

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

MURARI (ORIGINAL PLAINTIFF), APPELLANT, v. SUBA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1882
September 11.

Jurisdiction—Caste question—Regulation II of 1827, Section 21—Suit for fees appurtenant to the office of Guru—Jurisdiction of Civil Courts,

A claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honours at the hands of the members of the caste in virtue of that office is a caste question, and not cognizable by a Civil Court. The same rule applies where there are fees appurtenant to the office.

The plaintiff belonged to the Mahar caste, and sued to recover from the defendants certain fees which, he alleged, were appurtenant to the office of *guru* to the members of the Mahar caste living in a certain village. The defendants denied that the plaintiff was their *guru*. Both the lower Courts dismissed the suit on the ground that it involved a caste question.

The High Court, on second appeal, confirmed the decrees of the Courts below.

This was a second appeal from the decision of S. Tagore, Judge of the District Court of Kanara, affirming the decree of V. W. Phade, Second Class Subordinate Judge of Sirsi.

The plaintiff Murari instituted this suit to establish his right as *guru* to certain annual fees from the defendants as his *sishayas* (disciples), and to recover one year's arrears of such fees from them. The defendants denied that the plaintiff was their *guru*.

The Subordinate Judge rejected the plaintiff's claim on the ground that it involved a caste question, and that, therefore, the suit was excluded from the jurisdiction of the Civil Courts by Regulation II of 1827, section 21. In appeal, the District Court upheld the decree of the first Court.

The plaintiff appealed to the High Court.

N. G. Chandavarkar for the appellant.

G. N. Nadkarni, for the respondents, relied upon *Murari Daya v. Nagria Ganeshia* (1) and the cases referred to therein; also *Shankara v. Hanma*. (2)

* Second Appeal, No. 596 of 1881.

(1) 6 Bom. H. C. Rep., A. C. J. 17. (2) I. L. R., 2 Bom., 470.

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SARGENT, C. J. — The plaintiff belongs to the Mahar caste and seeks to recover from defendants certain fees, which, he alleges, are as of right appurtenant to the office of gura to the members of the Mahar caste, living in the village of Indur, Taluka Yellapur, the duty of which office he states is to supervise the religious ceremonies in the families of his disciples. The defendants denied that the plaintiff was their gura. The District Judge dismissed the plaint without taking evidence, holding on the authority of *Murar Daya v. Nagria Ganeshia* (1) that it was a caste question. In that case the plaintiffs sued to recover, from another member of the caste, fees alleged to be due to them as mehtars, or chief men of the caste on the marriage of the defendant's daughter. The defendant said the plaintiffs were not his mehtars, and that he had never engaged them as such. The Court held, following the view taken in Special Appeal No. 39 of 1862, that the question at issue between the parties was a caste question, and excluded from the cognizance of the Civil Courts by Regulation II of 1827, sec. 21. In Special Appeal No. 39 of 1862 the question was as to the right to be recognized as the head of the caste, and to be entitled to receive from the defendants (other members of the caste) certain privileges and precedence, and the Court held that the question at issue was a caste question, and to hold otherwise would be to interfere with the autonomy of the caste. It was a decree, therefore, that the right to an office of dignity in a caste is a caste question, and that a suit will not lie against members of the caste who refuse plaintiff the privileges belonging to that dignity.

In the case of *Shankara v. Hanwa* (2) the plaintiff claimed to be the hereditary holder of the office of chalvadi in the Lingayat caste of Bagalkot to which (it was found by the Court below) no fees as of right were appurtenant, and he sued defendants for damages for having dispossessed him of the office, and it was held that the claim was a caste question within the meaning of so much of 21st section of Regulation II of 1927 as remains unrepealed by Act X of 1861. The Chief Justice delivering judgment says: "The alleged duty of the chalvadi being to carry the insignia of the caste at public ceremonials without any

(1) 6 Bom. H. C. Rep. 17.

(2) I. L. R. 2 Bom., 470.

right to levy fees or receive salary for the purpose of that duty, is essentially a matter which concerns the caste exclusively, and, therefore, one which we think the Bombay Legislature intended to leave to the caste."

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Upon these authorities it must be taken as well established that a claim to a caste office and to be entitled to perform the honorary duties of that office or to enjoy privileges and honours at the hands of the members of the caste in virtue of such office is a caste question and not cognizable by a Civil Court; and, indeed, we think the same rule ought to apply when there are fees appurtenant to the office.

We do not understand the Chief Justice as intending to express an opinion either way in such a case in *Shankara v. Hanwa*, although doubtless he relied on the fact of there being no fees appurtenant to the office as a circumstance which assisted the conclusion that the question was a caste one. The principle laid down by the Court in Special Appeal No. 39 of 1862 appears to us to be the sound one, viz., would the taking cognizance of the matter in dispute be an interference with the autonomy of the caste? And applying that principle, we think it would be equally so, whether the question turns upon the obligation of the members of the caste to accord to the holder of the office certain privileges and honours or to pay him fees in virtue of his office. In either case it is one which, if a caste is to be considered in any sense a self-governing body as is contemplated by the Regulation of 1827, should, we think, be left to be decided and dealt with by the caste according to its customary mode of procedure. Of course, if the office be one which enables the holder to render services to individual members of the caste, and the holder is actually employed to render those services, he may be entitled to recover in the Civil Courts remuneration for them; and in determining the amount, the fees customarily paid in the caste would, in the absence of special agreement, be properly taken as the basis for assessing it. That is, however, not the plaintiff's case. We must, therefore, confirm the decree with costs.

Decree confirmed.
