

## APPELLATE CIVIL.

( 58 )

*Before Mr. Justice Melvill and Mr. Justice Kemball.*1878  
February 17.RAJA VALAD SHIVAPA AND ANOTHER (ORIGINAL DEFENDANTS Nos. 2 AND 3),  
APPELLANT, v. KRISHNABHAT (ORIGINAL PLAINTIFF), RESPONDENT.\**Burden of proof—Vatandar Joshi—Damages against an intruder into an office  
—Injunction.*

The burden of proving that the *vatandar joshi* of village is not entitled to officiate and take fees in the family of any particular caste, lies upon the person or persons asserting exemption.

The *vatandar joshi* of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him; but the Court will not grant any injunction against such intruder, which would have the effect of forcing upon any section of the community the services of a priest whom they are unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire.

THIS was a second appeal from the decision of M. H. Scott, Senior Assistant Judge at Kaladgi, in the District of Belgam, amending the decree of Madhavrao Krishna, Second Class Subordinate Judge at Bagalkot.

The plaintiff brought this suit to recover damages against (1) Rayakotepa, (2) Raja bin Shivapa, and (3) Balachari, and alleged that he was the *vatandar joshi* of their village, and as such was entitled to certain fees from the defendants No. 1 and No. 2 (uncle and nephew) on the occasion of the marriage of defendant No. 2; but that the fees were paid by them to and received by defendant No. 3, who had no right whatever to such fees. The plaintiff's also prayed for an injunction against defendant No. 3. The defendants answered that they were members of the Sonar caste; that the plaintiff, who was a Brahman, was not the priest of their community; and that the civil Courts had no jurisdiction to try the suit. The Subordinate Judge awarded the plaintiff's claim against all the defendants, and granted the jurisdiction sought by the plaintiff. In appeal the Senior Assistant Judge amended the decree of the first Court by rejecting the plaintiff's claim for damages against defendant No. 3. The second appeal was filed by defendants Nos. 2 and 3 only.

\* Appeal No. 375 of 1878.

*Farran* (with him *Rastamji Merwanji Patel*) for the appellants.—The present suit is a dispute between a Brahman on one side and a Sonar on the other, and involves a caste question. The civil Courts are barred from taking cognizance of such caste questions by Regulation II of 1827, sec. 21. The injunction ought to be dissolved.

*Ghanasham Nilkanth Nadkarni* for the respondent. The District Court wrongly dismissed the plaintiff's claim for damages against *Bháláchari*, defendant No. 3, on the authority of *Vithal Krishna Joshi v. Anant Ramchandra*.(1) That case, so far from supporting the view of the District Court, gives a right of action for damages to the holder of a priestly office against the usurper of it.

MELVILLE, J.—We think that the burden of proving that the *vatandar joshi* of the village is not entitled to officiate and take fees in the families of any particular caste, lies upon the persons asserting exemption. The Courts below have found that the defendants have failed to prove such exemption, and this is a finding of fact with which we cannot interfere.

The Assistant Judge has awarded damages against the first and second defendants, the *yajmans*, but has refused to do so against the third defendant, the intruding priest, assigning as his reason the decision of this Court in the case of *Vithal Krishna Joshi v. Anant Ramchandra*.(2) That decision, and most of the other decisions quoted in it, declare the right of the legitimate holder of an office to recover from a usurper any fees taken by the latter. We think, on the authority of these decisions, that the plaintiff is entitled to a decree for damages against the third defendant.

As regards the injunction made by the Courts below against the third defendant, we think that it is unnecessary, and might lead to inconvenient results. We should not as at present advised, be prepared to sanction any injunction which would have the effect of forcing upon any section of the community the services of a priest whom they are unwilling to recognize, and forbidding them to employ a priest whose ministrations they desire. Still

(1) 1 Bom. H. C. Rep. 6.

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

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less should we be willing to make any order which might appear to declare that a marriage celebrated, as in the present case, by a priest other than the *vatandar joshi*, is invalid, and the children of such marriage illegitimate. We think that we are not required to do more than to secure the legitimate holder of the priestly office from pecuniary loss, and this end is sufficiently secured by giving him a decree for the amount of his fees against the *yajman* and the rival priest.

We amend the decree of the Court below by awarding plaintiff's claim for ten annas nine pice against all the defendants, and by omitting from it the injunction against the third defendant. So much of the plaintiff's costs as was awarded by the Assistant Judge against defendant Raja only to be borne by defendants Raja and Balappa. In other respect the decree is confirmed. The parties to bear their own costs in this appeal.

### APPELLATE CIVIL.

( 59 )

*Before Mr. Justice Melvill and Mr. Justice Kemball.*

1878  
 February 21.

KUVARJI (ORIGINAL DEFENDANT), APPELLANT, v. MOTI HARIDAS  
 (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Unauthorized sale—Lien—Repayment of money due on a mortgage.*

The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant. The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage. The previous owner had left a minor son. The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of administration to her husband under Act XX of 1864.—*Held* that the defendant had a lien upon the land for the amount of the mortgage debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien.

*Bai Kesar v. Bai Ganga* (8 Bom. H. C. Rep. 31, A. C. J.) followed.

THIS was a second appeal from the decision of E. Cordeaux, Acting District Judge of Khandesh, affirming the decree of the Second Class Subordinate Judge of Nandurbar.

\* Second Appeal, No. 440 of 1878.