

be continued in his possession free from any [25] mortgage claim on the part of the defendant, mortgagee, and with respect to the property described in the mortgage-deed, Ex. 10, also now in the possession of the plaintiff, mortgagor, we hereby direct that it be so continued in his possession redeemed from defendant's mortgage upon his payment to defendant within the period of six months from the date of this decree, of the sum of Rs. 3,774-2-7 with interest as directed above, but that on plaintiff's making default in such payment within such period, the mortgage be deemed to be foreclosed, and possession of the said property described in Ex. 10 be delivered to the defendant.

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REVISIONAL CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Candy.

In re ATMARAM NARAYAN PARAB AND OTHERS.*

[19th March, 1889.]

Criminal Procedure Code (Act X of 1882), s. 147—Dispute about the right of performing worship and other religious rights in temples—Jurisdiction of Magistrates to interfere in cases where Civil Courts cannot grant relief—Procedure to be adopted where breach of the peace is apprehended.

A Magistrate, First Class, made an order under s. 147 of the Criminal Procedure Code (Act X of 1882) forbidding certain persons from taking part in the worship and other religious ceremonies connected with certain temples. As to the right to perform these ceremonies, the High Court had previously held that Civil Courts could not determine the trivial question of mere dignity or privilege.

Held, that the matters in dispute not being adjudicable by a Civil Court, s. 147 did not give the Magistrate jurisdiction to forbid the persons named in the order from taking part in the ceremonies in question.

Held, also, that the order was bad in form, as it contained no restriction of the time during which it was to operate.

Held, further, that in cases where a Magistrate apprehends a breach of the peace, his proper course is to act under the provisions of chap. VIII of the Criminal Procedure Code (Act X of 1882).

[D., Rat. Unr. Cr. Cas. 709 (709).]

THE applicants Atmaram Narayan, Babaji Vishram and Vishram Vithu belonged to the family of Parabes at Vengurla. There were disputes between the members of this family as to the right to receive *man pars* and take part in certain religious ceremonies in connection with the temples of Rameshvar, Bharavasacha Purvas, Bhumkai, and Ravalnath at Vengurla. These disputes were the subject-matter of several suits, in which [26] the High Court ultimately decided (1) that Civil Courts could not grant relief in respect of the rights in question.

On 11th October, 1888, the First Class Magistrate of Ratnagiri acting on the report of the police instituted proceedings, under s. 147 of the Code of Criminal Procedure (Act X of 1882), against the applicants and others, and passed an order, declaring, Gama Madhe Parab, Sato Sadashiv Parab and Lakshman Lado Parab to be alone entitled to take part in the religious ceremonies in the temples in question, and forbidding the rest from obstructing them in the exercise and enjoyment of their rights.

* Criminal Revisional Nos. 519 of 1888 and 22 of 1889.

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The Magistrate's order was in the following terms :—

"Whereas I am satisfied that a dispute exists concerning the right to and prevent the doing of certain acts connected with the religious ceremonies in or pertaining to the temple of Rameshvar, Bharavasacha Purvas, Bhumkai and Ravalnath at Vengurla, which dispute is likely to cause a breach of the peace, I direct as follows :—

"With the exception of Gama Madha Parab none of the Parabs other than Sato Sadashiv Parab and Lakshman Lado Parab have any right to control or take part in any religious ceremonies in or pertaining to the abovementioned temples in capacity of *mankari*, *matkari*, *gaokari* or *vrittik*. I forbid all the Parabs other than the said Gama Madhe Parab, Sato Sadashiv Parab, and Lakshman Lado Parab (1) to control, or take part in, or attempt to control, or take part in, any of the said ceremonies in any of the said capacities; (2) or to hinder or obstruct Sato Sadashiv Parab, or Lakshman Lado Parab, in the performance of acts or enjoyment of rights as *mankaris*, *gaokaries*, or *vrittikis*, in Vengurla. Any hindrance or obstruction caused to any member of the households of Sato Sadashiv Parab and Lakshman Lado Parab in the performance of any act or the enjoyment of any right on behalf of the said Sato Sadashiv Parab or Lakshman Lado Parab in Vengurla in the said capacities shall be deemed to be caused to Sato Sadashiv Parab or Lakshman Lado Parab, as the case may be."

[27] Against this order, the applicants moved the High Court under s. 435 of the Code of Criminal Procedure (Act X of 1882) on the ground that the order was illegal and *ultra vires*.

A similar application was made by Raoji Kashiba and Sakharam Appa Gaude, who were also interdicted from taking part in the ceremonies.

The High Court called for the record and proceedings in this matter. *Ghanasham Nilkant*, for Atmaram Narayan Parab and others.

Visudev G. Bhandarkar, for Raoji Kashiba.

JUDGMENT.

The judgment of the Court (Jardine and Candy, JJ.) was delivered by

JARDINE, J.—The order of the Magistrate purports to be issued under s. 147 of the Code of Criminal Procedure. It is bad in form, as it contains no restriction of time for which it is to operate, whereas the section itself restricts the operation of any order passed under it only "until the person objecting to such thing being done or claiming that such thing may be done obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be." The Magistrate was not unaware of this restriction, and it appears that the decision of this Court in *Narayan Vithe Parab v. Krishnaji Sadashia* (1) was brought to his notice at the hearing. That decision related to the very rights now in dispute, and is authoritative also as to the general law that the Civil Courts will not determine trivial questions of mere dignity and privilege.—*Sangapa v. Gangapa* (2); *Rama v. Shivram* (3). It being thus settled that the matters in dispute are not adjudicable by a Civil Court, s. 147 of the Code of Criminal Procedure did not give the Magistrate jurisdiction to interdict the persons named in his order from taking part in ceremonies in

(1) 10 B. 233.

(2) 2 B. 476.

(3) 6 B. 116.

the temples there specified. The Magistrate observes as follows:—
 “Further in acknowledging their incapacity to grant a perpetual injunction, the Civil Courts have shown that they [28] are unable to protect Sato in the enjoyment of his rights.” In respect to his observation it is only necessary to point out the protection generally afforded by the substantive criminal law. As regards the duty of the Magistrate when he apprehends that there will be a breach of the peace, it is sufficient to mention the provisions of chap. 8 of the Code of Criminal Procedure as to taking security. The subject was considered in *Sundram Chetty v. the Queen* (1) where the limits of magisterial interference with rights are discussed. The learned Chief Justice says (pp. 220 and 221): “It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace.” We, therefore, quash the order as made without jurisdiction.

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Order quashed.

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APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
 Mr. Justice Candy.*

SAKHARAMSHET AND OTHERS (*Original Plaintiffs*), Appellants *v.*
 AMTHA DEVJI GANDHI AND OTHERS (*Original Defendants*)
*Respondents.** [21st March, 1889.]

Mortgage—Redemption—Vismajor—Asmani sultani, meaning of the words.

A mortgage-deed stipulated that in the event of the mortgaged house being destroyed “by *asmani sultani*”, (*i.e.*, evils from the skies or the king), the mortgagor should rebuild it, and if he did not do so, and if the mortgagee rebuilt it, he (the mortgagor) would pay the cost of rebuilding with interest in addition to the mortgage debt. The house was destroyed by a fire which originated in another part of the village, and the mortgagor failing to rebuild the house, the mortgagee rebuilt it. The mortgagor brought the suit for redemption.

Held, that the repayment of the costs of rebuilding the house was a condition precedent to redemption. The destruction of the house was in the nature of a calamity from heaven within the meaning of the term *asmani*.

[29] THIS was a second appeal from a decision of R. Courtenay, Assistant Judge of Ratnagiri.

The plaintiffs sued to redeem a house, alleged to have been mortgaged for Rs. 501 by their ancestor Balshet in 1828 to Devji, the father of the defendant. The material portion of the mortgage-bond was as follows:—

“In the event of the house being destroyed by *asmani sultani* (evils from the skies or the king), you (mortgagee) are not to be answerable. I (mortgagor) will rebuild the house myself. In the event of my failing, I will pay interest (on the mortgage debt) at 12 annas *per cent. per month*;

* Second Appeal No. 521 of 1886.

(1) 6 M. 203..