1885

QUEEN-EMPRESS v. DOSÁ JIVÁ.

JARDINE, J.:—We are of opinion that the confession of the other prisoner, Hati, admitted under section 30 of the Indian Evidence Act I of 1872 against the appellant Dosá, is not sufficiently corroborated by the circumstance that Dosá, some months after the commission of the offence, pointed out the stolen property; this act being in itself ambiguous, and not inconsistent with the theory of innocence. The confession of Hati is not entitled to even as much consideration as the testimony of an accomplice examined on oath and subject to cross-examination. In the present case, the confession is not corroborated by any independent evidence to show that the appellant was one of the house-breakers. For these reasons we reverse the conviction and sentence.

Conviction and sentence reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

NA'RA'YAN VITHE PARAB AND OTHERS, (ORIGINAL DEFENDANTS), APPELLANTS, *v.* KRISHNA'JI SADA'SHIV, (ORIGINAL PLAINTIFF), RESPONDENT.*

1885. *December* 2.

Jurisdiction—Máns, suit for right to—Perpetual injunction against invasion of these máns—Right to worship—Mere dignities, right to—Small gifts by presents of rice, cocoanuts, vidá and venison attached to such máns how far considered as emoluments.

The plaintiffs and the defendants as members of a family of Ganvkárs claimed to be entitled to certain *máns*, consisting of the right to be the first to worship the deity on certain occasions and to receive gifts of rice, cocoanut and *vidá* and venison made by the priest on certain religious ceremonies and other occasions. The plaintiff, being obstructed by the defendants in the enjoyment of the *máns*, sought to obtain a perpetual injunction against the defendants. The Court of first instance dismissed the plaintiff's claim as being one for mere dignities unaccompanied with emoluments, and, as such, not cognizable by a Civil Court. The plaintiff thereupon appealed, and the lower Appellate Court reversed the lower Court's decree, and granted a perpetual injunction against the defendants, prohibiting them from interference with the plaintiff's enjoyment. On appeal by the defendants to the HighCourt,

Held, restoring the decree of the Court of first instance, that the plaintiff's suit was not maintainable. The *máns* were mere dignities to which no profits or

*Second Appeal, No. 697 of 1883.

1885.

NÁRÁYAN ITHE PARAB v. KRISHNÁJI SADÁSHIV.

emoluments were attached. The trifling gifts, made by the priest, of rice, a cocoanut and *vidá* on the occasion of worshipping the deity and of a piece of venison on other occasions could not be regarded as emoluments, being merely symbols of recognition and marks of respect of and to the holders of the *máns*.

Rámá v. *Shivrám*(1) approved and followed.

THIS was a second appeal from the decision of G. Jacob, Assistant Judge of Ratnágiri.

The plaintiff and the defendants were members of a family of Ganvkárs, and, as such, were entitled to certain *mans*, which consisted of the right to be the first to worship the village deity on the occasion of certain religious ceremonies and festivals, and to receive from the priest on those occasions small presents of rice, cocoanut and *vidá* and of venison when game was killed in honour of the deity.

The plaintiff complained that he was obstructed by the defendants in the enjoyment of these *máns*, and he sued for a perpetual injunction against the infringement of his right. The plaintiff claimed to be entitled to the following gifts or fees, *viz* :—

"1. One cocoanut, worth six pies, on the day of third *jágar* (night ceremony) in the month of *Chaitra*.

"2. One pie worth of *churmures* (fried rice) on the 15th *Shudh Ashvin*.

"3. One cocoanut, worth six pies, on the occasion of the *taranga* (insignia) of Ravalnáth going to different other idols on the *Dasará* holiday.

"7. Four annas' worth of venison when in a religious shooting a game is killed, and when he has to cut it first.

"8. Six pies' worth of rice and betelnuts after worshipping corn in the temple of Bhumika.

"9. A *vidá* (betelnut and leaves) of one pie when he adores and worships the Tarangs.

"13. *Hal davin tirth* (holy water) the value of which cannot be estimated in money."

(1) I. L. R., 6 Bom., 116.

1885.

NÁRÁYAN VITHE PARAI v. KRISHNÁJI SADÁSHIV.

The plaintiff based his claim on an alleged *tharávpatra*, or agreement, between himself and the defendants by which the right to these *máns* was admitted by the defendants to belong to him exclusively.

The defendants admitted the execution of the agreement, but contended that it had no reference to the *ganvki* rights in question, which belonged to them as representatives of the elder branch of the family.

The Subordinate Judge, who tried the suit, held that the plaintiff's claim being for mere dignities, to which no profits or emoluments were attached, was untenable, and accordingly he dismissed the suit.

The defendants appealed to the Assistant Judge of Ratnágiri, who reversed the decree of the Subordinate Judge with the following remarks :—

"I find that the plaintiff is entitled to a perpetual injunction against all the defendants, except No. 8, with regard to his rights set forth in the plaint. I do not think the line of reasoning adopted by the Subordinate Judge is exactly relevant in this case. At any rate, it is clear, from his own judgement, that there is something in the way of fees or profits attached to several of the *haks* claimed by the plaintiff. The fact that they are of insignificant value is immaterial. This case is of a totally different nature from most of those referred to by the Subordinate Judge. The plaintiff does not sue here to establish his right, but he sues to obtain an injunction to prevent the defendants from usurping rights which have already been decided to belong to him, or which are based on contract with the defendants, or their representatives. I am, therefore, of opinion that section 11 of the Civil Procedure Code (XIV of 1882) has no application here in regard of its exceptive clause. There is no necessity, in the present case, for deciding any question as to religious rites and ceremonies, except so far as the question arises whether they are included within the terms of a certain document * * * *. The only question is, whether this is a proper case for granting a perpetual injunction * * * *. The law relating to the granting of a perpetual injunction is found in sections 53, 54

1885.

NÁRÁYAN VITHE PARAB v. KRISHNÁJI SADÁSHIV.

and 56 of the Specific Relief Act (I of 1877). The present case comes apparently under clauses (*b*), (*c*) and (*e*) of section 54, and I see nothing in section 56 that can apply against the granting of an injunction. For these reasons I do not think that there are any good grounds for refusing the grant of the injunction prayed for as against all the defendants, except No. 8, who does not appear to lay any claim to the rights in question."

The defendants preferred a second appeal to the High Court.

Ghanashám Nilkanth Nádkarni for the appellants.—The Court of first instance was right in dismissing the plaintiff's suit, which is for mere *máns* or dignities. There are no fees attached thereto, so as to bring the suit within the jurisdiction of a Civil Court. A suit for a mere dignity cannot lie: see *Rámá* v. *Shivrám*[1]; *Murári* v. *Subá*[2]; *Sangápá* v. *Gangápá*[3]. See Kerr on Injunction, page 1, and Specific Relief Act I of 1877, section 57.

Máneksha Jehángirshá for the respondent.—The suit is not for enforcement of dignities, but is one for right to worship. A right to worship was held to be a fit subject for cognizance of a Civil Court: see *Anandráv* v. *Shankar Dáji*[4]. There is an office here, and fees attached to it. The right to worship is exercised at intervals by members of the Ganvkár family. The case of *Náráyan* v. *Bálkrishna*[5] is in point. The respondent is entitled to a perpetual injunction.

SARGENT, C.J.:—This is a suit for a perpetual injunction, restraining the defendants from obstructing the plaintiff in the enjoyment of certain *máns* and the performance of *jágars* in connection therewith. It is not in dispute that all the parties to the suit are members of a family of Ganvkárs, in whom the *máns* in dispute have been become vested by long established usage and custom. The plaintiff's case is based on a *tharávpatra* alleged to have been entered into between himself and the defendants, by which the right to the *máns* in question, as he alleges, became vested exclusively in himself. The defendants in their written statement say that the *tharávpatra* has no reference to *ganvki*

(1) I. L. R., 6 Bom., 116.
(2) I. L. R., 6 Bom., 725.
(3) I. L. R., 2 Bom., 476.
(4) I. L. R., 7 Bom., 323.
(5) 9 Bom. H. C. Rep., 413.

1885.

NÁRÁYAN VITHE PARAB v. KRISHNÁJI SADÁSHIV.

rights, which belong to them as representatives of the elder branch of the family. The Subordinate Judge held, on the authority of *Sangápá bin Baslingápá* v. *Gangápá*[1] and *Rámá* v. *Shivrám*[2], that the suit would not lie on the ground that the *máns* were merely dignities to which no profits or emoluments were attached. The Assistant Judge on the contrary held that the *máns* could not be regarded as mere dignities, and granted a perpetual injunction against all the defendants, except defendant No. 8.

We agree with the Subordinate Judge in his view as to the character of these *máns*. They consist in the right to be the first to worship the deity on the occasion of certain public religious ceremonies, and to be the first to send *deshruth* and strike the game on certain other religious festivals. The trifling gifts made by the priest of rice, a cocoanut and *vidá* on the occasion of worshipping the deity and of the piece of venison on the other occasions cannot be regarded as "emoluments". They would appear to be merely symbols of recognition and marks of respect of, and to the holders of the *máns*.

As to the application, to the present case, of the ruling in the above decisions relied on by the Subordinate Judge, it has been urged before us that the present suit is not one to enforce a claim against strangers, but to compel specific performance of an agreement between members of a family who are admittedly holders of the *máns* in question. It is to be remarked, however, that this was the precise nature of the suit in *Rámá* v. *Shivrám*[2], and that the distinction now attempted to be drawn, although much relied on in the judgment of Mr. Ránade, the First Class Subordinate Judge, and urged before the High Court on second appeal, was not allowed to prevail. The principle of these cases, as stated by Melvill, J., in *Rámá* v. *Shivrám*[2], is that the Civil Courts "ought not to be involved in the determination of trivial questions of dignity and privilege, although connected with an office," as was the case both in *Rámá* v. *Shivrám*[2] and *Sangápa* v. *Gangápá*[1]. We have been referred to the case of *Ábá bin Rághuji* v. *Devji bin Dáji*[3], where the right claimed was apparently a

(1) I. L. R., 2 Bom., 476. (2) I. L. R., 6 Bom., 116.
(3) Printed Judgments for 1884, p. 297

1885.

NÁRÁYAN VITHE PARAB v. KRISHNÁJI SADÁSHIV.

mere dignity; but the only question before the Court on second appeal in that case was whether the suit raised a caste question which was excluded by the regulation from the jurisdiction of a Civil Court, and the Court held it did not, and remanded the case for trial. The present case is on all fours with *Rámá* v. *Shivrám*[1], which proceeds, we think, on a sound principle. We must, therefore, reverse the decree of the Assistant Judge, and reject the plaintiff's claim, with costs throughout on plaintiff.

Decreee reversed.

(1) I. L. R., 6 Bom., 116.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1886. *January* 21.

NA'RA'YAN RAGHUNA'TH AND OTHERS, APPLICANTS, *v.* BHAGVANT ANANT, OPPONENT.*

Stamp—Memorandum of appeal from an order under Section 331 *of the Civil Procedure Code (Act XIV of* 1882*)—Court Fees Act VII of* 1870, *Sch. I, Art.* 1—*Practice.*

A memorandum of appeal from an order under section 331 of the Civil Procedure Code (Act XIV of 1882), should be stamped with an *ad-valorem* duty as provided by article 1, Sch. I, of the Court Fees Act VII of 1870.

THIS was a reference by H. J. Parsons, District Judge of Thána, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The question referred for decision was:—What is the proper stamp that should be affixed to a memorandum of appeal against an order passed under section 331 of the Code of Civil Procedure (Act XIV of 1882)?

There was no appearance for the parties.

SARGENT, C. J.—The appeal should be stamped under article 1 of Schedule I of the Court Fees Act VII of 1870. Section 322B of the Civil Procedure Code (XIV of 1882) does not contemplate a distinct claim being made, as in the case in section 331, and this would appear to be the real ground on which the Madras decision in *Shrinivása Ayyangar* v. *Peria Tambi Náyákar*[1] proceeded.

*Civil Reference, No. 44 of 1885.

(1) I. L. R., 4 Mad., 421.