

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

1882
January 20.

RAMA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. SHIVRAM
AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Cause of action—Jurisdiction—Suit to parade bullock on the Pola—Damages—
Dignity.

A suit does not lie in a Civil Court for a declaration that the plaintiffs have the right of parading their bullock on the *Pola* (the last day of the month of Shravan) of one year, and the defendants on the *Pola* of the next; for damages for the invasion of the plaintiff's right in a given year; and for an injunction restraining the defendants from interfering with the said right.

Sangapa v. Gangapa (1) followed.

THIS was a second appeal from the decision of Rao Bahadur, M. G. Ranade, First Class Subordinate Judge of Khandesh, confirming the decision of the Subordinate Judge (Second Class) of Jalgaon.

The suit was brought by the original plaintiffs for a declaration of their rights in respect of a certain *manpan*, or dignity, and for the recovery of damages under the following circumstances. The plaintiffs and defendants were *vatandar chaudaris* of the village of Asod, and between them held a *takshim*, or share, in equal proportions. The plaint alleged that it had been the custom of the parties to carry on the *Pola* day (*i. e.*, the last of the month of Shravan) the bullocks of the various *takshims* in procession through the village. With regard to their own *takshim*, the parties shared this right between them, and exercised it every alternate year. In confirmation of this right, the plaint further alleged, one of the defendants had, on behalf of the defendants' branch of the family, passed to the father of one of the plaintiffs, as a representative of the plaintiffs' branch, an agreement, dated 25th December, 1855, whereby it was arranged that the plaintiffs' bullock should be paraded in 1856 and the defendants' in 1857, and so on alternately. In conformity with this arrangement it was the plaintiffs' turn to parade their bullock in 1878; but the defendants on the 27th of August of that year prevented the exercise of their right, and carried their own bullock in procession, in-

* Second Appeal, No. 419 of 1880.

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fringing the plaintiffs' right of *manpan*, and causing them damage. The plaintiffs accordingly brought this suit—first, to have a declaration that in the Shravan of 1878 it was their turn to parade the bullock; secondly, to have a similar declaration of their right to parade their bullock every alternate year; thirdly, for an injunction restraining the defendants from interfering in future with the plaintiffs' exercise of their right; and, fourthly, to recover Rs. 25 as damages.

The defendants denied the plaintiffs' right, and asserted their own exclusive right. They also denied the genuineness of the agreement, and contended that the plaintiffs sustained no damages.

The Subordinate Judge of Jalgaon awarded the plaintiffs' claim. In appeal that decree was confirmed. In the appeal it was contended, for the first time, that no suit lay in a Civil Court in a matter of this kind. The Appellate Court disposed of this contention in the following manner:—

“The appellants' pleader contended that, as the plaintiffs' claim was for a mere dignity, no action could be maintained for the same in the Civil Courts under the authority of the High Court's decision in *Sangapa v. Gangapa* ⁽¹⁾ in which the previous decisions—*Shri Sunkur Bharti Swami v. Sidha Lingaya Charanti* ⁽²⁾ and *Narayan Sadanand Bava v. Ballerishma Shideshwar* ⁽³⁾—were reviewed and discussed. In *Sangapa v. Gangapa* the suit was brought for a declaration of plaintiffs' right to take a cupola to a certain temple, to place it on the car of the idol, and to take a bambu with tomtom from his house to the temple, and to offer the first cocoanut to the idol at the annual festival of a Lingayat saint. The suit was dismissed in both the lower Courts on the ground of its being barred by limitation. In special appeal, the High Court, while expressing an opinion that the suit was not barred by limitation, dismissed it on another ground, namely, that it was brought to vindicate plaintiff's right, not to an office, but to a mere dignity unconnected with any fees, profits, or emoluments, and, as such, on the authority of the great Palki case—*Shri Sunkar Bharti Swami v. Sidha Lingaya Charanti* (in which the suit related to the exclusive right of sitting crosswise in a

(1) I. L. R. 2 Bom. 476. (2) 3 Moore's Ind. App. 198. (3) 9 Bom. H. C. Rep. 413.

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palki, and was disallowed by the Sadar Court)—no action could be instituted in the Civil Courts for the same. The authority of the previous decision in *Narayan v. Ballerishna* ⁽¹⁾ (in which a declaration of the right of performing the ceremonial of breaking the curd-pot in a temple had been allowed by the High Court), was questioned in this later decision, and virtually overruled on the strength of the precedent in the Palki case referred to above. The question before me, therefore, is whether the dignity, or *manpan*, claimed in this suit comes within the principle of these decisions. The grounds urged in the Palki decision for refusing to entertain the suit of the plaintiff in that case, appear to have been—(1) that the claim was unsubstantial and objectionable in a way which it was thought necessary to discourage; (2) that it was a claim by the religious head of one community against the religious head of another and heretical community; (3) that the reigning Government was the only authority which could permit or withhold the use of such honours; and, lastly, (4) under English law no action could be maintained by the grantee of a dignity against an intruder. In *Sangapa v. Gangapa* the ground urged for rejection was that the claim related to the vindication of plaintiff's right, not to an office, but to a mere dignity unconnected with any fees, profits or emoluments. In the present case, the dignity claim relates to an office, namely, that of the *chaudhari vatan*, in which both the parties have a share, and in connection with which the plaintiffs are actually in possession of a certain portion of *inam* lands attached to the *vatan*. It cannot, therefore, be said that the right claimed here relates to a mere dignity. It relates to an office and a *vatan*, and the annual procession of the bullocks on *Pola* day is the most prominent non-official recognition of the plaintiffs' status as *vatan-dars* in the village. It is true the right claimed is not accompanied with any fees or emoluments, but this circumstance is not indispensable to secure a recognition for a dignity which is attached to an office. The High Court, in another case—*Ramchandra v. Sadashiv* ⁽²⁾—have held that it does not follow, from the decision in the Palki case, that 'no dignities, provided a money gain is not attached to them, are fit subjects to be protected

(1) 9 Bom. H. C. Rep. 413. (2) Printed Judgments (Bombay) for 1878, p. 271.

by the Civil Courts.' The dignity in that case related to a right to settle with Government or its assignees for certain revenue collections, and was admittedly unattended with any profits; and yet the claim was allowed on the ground that 'the dignity was of a very practical kind, which the Civil Courts could protect without encouraging frivolous litigation. It was observed in that judgment that 'dignities, the essence of which consists in voluntary tributes of respect, and which derive their whole value from their spontaneousness, do not in their nature admit of effectual protection by the Municipal Courts. These remarks go to show that it is chiefly with a view to check frivolous litigation, or to check the tendency to exact as of right what should be spontaneous recognition of superiority, that suits for mere dignities are discouraged. Neither of these considerations have any place in the present case. It is clear, further, that the analogy of the English law about the grant of dignities has no application in respect of these village disputes for precedence or equality, as these rights are communal, and have not sprung from any gift of the Crown, and the Executive Government claims no power either to confer or to withhold them. It is also to be noted that in all the three cases referred to above, the dispute related to some right in connection with religious ceremonies or between rival priests. They did not refer to civil persons or civil rights. The right claimed by the plaintiffs in this case is not, moreover, a *dignity* in the usual sense. It is not a claim for precedence against strangers, who deny the obligation of subordinating themselves to the plaintiffs by its recognition. It is a dispute between *bhaubands*—admitted sharers in a *vatan*; and all that plaintiffs seek, is to be recognized as the *equals* of the defendants. For the several reasons set forth above,—namely, (1) that the right claimed belongs to an office and a *vatan*; (2) that it is a civil right between civil persons, and has no relation to religious ceremonies; (3) that it is a communal right, and not a gift of the Crown nor under the control of the Executive Government; (4) that it is not a claim for precedence against strangers, but it is a claim for equal recognition among shares; (5) that it is not a preposterous, but a substantial, claim, the recognition of which, one way or the other, affects the status of the plaintiffs as

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valandar chaudaris,—I hold that the principle of the decision in *Shri Sunkur Bharti Swami v. Sidha Lingaya Charanti* and *Sangapa v. Gangapa* does not apply to the present case, and that it comes within the class of cases referred to in *Ramchandra v. Sadashiv*, where the dignity is a fit subject for the protection of the Civil Courts.”

The defendants thereupon appealed to the High Court.

Yashvant Vasudev Athalye for the appellants.—The present suit refers to a mere dignity, and is not maintainable in a Civil Court: *Sangapa v. Gangapa* ⁽¹⁾ and *Shri Sunkur Bharti Swami v. Sidha Lingaya Charanti* ⁽²⁾. The right in dispute having been held by the lower Courts to be unaccompanied by any fees or emoluments, the lower Courts were wrong in awarding a claim in reference thereto. The circumstance that the litigant parties are office-bearers, cannot by itself make the right claimed in any way dependent upon an office, particularly when it is conceded that the official recognition of the plaintiffs' status is independent of the dignity in dispute. As to the agreement set up, it is not binding upon the parties to this suit.

Shantaram Narayan for the respondents.—The case of *Sangapa v. Gangapa* is distinguishable from the present case. I also rely upon it to show that the present action is maintainable. The suit in that case was for declaration, not for damages; and, secondly, the plaintiff there held no hereditary office. There was no office to which fees, profits or emoluments were attached. Mere dignity attached to no office, and yielding no fee, may not be actionable; but in this case the plaintiffs are hereditary *chaudaris*. As held by the High Court in *Ramchandra v. Sadashiv* ⁽³⁾, and as remarked by the Appellate Court, it does not follow from the decision in the *Palki* case that no dignities, provided a money gain is not attached to them, are fit subjects to be protected by the Civil Courts. The natives of this country are very jealous of such *manpans*, and it is right they should be protected.

MELVILL, J.—I am unable to hold that this case is distinguishable in principle from that of *Sangapa v. Gangapa* ⁽⁴⁾, in which it

(1) I. L. R. 2 Bom. 476.

(3) Printed Judgments for 1878, p. 271.

(2) 3 Moore's Ind. Ap. 198.

(4) I. L. R. 2 Bom. 476.

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was held, on the authority of the Privy Council in *Shri Sunkar Bharti Swami v. Sidha Lingaya Charanti*⁽¹⁾, that a suit is not maintainable to establish a right to a mere dignity unconnected with any fees, profits, or emoluments. It is said that in the present case the dignity is connected with an office. If that be so, the circumstance creates no distinction between this case and the Privy Council case, in which the holder of the office of arch-priest of a certain sect claimed, by virtue of a grant to a predecessor in office, the right of being carried crosswise in a palanquin. It is also said that there is an agreement between the parties in the present case, by which the plaintiffs' right is recognized, and a penalty is provided for its invasion. But this was equally the case in *Sangapa v. Gangapa*. The law applicable to such questions was clearly laid down in that case; and I am in no way disposed to depart from it, and to involve the Civil Courts in the determination of trivial questions of dignity and privilege, which are much better left to the decision of the society in which they arise.

We reverse the decrees of the Courts below. The plaintiffs to bear the costs of appeal and second appeal. The parties to bear their own costs in the Court of first instance.

PINHEY, J.—The case as stated is on all fours with *Sangapa v. Gangapa*⁽²⁾, and, therefore, it would be sufficient to say that, following the decision in that case, we must reverse the decrees of both the Courts below and reject the claim.

But there is a further reason why the plaintiffs in this case cannot possibly succeed. They sue for a declaration that they are entitled to take their bullock first in the procession on the *Pola* day in alternate years, and their suit is based on the agreement (exhibit No. 48), dated 25th December, 1855. That agreement is a personal one, and passed by Gana Supa and Vithu Jairam (appellants 7 and 8) to Dhanji Khandu, who is not a party to the case. Not one of the plaintiffs was a party to the agreement; but plaintiff Wahadan (No. 2) is said to be a son of Dhanji Khandu, who has died. Moreover, by the terms of the agreement (exhibit No. 48) even if the present plaintiffs could sue

(1) 3 Moore's I. A., 198.

(2) I. L. R., 2 Bom. 476.

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the present defendants on it, the right of Dhanji Khandu to take his bullock first in the procession in alternate years named in the agreement would be terminated by Vithu Jairam personally paying Rs. 25 once for all to Dhanji Khandu—a payment for which there does not appear to have been any consideration. And even this Rs. 25 is payable by Vithu Jairam personally to Dhanji Khandu only if the latter sustain damage or loss from his bullock being obstructed in the *Pola* procession. Not only is there no evidence of damage or loss, but it is admitted that no damage or loss of a pecuniary character has been caused to any one.

We must reverse the decrees of both the lower Courts and reject the claim. The parties should bear their own costs in the Court of first instance, but the costs in the District Court and in this Court must be borne by plaintiffs.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Kimball.

DHADPHALE (ORIGINAL DEFENDANT), APPELLANT, v. GURAV,
(ORIGINAL PLAINTIFF), RESPONDENT.*

*Cause of action—Offering of food to idol—Suit for damages on account
Of omission to offer food.*

The plaintiff, alleging that he was a member of a family of *Guravs* holding a *watan* attached to a temple, complained that the defendant was the holder of an *inam* allowance, granted in consideration of his daily offering to the idol some rice and cake, and burning a lamp; and that he had omitted to make such offering for one year. The plaintiff claimed Rs. 15 damages.

Held that the plaintiff had no cause of action. The defendant's obligation, if any, was towards the idol; and, if that obligation had not been performed, it could only be enforced by some person claiming to have a right to insist that the worship of the idol should be properly performed.

This was a second appeal from the decision of W. H. Newnham, Judge of Poona, confirming the decree of the First Class Subordinate Judge of Poona.

* Second Appeal, No. 103 of 1881.

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December 19.