1905 JUNE 19.

CRIMINAL REVISION.

32 C. 1069=3 Cr. L. J. 119.

The District Magistrate has submitted an explanation from the Deputy Magistrate and does not show cause against the rule.

[1071] We must point out to the Sessions Judge that he had no authority under any section of the Criminal Procedure Code to pass the order, which he did. If the Magistrate's decision was not as satisfactory as he thought it should have been, it was his duty as Sessions Judge in appeal to go into the whole facts fully and dispose of the case. He could not devolve this duty, as he did, on the Deputy Magistrate.

We therefore make the rule absolute, and direct that the appeal to the Sessions Judge be readmitted and that he do hear it according to law.

Rule absolute.

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32 C. 1072 (=10 C. W. N. 505=2 C. L. J. 390.)

[1072] APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Bodilly.

LOKE NATH MISRA *v.* DASARATHI TEWARI.*

[3rd August, 1905.]

Civil Court—Civil Procedure Code (Act XIV of 1882) s. 11—Suit for right to property or to an office—Suit relating to religious rites and ceremonies—Suit by a worshipper to have idol located in a particular temple—Jurisdiction.

Suits as to religious rites and ceremonies, which involve no question of the right to property or to an office are not suits of a civil nature within the meaning of s. 11 of the Civil Procedure Code and are not within the jurisdiction of the Civil Court.

Vasudev v. *Vamnaji* (1) approved.

A suit by the worshipper of an idol, not based on any right to the property in the idol or to an office, against its custodians to locate it in a particular temple instead of in another, there being no allegation that the plaintiff is prevented from worshipping the idol at the latter temple, is not cognizable by a Civil Court.

Jagannath Churn v. *Akali Dassia* (2) distinguished.

O. Nagiah Bathudu v. *Muthacharry* (3) referred to.

[Ref. 30 Mad. 158=17 M. L. J. 1=2 M. L. T. 69.]

SECOND APPEAL by the plaintiff Loke Nath Misra.

The plaintiff alleged that from ancient time certain idols were established in a temple at the eastern end of a certain road; that on certain festivals the idols used to be carried in procession from this temple to another at the western end of the road; that after a stay of a few days the idols were carried back to the eastern temple, where they used to remain; that during these processions the plaintiff and other persons, by whose doors the procession passed had the right to make offerings of food to the idols; that on the occasion of one of these festivals in the year 1307 [1073] the idols were carried to the western temple but instead of bringing them back to the eastern temple, the defendants acting in concert carried the idols in procession for only a short distance towards the east and then carried them back and kept them in the western temple in violation of the old practice; that in consequence he was prevented from

* Appeal from Appellate Decree No. 1939 of 1903 against the decree of M. Abdul Barry, Subordinate Judge of Cuttack, dated the 29th June 1903, reversing the decree of Narendra Nath Ghose, Additional Munsif of Puri, dated the 20th of September 1901.

(1) (1880) I. L. R. 5 Bom. 80.
(2) (1893) I. L. R. 21 Cal. 463.
(3) (1900) 11 M. L. J. 215.

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32 C. 1072=10 C. W. N. 805=2 C. L. R. 590.

making the offering of food to the idols and had suffered damage to the extent of Re. 1 and odd. He therefore brought the suit, out of which this second appeal arose, against the defendants for damages, for a declaration that he was entitled on the occasions stated to have the idols carried to his door and to make the customary offering of food to the idols, for an order to have the idols removed from the western to the eastern temple and kept there, and for a permanent injunction restraining the defendants from resisting him in making the offerings.

The defendants pleaded *inter alia* that the suit was not maintainable in the Civil Court and that the western temple was the place where the idols were ordinarily located; they denied having caused any damage to the plaintiff. At the hearing they admitted plaintiff's right to make the offerings and undertook not to resist him in doing so.

The Munsif, who tried the suit, held that the suit was maintainable, and that the idols should ordinarily remain in the eastern temple. He accordingly made a decree declaring plaintiff's right to make the offerings and directing that the defendants shall not obstruct him in future; the decree further ordered that the idols should reside and be kept in the eastern temple. The claim for damages was dismissed.

The defendants appealed against the portion of the decree which ordered that the idols should reside and be kept in the eastern temple.

The Subordinate Judge held that this portion of the decree was made without jurisdiction, the matter being not one of a civil nature and he ordered it to be struck out.

The plaintiff appealed to the High Court.

Babu *Baidya Nath Dutt* (Babu *Nagendra Nath Mitra* with him) for the appellant. The plaintiff has a right to worship the idol [1074] in a particular place: the right to worship implies that the worshipper has a certain right in the idol itself, for if any person removes it the worshipper would have the right to compel him to restore the idol to its place or to get an injunction to restrain him from removing it. An idol is property—*Jagannath Churan* v. *Akali Dassia* (1); *Debendronath Mullick* v. *Odit Churn Mullick* (2); *Subbaraya Gurukal* v. *Chellappa Mudali* (3); *Anandrav Bhikaji Phadke* v. *Shankar Dajit Charya* (4). In *Vasudev* v. *Vamnaji* (5) no question of personal right was involved: the plaintiff merely said that the priests were bound to place certain ornaments on the idol. The explanation to s. 11 of the Civil Procedure Code, does not narrow the scope of the section, and merely because no right to property or office is involved it does not follow that the suit may not be one of a civil nature. If the right is a substantial one the Civil Courts must take cognizance. *Sangapa* v. *Gangapa* (6) is rather against me, but the later case of *Anandrav Bhikaji* (4) shown that ultimately the other view prevailed. The plaintiff claims a right to worship in a particular temple, and if he is prevented from doing that he may have his right declared as in the case of a Mahomedan's right to worship in a particular mosque. There is a sanctity attached to the particular temple; plaintiff's grievance is substantial. See also *Vengamuthu* v. *Pandaveswara Gurukal* (7).

Babu *Jogesh Chandra Dey* (Babu *Kshetra Mohan Sen* with him) for the respondents. The plaint does not allege any right to worship in the eastern

(1) (1893) I. L. R. 21 Cal. 463.
(2) (1878) I. L. R. 3 Cal. 890.
(3) (1881) I. L. R. 4 Mad. 315.
(4) (1883) I. L. R. 7 Bom. 328.
(5) (1880) I. L. R. 5 Bom. 80.
(6) (1878) I. L. R. 2 Bom. 476.
(7) (1882) I. L. R. 6 Mad. 151.

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temple nor is it alleged how the plaintiff has acquired the right to have the idols removed to the eastern temple. The plaintiff has claimed no right to the idol or to any office; it is a mere suit for a dignity. The following cases were referred to; *Sri Sankur Bharti Swami* v. *Sidha Lingayai Charanti* (1); *Sangapa* v. *Gangapa* (2); *Vasudev* v. *Vamnaji* (3); *Rama* v. *Shivram* (4); *Narayan Vithe Parab* v. *Krishnaj* [1075] 32 C. 1072= 10 C. W. N. 805=2 C. L. J. 590. *Sadashiv* (5); *Karuppa Goundan* v. *Kolanthayan* (6); *O. Nagiah Bathudu* v. *Mathacharry* (7).

Babu *Baidya Nath Dutt* in reply. In the case of *O. Nagiah Bathudu* v. *Muthacharry* (7) the two learned Judges came to different conclusion.

Cur. adv. vult.

PRATT AND BODILLY. The only question which arises in this appeal is whether the plaintiff, who is a worshipper of certain idols, can maintain a suit against the custodians of those idols to locate them in a certain temple situated at the eastern end of a particular road instead of another temple situated at the western end of the same road.

The plaintiff's case was that during certain festivals the gods are taken from the eastern temple, and after being paraded through the streets are carried to the western temple, and after an interval of a few days are brought back to the east temple and there kept until the next festival, and that the defendants have not on a certain festival brought them back to the east temple after parading them in the manner stated.

The Munsif made an order that the gods should be kept in the east temple.

The Subordinate Judge has held that the suit is not maintainable.

There is no allegation that the plaintiff is prevented from worshipping the gods while in the west temple. He merely insists upon the gods being located in the east rather than in the west temple. Section 11 of the Code of Civil Procedure enacts as follows:—

"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force. (Exp.) A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."

[1076] It seems to follow by implication, as was pointed out in the case of *Vasudev* v. *Vamnaji* (3), that suits as to religious rites and ceremonies, which involve no question of the right to property or to an office, are not regarded by the Legislature as suits of a civil nature, nor intended to be brought within the jurisdiction of the Civil Court. This suit is not based upon any right to the property in idols or to an office, but upon the plaintiff's supposed right as worshipper to insist on the observance of a ceremonial regulation relating to the particular temple in which the idol should ordinarily be located. We think that the suit is not one of a civil nature and that it has been rightly dismissed on that ground. The case law on this subject has been dealt with somewhat fully in the case of *O. Nagiah Bathudu* v. *Muthacharry* (7) and we think it unnecessary to recapitulate the same. As regards the case of *Jagannat Churan* v. *Akali Dassia* (8) which

(1) (1848) 8 Moo. I. A. 198.
(2) (1878) I. L. R. 2 Bom. 476.
(3) (1880) I. L. R. 5 Bom. 80.
(4) (1882) I. L. R. 6 Bom. 116.
(5) (1885) I. L. R. 10 Bom. 293.
(6) (1883) I. L. R. 7 Mad. 91.
(7) (1900) 11 M. L. J. 215.
(8) (1898) I. L. R. 21 Cal. 463.

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is not there referred to, we need only say that there was a claim to some right in the property. The grievance alleged by the plaintiff in the present case seems to be merely sentimental. The plaint does not even set out any right in the plaintiff to interfere with the discretion of the defendants to locate the gods in the western temple. It only says that the defendants have acted in violation of an old practice to bring the idols back to the eastern temple after a few days' visit to the western temple. The plaintiff is opposed to what he considered to be an innovation: the question he raises is not in our opinion of a nature cognizable by a Civil Court.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

32 C. 1077 (=9 C. W. N. 868.)

[1077] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Mitra.

KRISHNA CHANDRA SAHA *v.* BHAIRAB CHANDRA SAHA.*

[21st July, 1905.]

Limitation—Mortgage—Limitation Act (XV of 1877) ss. 19, 20—Acknowledgment of debt—Acknowledgment by predecessor in interest—Part Payment—payment of interest.

A mortgaged several properties to the plaintiffs and then sold one of them, property No. 3, to B who again mortgaged the property to C, and in a mortgage suit by C, the property was sold and purchased by D.

A afterwards paid part of the principal as well as of interest under the mortgage and made an acknowledgment of his liability under it.

D contended that any such acknowledgment as against her was of no avail.

Held, that under sections 19 and 20 of the Limitation Act the acknowledgment as well as the payments were sufficient to keep the debt alive against the property No. 3.

Chinnery v. *Evans* (1) referred to.

[Appl. 22 I. C. 510; Fol. 33 Cal. 1278=11 C. W. N. 107; Ref. 12 M. L. T. 610=24 M. L. J. 66=17 I. C. 619; 32 I. C. 603; 37 Cal. 461; 40 M. L. J. 126=62 I. C. 833.]

APPEAL by some of the plaintiffs, Krishna Chandra Saha and others.

The plaintiffs brought the suit on the 7th February 1903 to enforce a mortgage bond executed by the defendant No. 1 Bhairab Chandra Saha in favour of the father of the plaintiffs Nos. 2 to 6 and of the remaining plaintiffs on the 28th April 1887, the date of payment fixed in the bond being in January 1888. Bhairab then sold one of the mortgaged properties, referred to in the judgment as property No. 3, to one Barada Charan Banerjee on the 20th December 1888 for Rs. 23,000, who motgaged it to Sew Bux Bogla. In execution of a decree obtained by Sew Bux on the 21st August 1896 on the Original Side of the High Court against the executrix and executor of the will of Barada Charan, the property was sold by the Subordinate Judge of [1078] Alipore and was purchased by the defendant No. 2 Bhaba Bhabani Dasi in the *benami* of one Tarini Churn Ghose on the 15th June 1897, the sale being confirmed on the 26th July 1897. To avoid the operation of the Limitation Act the plaintiffs relied on certain payments of part of the principal as well as of interest duly made by the defendant No. 1 Bhairab

* Appeal from Original Decree No. 292 of 1904 against the decree of Hari Nath Dey, Subordinate Judge of Dacca, dated the 23rd of June 1903.

(1) (1864) 11 H. L. C. 115.