1893
OCT. 17.

APPELLATE CIVIL.

18 B. 690.

gave certain directions with regard to the payment. We have paid all the instalments as they fell due.

We further contend that the clause in the decree with respect to the recovery of possession is penal, and should be relieved against—*Vaguran* v. *Rangayyangar* (1).

Mahadeo C. Apte, for the respondents (plaintiffs) :—When litigant parties come to an understanding, and a decree is passed on the terms of that undrestanding, anything directed by the decree that is done subsequently to the decree must be considered as done under it. We, therefore, submit that any payments made were made under the decree and not under the old *mirasi* tenure, and ought to have been certified to the Court in accordance with s. 258. Not having been so certified, they cannot be recognized. When a forfeiture clause comes into operation under a decree, it cannot be avoided, because there has been no change of the relationship of the parties under the decree.

JUDGMENT.

SARGENT, C. J.—The original suit in which the decree was made was a possessory suit brought by the inamdar against the defendants, who set up a right to hold the lands under a *mirasi* tenure. The decree declares that such was the nature of the tenure and directs that the rent "should be paid as before." We think that under these circumstances the rent when paid is to be deemed as paid under the *mirasi* tenure and not under the decree, and, therefore, that s. 258, Civil Procedure Code, does not apply.

[693] The decree must, therefore, be reversed and the case sent back for decision on the merits; and we may observe that the defendant will not be precluded by ss. 56 and 64 of the Dekkhan Agriculturists' Relief Act from proving the payment of the instalment in question by any one of the ordinary legal modes of proof.

Decree reversed.

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18 B. 693.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

KAZI SUJAUDIN (*Original Defendant*), *Appellant v.* MADHAVDAS (*Original Plaintiff*), *Respondent.**

[17th October, 1893.]

Right of suit—Cause of action—Religious processions—Public road—Suit to enforce a right to conduct a religious procession along a public road—Obstruction to a public road—Public nuisance—Special damage—Injunction.

A civil action will not lie to enforce a right to conduct a religious procession along a public road without an allegation of some personal loss or damage to the plaintiff.

Saiku v. *Ibrahim* (2) followed.

[Appl., 34 B. 571 (573)=12 Bom. L. R. 586=7 Ind. Cas. 663; R., 32 M. 478=1 Ind. Cas. 716=19 M. L. J. 617 (626); 11 Bom. L. R. 372 (375)=2 Ind. Cas. 494.]

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* Second Appeal, No. 422 of 1893.

(1) 15 M. 125.

(2) 2 B. 457.

1893
OCT. 17.
APPELLATE CIVIL.
18 B. 693.

SECOND appeal from the decision of Khan Bahadur N. N. Nanavati, First Class Subordinate Judge with appellate powers at Dhulia, in Cross Appeals Nos. 187 and 191 of 1892.

The plaintiff sued (1) for a declaration of his right to conduct the car and *palki* of the deity Shri Datatrya Maharaj in procession, accompanied by bodies of worshippers reciting prayers to the sound of music (such as *tal, zanj, mirdang and vina*) along the public thoroughfares of Raver, and (2) for a perpetual injunction restraining the Mahomedans of the locality from obstructing the passage of the procession and the performance of the ceremony called *Gopal Kala* at Nagziri, with music playing.

The defendants were made defendants under s. 30 of the Civil Procedure Code (XIV of 1882) as representing the Mahomedan community.

The Subordinate Judge of Yeola granted the declaration sought, subject, however, to the right of the Mahomedans not to be disturbed **[694]** while assembled and engaged in public worship during hours in which they usually assemble for public worship, and of which they have informed the authorities in due time.

On appeal, the First Class Subordinate Judge, A. P., confirmed the decree of the Court of first instance, and further ordered that the defendants should inform the authorities responsible for the preservation of the public peace of the hours fixed for public prayer, and that the plaintiff and his processionists should stop all music within 75 feet on either side of a mosque during hours in which the Mahomedans were engaged therein in public worship.

From this decree the defendants appealed to the High Court.

Manekshah Jehangirshah, for appellants:—This case falls under the general rule that no action can be maintained by one person against another for obstruction to a highway, unless special damage is proved: The plaint in this case does not allege special loss or damage to the plaintiff. Nor has he given any proof of special damage sustained by him. This suit cannot, therefore, lie—*Satku* v. *Ibrahim*(1); *Siddeswara* v. *Krishna* (2).

P. M. Mehta (with Messrs. *Dixit* and *Hiralal*) for respondent:—The suit was instituted on the allegation that plaintiff had been obstructed by the defendants. This obstruction constitutes special damage. The suit will, therefore, lie. Refers to Second Appeal No. 527 of 1891. The point now taken on second appeal was not raised in either of the Courts below. It should not, therefore, be allowed.

JUDGMENT.

FULTON, J.—The only question argued in this appeal was, whether without alleging any personal loss or damage the plaintiff could maintain this action. The question has been very fully considered in the learned judgment of Sir M. R. Westropp in *Satku* v. *Ibrahim*(1) which does not seem to have been brought to the notice of the Courts below. That decision shows clearly that although "there cannot be any doubt that Her Majesty's subjects, as well in India as in England, have the right to pass and re-pass along a public highway," a civil action to enforce a right to **[695]** conduct a religious procession along a particular road cannot ordinarily be maintained. Whether, if an order had been passed under s. 44 of Bombay Act IV of 1890, an action could be instituted under cl. 2, it is unnecessary to determine, as no such order has been made.

(1) 2 B. 457. (2) 14 M. 177.

The decisions of the Madras High Court in *Sundram* v. *The Queen*—*Ponnusami* v. *The Queen* (1) and *Muthialu Chetti* v. *Bapun Saib* (2) are appropriate for the purpose of showing the legal rights of the plaintiff, but do not support the proposition that in case of obstruction his proper remedy is by civil suit. The former of these was the judgment in a criminal case, and the latter in a suit for which the cause of action was not any alleged obstruction to the road, but the procurement of an improper order from a Magistrate. It was admitted that in Second Appeal No. 527 of 1891, in which the point now under consideration might have been raised, it was not taken by the respondents, who were defendants and made no objection to the decree of the Courts below. Consequently that case cannot be relied on as a precedent. The present case seems governed by *Satku* v. *Ibrahim* (3). We trust that the parties to this suit will come to some reasonable compromise, and would suggest that they should either accept the First Class Subordinate Judge's opinion, or, if they cannot do so, refer their dispute to the arbitration of the Collector and agree to abide by his award. A prolongation of this quarrel may compel the interference of the Magistrates and lead to much trouble, which can be avoided by the exercise of forbearance on both sides. We reverse the decree and reject the claim. The parties to pay their own costs throughout.

Decree reversed.

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18 B. 696.

[696] APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice.

KASHINATH BALLAL AND OTHERS (*Original Plaintiffs*), *Appellants* *v.* GANPATRAO AMRITESHVAR JOSHI (*Original Defendant*), *Respondent.** [10th November, 1879.]

Stamp—Valuation—Court Fees Act (VII of 1870), s. 7, cls. 1—9—Foreclosure suit—Suit by the mortgagee against the heir of the mortgagor for recovery of the mortgage-debt by sale of mortgaged and other property—Valuation for the purpose of Court fees.

A suit instituted by the mortgagee against the heir of the original mortgagor, to have the mortgage-debt paid by sale not exclusively of the mortgaged property, but also of all the other property in the hands of such heir liable for the debts of the original mortgagor, is virtually a suit for money, and should be valued, not at the principal debt, but the entire amount including interest.

[R., 7 Bom. L. R. 194 (195).]

THIS was a reference by the Taxing Officer under s. 5 of the Court Fees Act (VII of 1870).

The plaintiffs sued in the Court of the First Class Subordinate Judge of Nasik to recover the sum of Rs. 8,236-14-0 (being Rs. 7,000 principal and Rs. 1,236-14-0 interest) due upon a mortgage-bond executed by the deceased defendant Ganpatrao in favour of the deceased father of the plaintiffs, and prayed that the amount might be realized by the sale of the mortgaged property and of the other property of defendant.

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* First Appeal, No. 23 of 1879.

(1) 6 M. 203. (2) 2 M. 140. (3) 2 B. 457.