Before Mr. Justice Banerjee and Mr. Justice Rampini.

JAGANNATH CHURN AND OTHERS (DEFENDANTS) *v.* AKALI DASSIA AND OTHERS (PLAINTIFFS).* 1893 *Dec.* 31.

Jurisdiction of Civil Court—Civil Procedure Code, 1882, s. 11—Suit for right to property and for office or emolument—Suit relating to caste questions—Right of suit—Suit by bhakats of religious fraternity expelled by other members for re-admission into fraternity—Powers of fraternity to impose fine and cause expulsion until fine is paid—Cause of action.

The plaintiffs were some of the *bhakats* or members of a *satra* or religious fraternity, and they claimed the right to enter the *kirtanghar* or prayer-hall, and perform their prayers and other rites therein. They alleged in the plaint that the management of the affairs of the *satra*, "including the distribution of honorarium and offerings and the appointment and dismissal of the *satria*," or head of the fraternity, was vested in the *samuha*, or entire body of *bhakats*, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the *satra* until they had been obstructed and interfered with by the defendants in such performance and had been expelled from the *kirtanghar*. The prayer of the plaint was that the plaintiffs' right to enter the *kirtanghar* to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the *kirtanghar* from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the *satria* and the other members of the fraternity forming the majority of the entire body of *bhakats*, denied the rights claimed by the plaintiffs as *bhakats*, and stated that the *satra* was governed by the *satria* and a select body of *bhakats*, that the plaintiff No. 1 had received *mantra* or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted moreover of a criminal offence, and a fine of Rs. 100 had accordingly been imposed on him and his partizans by the governing body of the *satra*, whose orders they had disobeyed by refusing to pay the fine, and they had, therefore, been excluded from entering the *kirtanghar*; and the defendants contended that the

*Appeal from Appellate Decree No. 146 of 1892, against the decree of A. A. Wace, Esq., Officiating Judge of the Assam Valley Districts, dated the 7th of October 1891, modifying the decree of Babu Shibo Prasad Chuckerbutty, Extra Assistant Commissioner and Munsif of Gowhatti, dated the 31st of July 1890.

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Civil Court had no jurisdiction in the matter and that the suit was, therefore, not maintainable. The Lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the *kirtanghar* on their complying with the order imposing the fine. *Held*, that having regard to the prayer for possession of the *kirtanghar*, and to the allegations made in the plaint about the position and privileges of the *bhakats* and their rights to honorarinm and offerings, and to the defendants' denial of those rights and of the plaintiffs' right to enter the *kirtanghar*, the suit must be regarded as one in which right to property and to an office, within the meaning of the explanation to section 11 of the Civil Procedure Code, is contested, and, therefore, notwithstanding that the honorarium and offerings were of trifling and merely nominal value, one of a civil nature and cognizable by the Civil Court.

Held also, that the rules laid down in the English cases as to expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules, are not applicable with regard to caste unions or religious fraternities in India, to which people belong not of choice but of necessity, being born in their respective castes or sects, and the consequences of exclusion from which are far more serious and affect a person's status in a far greater degree than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of Justice, even though presided over by judges of a different religious persuasion, against expulsion, is much more needed than in clubs or voluntary associations. Cases of expulsion from them were, therefore, cognizable by the Civil Court. *Sudharam Patar* v. *Sudharam* (1), *Hopkinson* v. *Marquis of Exeter* (2), and *Dawkins* v. *Antrobus* (3), distinguished; *Gopal Gurain* v. *Gurain* (4), and *Ramkant* v. *Ram Lochan* (5), followed. *Advocate-General of Bombay* v. *Haim Devakar* (6), not followed.

Held, further, that even if the rules laid down in the English cases were applicable, they were subject to a qualification which leaves it open to a Court of Justice to interfere with the decision of a private association on grounds, one of which is that the decision is contrary to natural justice. The decision of the Lower Courts therefore ordering the re-admission of the plaintiffs to the *kirtanghar*, on their complying with the order imposing the fine, was not such an interference with the decision of the domestic tribunal of the parties as is opposed to the cases cited as to clubs, &c., as it would have been contrary to natural justice for the fraternity to enforce such exclusion after the reason for it had ceased, and make the disqualification of the plaintiffs permanent.

(1) 3 B. L. R., A. C., 91; 11 W. R., 457.
(2) L. R. 5 Eq., 63.
(3) L. R. 17 Ch. D., 615.
(4) 7 W. R., 299.
(5) S. D. A., 1859, p. 535.
(6) I. L. R., 11 Bom., 185.

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Held, on the statements in the plaint, that the plaintiffs had a cause of action, and the suit could not have been properly dismissed on the finding of fact by the Lower Appellate Court that the plaintiffs' exclusion from the *kirtanghar* was justified by their refusal to pay the fine imposed on them.

THIS suit was brought to establish the plaintiffs' alleged right to perform *nams*, *prasangs*, and *kirtan* in the *kirtanghar* or prayer-house at the Chamaria *satra*, from which right they stated the defendants had excluded them.

The land on which the *kirtanghar* stood was granted by one of the Assam Rajas in Joistho 1693 to the ancestors of the plaintiffs and defendants for religious purposes, consisting of the singing and hearing of divine songs and texts; and the plaintiffs alleged that from the time of the establishment of the *satra* the forefathers of themselves and the defendants who were the then *satria* and *bhakats* of the *satra* had from generation to generation been performing *nams*, *kirtan* and *prasangs* in conformity with the ancient customs of the *satra* and receiving *nirmalyas* and *prasads* (consecrated flowers, leaves, offerings of rice, fruit, &c.) according to custom, and in the enjoyment of their respective privileges and honorariums had been performing the *harinam* and the function of praying and hearing which are the essential features of the religion of the *satra*; that all the affairs of the *satra*, the distribution of honorariums, *nirmalya*, &c., amongst members of the collective body of *bhakats* according to their rank and gradation, the appointment and dismissal of the *satria* vested with the *samuha*, or entire body of *bhakats*, in general; no individual member could have any exclusive right or authority in the matters just mentioned against the wishes and opinions of the general body of *bhakats* of the *satra*; that the plaintiffs had been in enjoyment of the above-mentioned rights and privileges in the *satra* up to the 2nd Magh 1294, when, as they stated in the 6th paragraph of the plaint, on the occasion of their entering the *satra* to perform *nams* and *prasangs* on the occasion of a festival, they were wrongfully expelled therefrom by the defendants who denied all their rights and privileges, obstructed them in the performance of the *prasangs* and forbade them to perform *nams* and *prasangs* any longer in the *satra*, or to participate in the offerings made in the *satra*, and had thus dispossessed them.

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The plaintiffs prayed that their right to enter into the *kirtanghar* to perform *nam* and *prasang*, to listen and pray, as well as to receive their share of the offerings be established, and the *kirtanghar* from which they had been dispossessed, made over to them for the purpose of performing the said rites and functions, and for an injunction enjoining the defendants not to obstruct them in such performance.

The defence was that there was misjoinder of parties; that the suit was not properly valued and, moreover, was barred by limitation; that the plaintiffs were bound to obey the rules of the *satra* and the orders of those in whom the management of the *satra* was vested, namely, the *satria* or head superintendent, the first defendant, and the select assembly of *bhakats*; then it was stated in paragraph 9 of the written statement that, in Aughran 1883, the plaintiff No. 1 disobeyed the rules of the *satra* by accepting spiritual advice from one Saruram instead of from the *satria*, and accordingly a fine of Rs. 100 was imposed on him and some of his partizans under a long-standing rule of the institution, and as they had made default in payment of the fine they had been expelled from the *satra*, and that a civil suit would not lie to determine the rights claimed; and in paragraph 13 of the written statement it was stated that the plaintiff No. 1, having received spiritual advice from Saruram, wilfully violated the rules of the institution; he was then convicted of a grave offence, fined and sentenced to imprisonment by a Criminal Court, and was, therefore, debarred from entering into the *kirtanghar* by the custom of the institution which deprived all criminals of that description from all privileges of the *satra*; the defendants therefore denied that the plaintiffs had the rights and privileges they claimed and their right to enter the *kirtanghar*.

The first Court found the issues of misjoinder, improper valuation, and limitation in favour of the plaintiffs; but it found that the plaintiffs by taking spiritual advice from Saruram had disobeyed the rules of the institution and was properly fined, but reduced the amount of the fine to Rs. 20, on payment of which they were to be entitled by the custom of the *satra* to enter the *kirtanghar to perform the rites and functions they claimed* without obstruction from the defendants; and an injunction to the above effect was issued.

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On appeal by the defendants the Judge agreed with the first Court as to the pleas in bar of the suit; and he held that although the plaintiffs had the right to perform religious ceremonies in the *kirtanghar* they were bound to abide by the rules of the *satra* and were properly fined for not doing so; but he was of opinion that the fine was a matter with which a Civil Court could not interfere, and that the first Court had, therefore, acted without jurisdiction in reducing its amount: that the fine was a matter entirely in the discretion of the *satria*, and the majority of the *bhakats*, which the first Court should not have interfered with; and that the relief asked for by the plaintiffs could only be granted on the condition of their conforming to the rules of the *satra*, and complying with the decision of the majority of the *bhakats*, and paying the fine of Rs. 100. With this modification of the first Court's decree the Judge dismissed the appeal.

The defendants appealed to the High Court.

Dr. *Rash Behari Ghose* and Babu *Promotho Nath Sen* for the appellants.

Babu *Mohini Mohun Roy* and Babu *Baikanta Nath Das* for the respondents.

The grounds of appeal, arguments, and cases cited are sufficiently stated in the judgment of the Court (BANERJEE and RAMPINI, JJ.) which was as follows:—

This appeal arises out of a suit brought by the plaintiffs, respondents, who are some of the *bhakats*, or members of a religious fraternity, in Assam, against the *satria*, or head of the fraternity, and the other members, for establishment of their right to enter into and perform their prayers and other rites in a *kirtanghar*, or prayer-hall, from which they allege they have been wrongfully dispossessed by the defendants, for having the said *kirtanghar* made over to them, and for a perpetual injunction restraining the defendants from interfering with the plaintiffs in the performance of the said rites. The plaintiffs allege in their plaint that the management of the business connected with the *satra*, or religious union, including the distribution of honorarium and offerings and the appointment and dismissal of the *satria*, or head, is entrusted with the *samuha*, or entire body of *bhakats*;

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and that they and their forefathers have been from generation to generation in receipt of honorarium and offerings and have been performing rites and ceremonies according to custom.

The defence was that the suit was bad for misjoinder of plaintiffs, that its true value was beyond the limits of the pecuniary jurisdiction of the Court; that it was barred by limitation; that the plaintiffs were not entitled to the rights they claimed for themselves as *bhakats*; and that plaintiff No. 1 having received *mantra*, or initiation, from one Saruram, contrary to the rules of the fraternity, and having been convicted of a criminal offence, and he and his partizans having disobeyed the order of the fraternity directing them to pay a fine, they had been debarred from entering the *kirtanghar*.

The first Court overruled all the pleas in bar, and on the merits it found that the plaintiffs as *bhakats* were entitled to the rights they claimed; but that plaintiff No. 1, by receiving *mantra* from Saruram, had disobeyed the rules of the brotherhood, and had been justly fined for that offence. It held, however, that the amount of the fine, which was Rs. 100, was excessive, and it reduced the amount to Rs. 20, and gave the plaintiffs a decree upon condition of their paying Rs. 20 to the *satra*.

On appeal by the defendants, the Lower Appellate Court has held that the defendants, who form the majority of the *bhakats*, were entitled by the customary rules of the fraternity to impose the fine of Rs. 100 and to enforce the payment of the fine by excluding the plaintiffs from the *kirtanghar*, and it has further held that the Civil Courts have no jurisdiction to alter the amount of the fine imposed, and it has accordingly varied the decree of the first Court and decreed the suit on condition of the plaintiffs conforming to the rules of their order and complying with the decision of the majority of the *bhakats*.

Against that decree the defendants have preferred this second appeal, and it is contended on their behalf, *first*, that the suit should have been dismissed as it was not cognizable by the Civil Courts, it being a suit not of a civil but of an ecclesiastical nature; *secondly*, that even if the suit was of a civil nature, still the Courts below should have held that they had no jurisdiction to interfere with the decision of the majority of the *bhakats* by which the

plaintiffs had been excluded from the prayer-hall; and, *thirdly*, that even if the Civil Courts had jurisdiction to interfere with the decision of the majority of the *bhakats*, upon the facts found by the Lower Appellate Court, that the fine had been justly imposed and the plaintiffs justly excluded by reason of its non-payment, the present suit should have been dismissed.

We do not think that the appellants are entitled to succeed upon the first point. Having regard to the prayer for possession of the *kirtanghar* and to the allegations made in the plaint about the position and privileges of the *bhakats* and their rights to honorarium and offerings, and to the defendants' denial of those rights and of the plaintiffs' right to enter the *kirtanghar*, we think the suit must be regarded as one in which right to property and to an office within the meaning of the explanation to section 11 of the Code of Civil Procedure is contested, and that being so, the suit must be regarded as a suit of a civil nature and cognizable by the Civil Courts. That similar suits have been entertained by our courts will appear from *Debendro Nath Mullick* v. *Odit Churn Mullick* (1), *Anandrav Bhikaji Phadke* v. *Shankar Daji Charya* (2), and *Vengamuthu* v. *Pandaveswara Gurukal* (3).

It was argued that the honorarium and offerings were of trifling and merely nominal value, and that the fact of the suit involving a dispute as to these was not, therefore, sufficient to make it a suit of a civil nature; and in support of this argument *Narayan Vithe Parab* v. *Krishnaji Sadashiv* (4) was referred to. But there is no finding as to the value of the honorarium and offerings, nor were the Courts below called upon to arrive at any finding on this point when no objection was raised before them that the suit was not cognizable by the Civil Courts.

In support of the second contention of the appellants, namely, that even if the suit was of a civil nature, within the meaning of section 11 of the Code of Civil Procedure, it was not competent to the Civil Courts to interfere with the decision of the majority of the *bhakats*, we were referred to *Sudharam Patar* v. *Sudharam* (5),

(1) I. L. R., 3 Calc., 390.
(2) I. L. R., 7 Bom., 323.
(3) I. L. R., 6 Mad., 151.
(4) I. L. R., 10 Bom., 233.
(5) 3 B. L. R., A.C. 91; 11 W. R., 457.

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Advocate-General of Bombay v. *Haim Devakar* (1), *Hopkinson* v. *Marquis of Exeter* (2), and *Dawkins* v. *Antrobus* (3).

Now in the first place we do not think that the rule laid down in these cases is applicable to the present case. The English cases cited are cases of expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins any such an association may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules. The case, however, is very different with regard to castes or religious fraternities like the one before us. As a rule, people do not join them as a matter of choice; they belong to them as a matter of necessity; they are born in their respective castes or sects; and the consequences of exclusion from caste or sect are far more serious and affect a person's status in a far greater degree than those of expulsion from a club. The protection of Courts of Justice, even though presided over by Judges of a different religious persuasion, against expulsion seems, therefore, to be much more needed in the one case than in the other. The case of *Sudharam Patar* v. *Sudharam* (4) is expressly stated to be one in which the exclusion complained of was not one from caste, but only from a *samaj* or association of a purely social nature, whereas the fraternity from which exclusion is complained of here is altogether of a different character. The Bombay case [*Advocate-General of Bombay* v. *Haim Devakar* (1),] is no doubt more in point, but as it is opposed to the decisions on this side of India [See *Gopal Gurain* v. *Gurain* (5) and *Ramkant* v. *Ram Lochan* (6),] with all respect for the learned Judge who decided that case, we must follow, as we are bound to do, the decisions of our own Court in preference to it.

In the second place, even if the rule laid down in the cases cited by the learned vakil for the appellants was applicable here, still that rule is subject to an important qualification which leaves it 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

(1) I. L. R., 11 Bom., 185.
(2) L. R., 5 Eq., 63.
(3) L. R. 17 Ch. D. 615.
(4) 3 B. L. R., A. C. 91; 11 W. R., 457.
(5) 7 W. R., 299.
(6) S. D. A., 1859., p. 535.

the association according to which the decision is arrived at, to use the language of Lord Justice Brett in *Dawkins* v. *Antrobus*, 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*. Now, in the present case the decision of the majority of *bhakats* has been left untouched by the Lower Appellate Court, so far as the propriety of their imposing the fine of Rs. 100 goes, and so far also as the propriety of their excluding the plaintiffs from the prayer-hall until the payment of the fine is concerned; and the only extent to which the decision of the learned Judge below is against the wish of the defendants, appellants, is that he has ordered the re-admission of the plaintiffs into the *kirtanghar* upon their complying with the order imposing the fine. Is this such an interference with the decision of the domestic tribunal of the parties as is opposed to the cases cited? We think not. However reasonable it may be that the payment of the fine imposed should be capable of being enforced by exclusion from the prayer-hall until such payment, there is no finding that a refusal to pay the fine should, according to the customary rules of the congregation of *bhakats*, produce permanent disqualification to enter the *kirtanghar*, which cannot be removed by any subsequent payment of the fine. And, even if there had been a finding that there was any such rule, we should have felt bound to hold that it was contrary to natural justice. The very fact of the congregation, in the first instance, imposing a fine for the offence of the plaintiffs, whatever it was, shows that it was expiable by payment of money and did not in itself entail permanent exclusion from the fraternity; and it would be contrary to natural justice to enforce such exclusion even after the reason for it has ceased. We are, therefore, of opinion that the second point urged before us must also fail.

It remains now to consider the third point, which was very strongly pressed before us, namely, that upon the finding of fact arrived at by the Lower Appellate Court, that the exclusion of the plaintiffs from the *kirtanghar* was justified by their refusal to pay the fine imposed on them, their present suit should have been dismissed and the conditional decree made should not have been granted. It was argued that, upon the facts found, the plaintiffs had no cause of action. We do not think that this contention is sound.

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Let us see whether there was or was not a cause of action, and for that purpose let us examine the statements of the plaintiffs in their plaint, and let us also examine the statements of the defendants in their written statements; not that the defence can in any way give rise to a cause of action that did not exist before, or complete a cause of action that was incomplete before, but the statements of the defendants may throw light on the question what was the real nature and extent of the infraction of right complained of.

Now the plaintiffs in their plaint (see paragraph 6) allege that the defendants wrongfully expelled them from the temple, denying all their rights and forbidding them to perform their prayers any longer in the *satra*, and they claim to be entitled to re-admission. Here there is an allegation of complete and not merely temporary exclusion from the prayer-hall. It is true that the plaint most disingenuously omits all allusion to the fine of Rs. 100 which is now found to have been justly imposed, and asks for an unconditional decree for re-admission. This is certainly most reprehensible. But the proper penalty for that is disallowance of costs and not dismissal of the claim. In answer to the claim made, the defendants did not deny that there was a permanent exclusion, nor did they contend that there was no cause of action because the plaintiffs' right to enter the prayer-hall had only been suspended so long as the fine imposed on them remained unpaid, and that they were not entitled to sue for re-admission into the temple until the fine was paid, but, on the contrary, they asserted (see paragraphs 9 and 13 of the written statement) that the plaintiffs had been expelled from the *satra* for refusal to pay the fine, and that they were debarred from entering it; and there being no denial of the existence of a cause of action, no issue was raised on the point, and no finding has been arrived at by either of the Courts below as to whether there was or was not a complete cause of action. For this, however, the plaintiffs should not suffer. The real fault in the plaintiffs' case then is not that the plaintiffs ask for relief—when there was no occasion for their doing so,—but that they ask for relief unconditionally when they ought to have asked for it on condition of their obeying the order for fine. They may not be entitled to the larger measure of relief they ask for, but that does not show that they are not entitled to any relief at all.

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The grounds urged before us therefore all fail.

The decree of the Lower Appellate Court, however, requires to be made more explicit as to the condition imposed, and that should be done by expressly stating that the relief that is granted to the plaintiffs is granted on the condition that they conform to the rules of their order, and within three months from the date of this judgment pay to the treasury of the *satra*, or to the defendants, or deposit in Court for the purpose of being so paid the sum of Rs. 100 which the plaintiffs were required by the decision of the majority of *bhakats* to pay. In all other respects that decree will stand. Under the circumstances each party will bear his own costs.

Decree varied.

J. V. W.

Before Sir W. Comer Petheram, Kt., C.J., Mr. Justice Prinsep, and Mr. Justice Trevelyan.

MOHABIR PROSAD SINGH AND OTHERS (PLAINTIFF) *v.* ADHIKARI KUNWAR AND OTHERS (DEFENDANT).*

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Feb. 2.

Letters Patent, High Court, cl. 15 *—Order refusing to stay execution decree for costs—Civil Procedure Code (Act XIV of* 1882), *s.* 608*—Security for costs—Costs.*

An order refusing to stay execution in the exercise of the discretion given to the Court under s. 608 of the Civil Procedure Code is not a decision which affects the merits of any question between the parties by determining a right or liability, and no appeal from such an order will lie under cl. 15 of the Letters Patent.

APPEAL under cl. 15 of the Letters Patent against the order of a Senior Judge of a Division Bench passed on an application made by the appellants for stay of execution of a decree passed against them for costs and against which an appeal had been preferred to Her Majesty in Council.

* Letters Patent Appeal, of 1893, against the order of Mr. Justice Norris, the Senior Judge of a Division Bench, dated the 5th September 1893, in an application made in the appeal to Her Majesty in Council, No. 32 of 1892.