanama is proved to be genuine it is invalid on any ground according to Mahomedan law.' " Applying those remarks to this case this issue only becomes possible on the assumption that the alleged cause of action in the plaint is unfounded, namely, plaintiff's claim that he as Jagadguru was entitled to be carried in procession in a cross palanquin as a religious dignity and privilege. That cause of action disappears entirely if the plaintiff were to allege that he was entitled to be carried in that way not because he was a Jagadguru, but because he happened to be a member of the public entitled to use the street in any reasonable way. The suit was dismissed by the trial Court as it found on the 2nd issue that this was a special right enjoyable by the defendant No. 1 and other high priests of the Hindus like him, that the plaintiff had no right to march in a procession seated in a cross-palanquin as alleged in the plaint in public

[1] (1888) L. R. 15 I. A. 81.

streets and that the 1st defendant had an exclusive right of riding in a cross-palanquin as against the plaintiff. But the lower Court also held that it had no jurisdiction to try the suit. The learned Judge said: "I shall examine whether a suit for this honour and dignity unaccompanied by any pecuniary profits and not attached to any particular office shall lie in a civil Court under section 9 of the Civil Procedure Code. I think that suits for an office are of a civil nature, but in my opinion a suit for vindication for a mere dignity, though connected with an office, is not. The present suit is not for a claim to an office, but for a claim to a mere honour and dignity on account of an office and is, I think, not maintainable in a civil Court. It has been held that the claim by a Swami or Arch priest that he is entitled to be carried on a high road in a cross-palanquin will not be entertained by a civil Court. What is claimed in such a suit is a mere honour and dignity, a mark attached to the office of a Swami. It has been laid down that civil Courts should discourage, as far as possible, claims of so unsubtantial and objectionable a nature and they ought not to be involved in the determination of trivial questions of dignity and privilege although connected with an office." Reference was made to *Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti*[1]. In first appeal the learned Judge said: "in considering the authorities the right claimed by the appellant may be regarded in two aspects, first as a religious dignity and privilege and secondly as a right to take a procession through public streets. From either point of view the current of Bombay decisions is against the appellant. In *Madhusudan Parvat* v. *Shri Shankaracharya*[2] it has been held that 'to decide disputes as to precedence or privilege between purely religious functionaries is no part of the business of the

(1) (1843) 3 Moo. I. A. 198. (2) (1908) 33 Bom. 278 at p. 291.

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civil Courts, nor will they grant injunctions to prevent preachers from preaching where they like under any title they please, provided no office or property is disturbed or interfered with.' In this case there is not the slightest suggestion that the appellant's office as the Head of Mundargi Math has in any way been affected." The learned Judge also referred to a Madras case—*Sadagopachariar* v. *Rama Rao*[1]—which was cited for the proposition that every member of the public and every sect has a right to use the public streets in a lawful manner. The learned Judge very rightly remarked that every sect may have the right to carry their leader in a cross palanquin. The question is whether the Court will enforce that right without proof of particular damage. It appears, therefore, to me that the authorities are perfectly clear. Civil Courts will not entertain a claim of this nature and really the argument that was addressed to us in second appeal was that we ought to deal with the case as if the plaintiff was suing as a member of the public claiming as such to be entitled to be carried in a cross palanquin if he chose to adopt that method of procession. As I pointed out, that was not the plaintiff's case and I doubt whether if we allowed the plaint to be amended, plaintiff would put his signature to such an amendment.

In my opinion, therefore, the appeal fails and the suit should be dismissed with costs.

Decree confirmed.

J. G. R.

[1] (1902) 26 Mad. 376.