APPELLATE CIVIL.

(4)

Before Sir M. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

DINANATH ABAJI AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* SADASHIV HARI MADHAVE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1878 *July* 24.

Suit by a Village Priest against his Yajman.

In the Presidency of Bombay a village priest can maintain a suit against a *yajman* who has employed another priest to perform ceremonies, and recover the amount of the fee which would properly be payable to him if he had been employed to Perform such ceremonies.

As a rule, the fee paid to the priest actually employed would afford a fair indication of the amount recoverable by the plaintiff under such circumstances.

Semble—A *yajman* ought to pay to the village or city priest, if not employed, a fee similar in amount to that which he (the *yajman*) pays to the priest actually employed, if the latter were not unreasonably large.

THIS was a special appeal from the decision of W. H. Newnham, District Judge of Puna, varying the decree of Mahadev Govind Ranade, First Class Snbordinate Judge of the same place.

Dinanath Abaji and three others sued Sadashiv Hari and nine others for a declaratory decree that they (plaintiffs) were entitled to perform certain ceremonies, and receive fees for the same. The Court of first instance made a decree in the plaintiffs' favour. The District Judge, however, slightly varied that decree in appeal, for reasons thus stated by him in his judgment :—

"It remains only to consider whether the declaratory decree should remain in the shape in which the Subordinate Judge has given it, namely, that the plaintiffs are entitled to perform the ceremonies irrespective of the *yajman's* wishes, as well as to receive the fees. In some of the decisions of the Calcutta and Agra Courts, shown me on the second issue,(1) the principle was laid down that, for religious ceremonies, a man might select his own priest. On this side of India, however, the contrary view has been maintained : *Ramchandra Bapujee Poorundare* v. *Ramchunder Lukshmun*,(2) *Muncharam* v. *Umba Pragjee*.(3) These and other cases are cited in the judgment in *Vithal* v. *Anant*.(4)

* Special Appeal, No. 339 of 1876.

(1) The second issue was whether the claim would lie in a civil Court.

(2) 9 Harrington's Rep. 537.

(3) Sel. Cases, Bom. 181.

(4) 11 Bom. H. C. Rep. 6.

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DINANATH ABAJI v. SADASHIV HARI MADHAVE.

"I am very strongly of opinion that the duty of a Hindu to employ a particular *joshi* or *upadhya* in the performance of religious duty might very well be left to be enforced by religious sanctions and not by legal means, the use of which latter is opposed to the spirit of our law and to public policy, and that the civil Courts do enough if they protect *joshis* against pecuniary loss. In the present case, were the declaratory decree to remain 'that the *joshis* are entitled to perform the ceremonies and to receive the fees,' the plaintiffs might sue on it for specific performance whenever the time approached for any family ceremony, and might obtain injunctions, restraining the *yajmans* from having the ceremony by any one but themselves,—a sufficiently singular result.

"The form which I think the decree should take, is that the Court declares the plaintiffs *vevhari joshis*, entitled to perform the ceremonies they mention in their plaint for the defendants, and to receive from them the fees customary, or, if not employed, to receive on each occasion a fee equal in amount to that paid by the defendants, or any of them, to the person or persons employed by them instead of plaintiffs (*Krishnambhat* v. *Anant*.(1))"

The principal puestion raised and argued in this case was, whether the suit was maintainable. The authorities cited are stated in the following judgment.

The Honourable Rav Saheb *V. N. Mandlik* appeared for the appellants.

Pandurang Balibhadra appeared for respondents Nos. 1 and 2.

Shantaram Narayan appeared for respondent No. 4.

WESTROPP, C.J.—The right of a village or town priest to maintain a suit against a *yajman*, who has employed another priest to perform ceremonies, though apparently denied by the Courts of Bengal and the N.W. Provinces—*Becheram Banerjee* v. *Sreemuttee Thakoormonee Debia*,(2) *Mugjoo Pandaen* v. *Ram Dyal Tewaree*,(3) *Hurgobind Surma* v. *Bhovaneepersaud*,(4) *Rama Kant*

(1) 4 Morr. 111.
(2) 10 Calc. W. R. 114 Civ. Rul.
(3) 15 Calc. W. R. 531 Civ. Rul.
(4) Sudder Dewani Rep. (Calc.) for 1850, p. 296

Surma v. *Gobind Chunder* ;(1) see, also, 11 S. D. Rep. N. W. P. (for 1856), p. 509; 3 Agra (for 1867), p. 80—has been recognized here (see Special Appeal 2791 decided by the S. D. A. on the 18th December 1851 ; Sel. Cas. 131, 181; 4 Morris 111—all decisions of the S. D. Adálat ; and see also Special Appeal 291 of 1872, decided in the High Court on the 9th December 1872, Printed Judgments for 1872). We, therefore, think that we are bound by authority to hold this suit to be maintainable. We, however, approve of the variation made by the District Judge by his decree in that of the Subordinate Judge. We understand from the judgment of the District Judge that in saying that the *yajmán* ought to pay to the city priests, if not employed, a fee similar in amount to that which he (the *yajman*) might pay to the priest actually employed, if the latter were not unreasonably large, he did so on the ground suggested by West, J., in his judgment in *Vithal Krishna Joshi* v. *Anunte Ramchandra*(2) as being a just mode of ascertaining what would be a reasonable fee, where some fee must be paid, but the rate not is not fixed ; as to which point, West, J., referred to *Bryant* v. *Foot*.(3) We affirm the decree with costs, and are somewhat surprised that the plaintiffs should have thought it worth their while to appeal against it in consequence of the slight variation made by the District Judge.

Decree affirmed.

(1) Sudder Dewáni Rep. (Calc.) for 1852, p. 398.

(2) 11 Bom. H. C. Rep. 6.

(3) L. R. 3 Q. B. 497, 508.