

## APPELLATE CIVIL

( 9 )

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

1878  
August 14.

RADHABAI KOM CHIMNAJI SALI AND ANOTHERS (ORIGINAL PLAINTIFFS)  
APPELLANTS, v. CHIMNAJI BIN RAMJI SALI AND OTHERS (ORIGINAL DEFEN-  
DANTS), RESPONDENTS.\*

*Suits relating to Devasthan Property—Code of Civil Procedure (X of  
1877), s. 539.*

Worshippers or devotees of an idol are entitled to bring a suit, complaining of a breach of trust with reference to the funds or property belonging to the idol or appendant to its temple.

*Quære*—Whether, if the suit had been brought after the Civil Procedure Code (Act X of 1877) came into force, s. 539 of that Act could be held applicable to the *devasthan* of an idol or temple, dedicated merely to the purposes of such idol or temple.

THIS was an appeal from the decision of W. H. Newnham, District Judge of Puna, in appeal No. 277 of 1876, affirming the decree of G. A. Mankar, Joint Subordinate Judge at the same place, in original suit No. 965 of 1875.

Radhabai and Narhari brought this suit against Chimnaji (husband of plaintiff No. 1) and two others to recover possession of a field. They alleged in the plaint that the field in question was *devasthan* land belonging to the idol Modowha at Puna, that defendant No. 1 illegally alienated it to defendant No. 2, who sold it to defendant No. 3. The defence, among other things, was that the plaintiffs were not entitled to bring the action. Both the lower Courts threw out the plaintiffs' claim, on the ground that they had no right to *sue*.

In the second appeal the question was whether the appellants (plaintiffs) could or could not maintain the suit.

*Nanabhai Haridas* (Government Pleader) appeared for the appellants.

*Inverarity* (with him *Shantaram Narayan*) for the respondents, referred to s. 539 of Act X of 1877 in support of the argument that the suit was not maintainable.

WESTROPP, C. J.—It appears from the evidence of witness No 36 that the plaintiff Narhari bin Ravji is a person who worships

\*Second Appeal, No. 266 of 1877.

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the idol Madowha, a part of whose *davasthan* is the subject-matter of this suit. The plaintiff Radhabai being the wife of the defendant Chimnaji, who is admitted to be a devotee of the same idol, would necessarily also be a worshipper of it. These circumstances alone, and independently of any Act of the Legislature, were, when this suit was instituted, sufficient to entitle the plaintiffs to bring a suit complaining of a breach of trust with reference to the finds or property belonging to the idol, or appendant to its temple. The suit having been brought before the new Civil Procedure Code came into force, cannot be governed by s. 539 of that Act (X of 1877), and it might be a question whether, even of this suit had been brought since that Act came into force, s. 539 could, in speaking of "public charitable purposes," be held applicable to the *devasthan* of an idol or temple dedicated merely to the purposes of such idol or temple. On that question we do not now express any opinion. We reverse the decrees of the Courts below, and remand this cause to the Court of the Subordinate Judge for trial on the merits. Costs of both appeals must be costs in the cause.

*Decrees reversed.*

### APPELLATE CRIMINAL.

( 10 )

*Before Mr. Justice West and Mr. Justice Pinhey.*

August 29.

NARU PIRA (ORIGINAL PLAINTIFF), APPELLANT, v. NARO SHIDHESHVAR (ORIGINAL DEFENDANT), RESPONDENT.\*

*Baluta—Jurisdiction—Small Cause Court.*

A suit to recover *baluta* (1) leviable on the crops of village lands is not a suit for an interest in land, but for a share of produce severed from land, and it cognizable by a Mufassal Court of Small Causes.

THIS was a second appeal from the decision of N. Daniell, Judge of Ahmednagar, reversing the decree of the Subordinate Judge of Karle.

The plaintiff, a Mahar of the village of Pisar Khand, in the Shrigonda Taluka of the Ahmednagar Collectorate, sued the defendant, a holder of eleven fields in that village, to recover out

\* Second Appeal, No. 218 of 1878.

(1) The share of crops in kind, or its equivalent in money, recoverable by a village servant from village lands,