APPELLATE CIVIL.

Before Mr. Justice Brett and Mr. Justice Chitty.

1908
Jan. 16.

ABDUS SUBHAN
v.
KORBAN ALI.*

Mahomedan Law—Amil-bil-hadis—Hanafi sect—Mosques—Right of worship by different sects—Dedication to particular sect.

Mahomedans of the *Amil-bil-hadis* or *Wahabi* sect have the right to worship in a mosque built primarily for the use of and used, as a general rule, by members of the *Hanafi* sect, and cannot be debarred from the exercise of such right on the ground of their views in the matter of ritual being different.

Quære: whether a special dedication of a mosque to any particular sect of Mahomedans would be in accordance with Mahomedan Ecclesiastical law.

Ata-ullah v. *Azim-ullah*(1) followed.

Queen-Empress v. *Ramzan*(2) and *Fazl Karim* v. *Maula Baksh*(3) referred to.

SECOND APPEAL by the defendants, Moulvi Abdus Subhan and others.

Two suits by different sets of plaintiffs, who belonged to the *Amil-bil-hadis* or *Ahol-hadis* school of the Sunni sect of Mahomedans, were instituted to establish their right to say their prayers and perform other religious duties in two mosques, one in Mohalla Mahomedpur and the other in Mahalla Baksariatola within the city of Patna, and restrain the defendants from interfering with such rights.

The defendants belonged to the *Hanafi* school of the Sunni sect of Mahomedans. The mosques were built by Mahomedans of the Hanafi sect primarily for the use of members of their own sect and used, as a general rule, by them only; but it was not proved that the mosques were expressly reserved for the *Hanafis*.

* Appeals from Appellate Decrees, Nos. 201 and 318 of 1906, against the decrees of T. W. Richardson, District Judge of Patna, dated Oct. 31, 1905, reversing the decrees of Joy Prashad Pandey, Munsif of Patna, dated May 27, 1905.

(1) (1889) I. L. R. 12 All. 494. (2) (1885) I. L. R. 7 All. 461.
(3) (1891) I. L. R. 18 Calc. 448.

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The question at issue being common to both suits, they were disposed of both in the Court of first instance and the lower Appellate Court in one judgment, and, on appeal by the defendants, this Court heard the two appeals together and disposed them of in one judgment.

Moulvi Syed Shamsul Huda and *Moulvi Mahomed Ishfaq*, for the appellants.

Moulvi Mahomed Yusuf, *Moulvi Abdul Jawad* and *Babu Biraj Mohan Majumdar*, for the respondents.

BRETT AND CHITTY JJ. These are two appeals from decrees of the District Judge of Patna reversing (except as to the defendant Abdul Karim) the decrees of the Munsif of Patna, and granting the plaintiffs the reliefs claimed by them in their respective plaints, but declaring that in the exercise of their rights the plaintiffs are subject to the general law of the land. The suits were brought to establish the plaintiffs' right to say their prayers and perform other religious duties in two mosques, one in Mahalla Mahomedpur Shahganj, and the other in Mahalla Baksariatola, Chowki Sultangunj, Patna, and further to restrain the defendants from interfering with such rights. The questions at issue are common to both suits, and were disposed of, both in the Court of first instance and the lower Appellate Court, in one judgment. The same course may be conveniently followed with regard to these two appeals.

The appellants before us are defendants 1 to 4, 6, 7 and 8, and the active respondents are the plaintiffs. A number of issues were raised in the Court of first instance relating to limitation, procedure, joinder of parties, and so forth. These were decided in the plaintiffs' favour. The lower Appellate Court declined to consider them, on the ground that they were not made the subject of a cross-appeal. They have been again put forward in the grounds of appeal before us, but no argument has been addressed to us in respect of them. The sole question laid before us has been as to the right of the plaintiffs to worship at these mosques, and that is the only point for our determination.

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The findings of fact which we must accept are shortly these :— The mosques in question appear to have been built by Musulmans of the *Hanafi* sect primarily for the use of members of their own sect. They have been used by *Hanafis* and as a general rule by *Hanafis* only. The lower Appellate Court has declined to find that either or both the mosques were expressly reserved for the *Hanafis*. Such an inference could not properly be drawn from the evidence on the record. It might also be questioned whether such a special dedication would be in accordance with Mahomedan Ecclesiastical law. The plaintiffs and defendants all belong to the Sunni sect of Musulmans. The plaintiffs, however, belong to a school known as *Amil-bil-hadis* or, as their opponents style them, *Wahabis*, and are regarded as unorthodox by the general body of *Hanafis* to which the defendants belong. The difference between them is not so much (if at all) in matters of belief, as of ritual. The *Amil-bil-hadis* employ the loud toned '*amin*' and the raising of hands (*rafaa eddain*), while the others pronounce the '*amin*' in a low tone and do not raise the hands above the knee. These points of ritual, though seemingly unimportant in themselves, have led to much difference of opinion among Musulmans, and consequent litigation. The earliest reported case was a criminal one, *Queen Empress* v. *Ramzan*(1). In that case Mahmood, J. expresssd an opinion that the accused was at liberty to say '*amin*' in a loud tone and was justified in entering the mosque and worshipping with the congregation, even though he used the loud toned '*amin*'. The question in that case was whether there had been an offence under section 296 of the Indian Penal Code, and the majority of the Full Bench concurred in remanding the case for further enquiry as to the facts.

The question came again before the Allahabad High Court in the case of *Ata-ullah* v. *Azim-ullah*(2). There the Full Bench held that members of the Wahabi sect, (as are the plaintiffs here), were Mahomedans and as such entitled to perform their devotions in a mosque though they might differ from the majority of Sunnis on certain points. Those points were the same as are in issue in this case. The learned Chief Justice there expressed an opinion that a Mahomedan would bring

(1) (1885) I. L. R. 7 All. 461. (2) (1889) I. L. R. 12 All. 494.

himself within the grasp of the criminal law who, not in the *bonâ fide* performance of his devotions but *mala fide* for the purpose of disturbing others engaged in their devotions, made any demonstration, oral or otherwise, in a mosque and disturbance was the result.

Lastly, in an appeal from this Court in the case of *Fazl Karim* v. *Maula Baksh*(1) their Lordships of the Privy Council upheld the right of an Imam to officiate in a mosque even though he belonged to the *Amil-bil hadis* or *Wahabis*, and adopted the loud toned '*amin*' and the raising of hands (*rafaa eddain*). It appears clear from these decisions that the plaintiffs have the right to worship in the mosques in question and that they cannot be debarred from the exercise of such right on the ground of their views in the matter of ritual. This was not seriously contested by the appellants. What they chiefly desire is that some restriction should be placed upon the plaintiffs by the Court in declaring their right so as to prevent, so far as may be possible, a breach of the peace or unseemly disturbance in the mosques. This appears to us reasonable The granting of declaratory relief is discretionary with the Court and there seems no reason why it should not make the declaration in such a form as will grant the relief claimed and yet provide against an abuse of the right accorded. The learned District Judge has taken this view but we think that his declaration that "in the exercise of their rights the plaintiffs are subject to the general law of the land" is too vague to be of much practical assistance to the appellants. We think that if the declaration in favour of the plaintiffs be accompanied by the *proviso* that the plaintiffs in the exercise of their rights of worship do not interrupt or disturb the worship of others it will meet the requirements of the case. We may say that we entirely agree with the *dictum* of the learned Chief Justice of Allahabad to which we have above referred. With this modification the decrees of the lower Appellate Court will be confirmed. We think that each party should bear his own costs of these appeals.

S. C. B.

(1) (1891) I. L. R. 18 Calc. 448.