

1887
SEP. 13.
APPEL
LATE
CIVIL.
12 B. 225.

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Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice
Nanabhai Haridas.

MEHTA JETHALAL (Original Plaintiff), Appellant v. JAMIATRAM
LALUBHAI (Original Defendant), Respondent.*
[13th September, 1887.]

Jurisdiction—Caste question—Secession from a caste—Property purchased by seceding section during period of secession—Reunion of section with the caste—Suit by caste to recover from a seceding member property purchased by seceding section.

The plaintiff and the defendant belonged to the caste of Visnagra Brahmans, which in 1841 divided into two sections, known as the big and little sections. [226] While this division continued, viz., in the year 1868, certain lands were purchased by the small section in the names of the plaintiff, the defendant, and three other persons. In 1873 the members of the small section, with the exception of the defendant, reunited with the other members of the caste. The lands, however, remained in the possession of the defendant. The plaintiff, on behalf of the caste, brought this suit to recover the lands from the defendant. Both the lower Courts held that the case was not cognizable by the Civil Courts, as it involved a caste question. On appeal by the plaintiff,

The High Court reversed the decrees of the Courts below, and sent back the case for retrial. The lands in question had been admittedly purchased out of their own funds and for their own purposes by the members of the caste who had seceded; and the question, as to whom those lands now belonged, being one between the caste and one of the seceding members who had purchased them, could not be a caste question, unless the small seceding section itself could be regarded (and it was not so contended) as a separate and distinct caste. Under these circumstances it was for the Civil Court alone to determine who was entitled to the property, although it might be incidentally necessary for that purpose to enquire into the usage and practice (if any) of caste sections, situated as the seceding section of this caste had been, with respect to the property in question. If the lands had been originally the property of the caste, the question would have been between the caste and a section of it, and would have been, as held in *Nemchand v. Savaichand* (1), a caste question, and not cognizable by the Civil Court.

[R., 19 B. 507; 26 B. 174; 34 B. 467 = 11 Bom. L. R. 1014 = 4 Ind. Cas. 108; 9 Bom. L.R. 569.]

THIS was a second appeal from a decision of A. Shewan, Assistant Judge of Ahmedabad.

The parties to the suit belonged to the caste of Visnagra Brahmans. In 1841 the caste spilt up into two divisions, styled as the big and small divisions. In 1868, certain lands, the subject-matter in dispute, was purchased for and on behalf of the small division in the names of the plaintiff and four other members of the section, of whom the defendant was one. In 1873 all the members of the small division, except the defendant, became reunited with the other members of the caste. The lands in dispute, however, remained in the possession of the defendant.

The plaintiff now for and on behalf of the caste sued to recover possession of the lands. The defendant (*inter alia*) contended that the suit involved a caste question, and, as such, was not within the jurisdiction of the Civil Court.

Both the lower Courts dismissed the plaintiff's suit as a caste question.

* Second Appeal, No. 540 of 1885.

(1) 5 B. note, p. 84.

[227] The plaintiff preferred a second appeal to the High Court.

Pandurang Balibhadra (Ganpat Sadashiv Rav with him), for the appellant.—The lower Courts were wrong in dismissing the plaintiff's suit. This suit does not involve a caste question. Here there will not be any interference with the autonomy of the caste. But the Court has to determine who is entitled to the possession of the caste property; and though it may be incidentally necessary to inquire into the usage of the caste, this circumstance alone cannot oust the jurisdiction of the Civil Court—*Pragji Kalan v. Govind Gopal* (1); see also *Anandrav v. Shankar Daji*(2); *Krishnasami v. Krishnama Charyar*(3); *Sudaram Patro v. Soodha Ram* (4).

Goverdhanram Madhavram (Narayan Vishnu Gokhale with him), for the respondent, contended that the question raised was a caste question.

JUDGMENT.

SARGENT, C.J.—The question in this case arises out of a dispute in the caste of Visnagra Brahmins, and is the result of a division of that caste, in 1841, into two sections, known as the big and little sections. During this division, *viz.*, in the year 1868, certain lands, which are the property in dispute, were purchased by the small section in the names of the plaintiff and four other persons, of whom defendant Jamiatram was one, for and on behalf of the section. In 1873 the members of the small section, excepting the defendant Jamiatram, became reunited with the other members of the caste. After 1873 the property remained in the possession of Jamiatram, and the plaintiff now sues, for and on behalf of the caste, to recover possession of it. Both the lower Courts have decided, but we think wrongly, that the suit involved a caste question, and not cognizable by the Civil Courts.

If the lands in dispute had been originally the property of the caste, the question would have been between the caste and a section of it, and would be, as decided in *Nemchand v. Savaichand* (5), a caste question, and, therefore, not cognizable by the Civil Courts; but here the lands had been admittedly purchased by [228] the members who had seceded, and constituted the small section, out of their own funds and for their own purposes; and the question to whom those lands now belong, cannot be a caste question, unless indeed the small section itself could be regarded, and it has not been contended that it can, as a separate and distinct caste. Under these circumstances, it is for the Civil Court alone to determine who is now entitled to the property in dispute, although it may be incidentally necessary for that purpose to inquire into the usage and practice, (if there be any), of caste sections, situated as the small section of this caste was, with respect to the property in question. We must, therefore, reverse the decree of the Court below, and send down the case for retrial. Costs of this appeal to abide the result.

Decree reversed.

(1) 11 B. 584.

(4) 11 W.R. C.R. 457.

(2) 7 B. 323 (328).

(5) 5 B. note, p. 84.

(3) 5 M. 313.