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of execution and the application must be dismissed with costs. Counsel certified.

Application dismissed.

Attorneys for plaintiff:—*Messrs. Bhaishanker, Kanga and Girdharlal.*

Attorneys for defendant:—*Messrs. Mulla and Mulla.*

W. L. W.

APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Batchelor.

1908. *November* 11.

MADHUSUDAN PARVAT STYLING HIMSELF SHANKARACHARYA OF DHOLKA (ORIGINAL DEFENDANT), APPELLANT, *v.* SHRI SHANKARACHARYA SWAMI OF SHARADA MATH (ORIGINAL PLAINTIFF), RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), section 11—Shankaracharya of Sharada Math, plaintiff—Shankaracharya of Dholka, defendant—Dispute as to precedence or privilege between purely religious functionaries—Jurisdiction of Civil Courts.

The plaintiff, Shankaracharya of the Sharada Math at Dwarka in Gujarath, sued the defendant, Shankaracharya of the Jyotir Math at Dholka in the same province for (1) a declaration that the defendant was not entitled to the style, title and dignities of a Shankaracharya and that he was not entitled to call for or receive any offerings from the people in Gujarath in his assumed capacity of a Shankaracharya of the Jyotir Math or a branch of that Math; (2) for an account of the money received by the defendant as a Shankaracharya in Gujarath with a decree for payment to the plaintiff of the sum found to have been so received by the defendant; and (3) for an injunction restraining the defendant from styling himself a Shankaracharya in Gujarath and from claiming and receiving offerings in Gujarath as Shankaracharya of the Jyotir Math or a branch of that Math.

The lower Court made a declaration that the defendant was not entitled to call himself a Shankaracharya of the Jyotir Math or of a branch of it at Dholka and an injunction against the defendant so styling himself and claiming or receiving offerings. The claim for an account and recovery of offerings received by the defendant was not allowed as the offerings might or might not have been made to the plaintiff.

On appeal by the defendant,

*First Appeal No. 45 of 1907.

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Held, dismissing the suit, that to decide disputes as to precedence or privilege between purely religious functionaries is no part of the business of the Civil Courts, nor will they grant injunctions to prevent preachers from preaching where they like under any title they please provided no office or property is disturbed or interfered with.

For interference with mere dignity no suit can be maintained.

For voluntary offerings received no suit will lie.

Sri Sunkur Bharti Swami v. *Sidha Lingayah Charanti*(1), *Sangapa* v. *Gangapa*(2), and *Rama* v. *Shivram* (3), referred to.

Boyter v. *Dodsworth*(4), followed.

FIRST appeal against the decision of Chandulal Mathuradas, First Class Subordinate Judge of Ahmedabad, in Suit No. 640 of 1901.

The plaintiff, a Shankaracharya of the Sharada Math at Dwarka in Gujarath, sued (1) for a declaration that the defendant was not entitled to the style, title and dignities of a Shankaracharya and that he was not entitled to call for or receive any offerings from the people of Ahmedabad and other places in Gujarath either in his assumed capacity of a Shankaracharya or of Shankaracharya of the Jyotir Math or of a branch of the Jyotir Math at Badrinath; (2) for a true and correct account of the proceeds that the defendant might have received during his sojourn at places mentioned in the plaint by virtue of his assumed capacity of a Shankaracharya; and (3) for a perpetual injunction restraining the defendant from styling himself a Shankaracharya in Gujarath as also from claiming or receiving offerings from the people of Ahmedabad and other places in Gujarath as a Shankaracharya or as a Shankaracharya of the Jyotir Math, or of a branch of the Jyotir Math of Badrinath.

The plaintiff alleged that he was the present occupant of the *Gadi* (seat) of Shri Shankaracharya at Dwarka in Gujarath called the Sharada Math, which was one of the four sees originally established in four directions by the well known and illustrious Shankaracharya, the restorer of the Vedic religion on the Advaita system of philosophy. The four sees so established were styled (1) the Jyotir Math, (2) the Govardhan Math,

(1) (1843) 3 Moo. I. A. 198.
(2) (1878) 2 Bom. 476.
(3) (1882) 6 Bom. 116.
(4) (1796) 6 T. R. 681.

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(3) the Sharada Math, and (4) the Shringeri Math. The first was situate in the Himalayas in Northern India, the second at Puri in Cuttack in Eastern India, the third at Dwarka in Western India, and the fourth at Shringeri in Southern India. Each of the said four Maths was given exclusive jurisdiction over the provinces surrounding it and the Shankaracharya of the respective Maths was enjoined to minister to the spiritual, theological, religious and social wants of the congregations within his jurisdiction and he was invested with the exclusive right to the status, style and position of a Shankaracharya as also the right as such to call for and receive pecuniary and other offerings from the people under his charge. The plaintiff duly and lawfully succeeded to the *Gadi* of the Sharada Math at Dwarka in 1901 and thus he became entitled to and had been in enjoyment of the said status, style and position of a Shankaracharya and to all the rights, titles, privileges and dignities as aforesaid appurtenant to the *Gadi* of the Sharada Math which possessed exclusive jurisdiction over Cutch, Kathiawar, Gujarath and other districts in Western India. The line of succession to the *Gadi* of Shankaracharya of the Jyotir Math at Badrinath had long become extinct and it was universally recognized that any lawfully constituted Shankaracharya of that Math was not in existence. Notwithstanding this circumstance the defendant fraudulently assumed the title of Shankaracharya and was falsely alleging that his so-called Math at Dholka was a branch of the Jyotir Math at Badrinath. Under his assumed title he called for and received pecuniary and other offerings from people at several places in Gujarath which was exclusively within the jurisdiction of the plaintiff to the serious detriment of the plaintiff's revenue and in derogation of his status, style and dignity as Shankaracharya and as occupant of the *Gadi* of the Sharada Math. The defendant was repeatedly warned to desist from arrogating to himself the title of Shankaracharya of the Jyotir Math or a branch of that Math in Umreth, Dholka, Nadiad, Matar, Mehmadabad, Sarkhej, Ahmedabad and other places in Gujarath and from collecting offerings from the people at said places but he failed to do so and his failure gave to the plaintiff the cause of action for the suit.

The defendant denied the plaintiff's status as Shankaracharya of the Sharada Math and contended that the plaintiff had no right to the style, position and dignities of a Shankaracharya and was therefore not entitled to the injunction sought for against the defendant, that the plaintiff's suit for the establishment of his right to the mere enjoyment of the dignities and position of a Shankaracharya was unsustainable in law, that the plaintiff's prayer that the defendant should be enjoined not to receive offerings from the people of Gujarath could not be entertained because the whole of Gujarath was not within the jurisdiction of the Court, that the Sharada Math and the Jyotir Math were two different Maths, there was no relation between them and it was not pretended that there was any other Shankaracharya of the latter Math, that the plaintiff was not entitled to call for an account of the voluntary offerings made to him as Shankaracharya of the Jyotir Math, that centuries ago, disputes having arisen between a former Shankaracharya of the Jyotir Math at Badrinath and the ruling authorities of that place, the then Shankaracharya left the Math enjoining his disciples not to reside in that Math thereafter, therefore the Shankaracharyas of that Math did not thereafter permanently live in the Math but they went about in Gujarath and other parts of India for the purpose of imparting religious instruction and the people believed that they were Shankaracharyas of that Math, that the Math was therefore not extinct and the ascendant preceptors of the defendant were always treated and respected as Shankaracharyas of the Jyotir Math and they established branches of that Math at several places in Gujarath, that the defendant and his preceptors were acknowledged as Shankaracharyas by several ruling Chiefs in Gujarath and even by the British Government which gave them licenses to carry arms, that the defendant and his preceptors had been preaching in Gujarath and other places and had been receiving offerings from the residents of those places for several years without any objection on the part of the plaintiff and his predecessors and so the plaintiff's claim was time-barred, that the territorial limits of the Maths being not fixed, the plaintiff was not entitled to claim exclusive jurisdiction to preach and collect offerings in Gujarath and that the

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plaintiff and his predecessors travelled out of Gujarath and received offerings within the territorial limits of the jurisdictions of the other Maths and that if the defendant and his preceptors did the same in Gujarath, the plaintiff suffered no injury and was not entitled to claim damages and injunction.

The Subordinate Judge found that his Court had jurisdiction to try the suit so far as it referred to the district of Ahmedabad and the people residing in that district; that the plaintiff was the lawfully appointed Shankaracharya of the Sharada Math of Dwarka and being the present Shankaracharya of that Math, he was entitled to bring the present suit; that the Jyotir Math of Badrinath had been without a Shankracharya for more than a century and there could be no branch of it in Dholka according to the rules laid down or intended to be laid down by the founder of that Math and the defendant was not a Shankaracharya of that Math or a branch of that Math; that the defendant could not found a branch or branches of the Jyotir Math at Dholka or any other place in the Ahmedabad District and he was not entitled to go round as a Shankaracharya of the Jyotir Math or of the Dholka branch of it for offerings in places within the limits of the jurisdiction of the Court and to collect such offerings from people residing therein as such Shankaracharya; that the claim was in time; and that the plaintiff could not sue for an account and could not recover those offerings or their value which had been voluntarily made to the defendant. The Subordinate Judge, therefore, passed the following decree:—

I therefore declare that the defendant is not entitled to call himself a Shankaracharya of the Jyotir Math of Badrinath or of a branch of it at Dholka and to claim or receive any offerings from the people of the Judicial District of Ahmedabad in his assumed capacity of a Shankaracharya of the Jyotir Math of Badrinath or of the so-called branch of it at Dholka and that he do restrain himself from calling himself as Shankaracharya of the Jyotir Math or of the so-called branch of it at Dholka and from claiming or receiving such offerings from the people of the district of Ahmedabad as such Shankaracharya of the Jyotir Math or of the so-called branch of it at Dholka. The rest of the plaintiff's claim is disallowed hereby.

The defendant appealed.

C. N. Thákore (with *G. N. Thákore*) appeared for the appellant (defendant):—Section 21 of Bombay Regulation II of 1827

provides that no interference by Courts of law in caste questions is warranted. The plaintiff's suit is a caste question within the meaning of the Regulation and hence is not maintainable. The plaintiff calls himself a Shankaracharya of a Math called the Sharada Math at Dwarka. The defendant is a Shankaracharya of the Jyotir Math which has its branch at Dholka. The followers of the religion propounded by the original Shankaracharya constitute a sect some of whom may attach themselves to the plaintiff as one of the successors of the original *Guru*, while some may be devoted to the defendant who is another successor, while others may be attached to both. In the present suit the plaintiff has opened up the question of the right of devotees to attach themselves to the *Guru* to whom they feel themselves drawn. This right is purely a religious right involving the internal autonomy of the members of the sect or caste in matters religious. Such a right could not be rendered the subject of litigation in a Court of law. The term caste in the Regulation is not restricted to caste as used in a strictly limited sense. It has been held that the term is not necessarily confined even to the Hindus: *Abdul Kadir* v. *Dharma*(1). The followers of the religion of Shankaracharya are therefore clearly included within the definition of the term. The circumstance of offerings being occasionally made to the religious head will not avail to take the case out of the category of caste questions. The principle of the Regulation is followed in other provinces: *Roodurmun* v. *Damoodur*(2). The prohibition contained in the Regulation is held applicable to numerous cases in some of which the emoluments were in the nature of fixed periodical fees. See also *Shankara* v. *Hanma*(3), *Murari* v. *Suba*(4), *Dayaram Hargovan* v. *Jethabhat Lakhmiram*(5), *Murar Daya* v. *Nagria Ganeshia*(6). The Regulation is, therefore, very clearly a bar to the maintenance of the present suit.

Next we contend that, even apart from the Regulation, the suit is not one of a civil nature and is therefore beyond the cognizance of Civil Courts. No straining of language can bring

(1) (1895) 20 Bom. 190.
(2) (1862) 1 Hay 365.
(3) (1877) 2 Bom. 470 at pp. 472, 473.
(4) (1882) 6 Bom. 725.
(5) (1895) 20 Bom. 784.
(6) (1869) 6 Bom. H. C. R., A. C. J. 17.

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the present suit within the description of suits referred to in the explanation to section 11 of the Civil Procedure Code of 1882 as being of a civil nature. What the plaintiff claims is a declaration that the defendant is not entitled to the style, title and dignities of a Shankaracharya and a further declaration that the defendant is not entitled to collect offerings in his assumed capacity of a Shankaracharya or of a Shankaracharya of the Jyotir Math or of its branch at Dholka. The other reliefs claimed are either subsidiary to the above or are merely consequential. No objection is taken to the defendant's collecting offerings without calling himself a Shankaracharya. Such a claim could not have been made by the plaintiff in the absence of any grant from the Crown; certainly not in the absence of a grant from the original Shankaracharya. The suit, therefore, resolves itself into a suit in respect of style, title and dignities. In *Sri Sunkur Bharti Swami* v. *Sidha Lingayih Charanti*(1) the Privy Council doubted whether an action could be maintained in a Civil Court by the grantee of a dignity from the Crown against a person who without a grant would assume the like dignity. On remand the High Court of Bombay held that such an action could not be maintained. See also *Shankara* v. *Hanma*(2). In the present case there is even no allegation of a grant. Besides, the name or title of Shankaracharya has not been let down as a heritage by the original *Guru*: Ghose's Hindu Law, p. 784 (2nd edn.). The suit is, therefore, clearly not maintainable as being one brought to vindicate a right to mere dignity: *Sangapa* v. *Gangapa*(3).

The office of the Shankaracharya of the Sharada Math at Dwarka has nothing to do with the right to assume the title of a Shankaracharya within particular limits. Even if the right to this dignity be assumed to be in any way connected with the office at Dwarka, that circumstance makes no difference: *Rama* v. *Shivram*(4).

The office, if it is called one, of Shankaracharya consists, strictly speaking, of the right to exercise moral and spiritual supervision

(1) (1843) 3 Moo. I. A. 198 at p. 217.
(2) (1877) 2 Bom. 470.
(3) (1878) 2 Bom. 476.
(4) (1882) 6 Bom. 116 at p. 121.

over the followers of the original *Guru*. No suit could lie for the enforcement of claims appurtenant to such an office: *Tholappala Charlu* v. *Venkata Charlu*(1).

The suit is in effect to compel a particular kind of religious observance from certain people which being an obligation of a moral kind is not enforceable: *Striman Sadagopa* v. *Kristna Tatachariyar*(2). The circumstance of pecuniary presents being received by the occupant of the office hardly makes any difference, as these are not any fixed and certain emoluments attached to any office but are voluntary offerings in the nature of fluctuating gratuities: *Boyter* v. *Dodsworth*(3), *Muhammad Yussub* v. *Sayad Ahmed*(4), *Tholappala Charlu* v. *Venkata Charlu*(1), *Narayan Vithe Parab* v. *Krishnaji Sadashiv*(5).

It is not alleged that the defendant ever moved about calling himself Shankaracharya of the Sharada Math. No fees are claimable as of right by any Shankaracharya from his followers within any given area. The plaintiff's office, being confined to duties of a moral and spiritual kind, is in no way interfered with by the defendant's claiming similar functions in a distinct capacity. No cause of action can accrue under such circumstances to the plaintiff.

The cases relied on by the Subordinate Judge are not on all fours and are clearly distinguishable. In none of them a claim to mere dignities was made. The case of *Gursangaya* v. *Tamana*(6) was a case in which there was a contest in respect of fees claimable as of right by the plaintiff in virtue of the office he was holding. In *Sayad Hashim Saheb* v. *Huseinsha*(7) there was direct interference with the exclusive right to perform the duties and enjoy the privileges specifically appertaining to the office of the Vatandar Kazi and Khalif of Gadag, which was held by the plaintiff. In *Srinivasa* v. *Tiruvengada*(8) it is expressly stated that, where the claim is for a mere dignity or for damages caused by loss of voluntary offerings, no relief can be given. In

(1) (1895) 19 Mad. 62 at p. 64.
(2) (1863) 1 Mad. H. C. R. 301.
(3) (1796) 6 T. R. 681.
(4) (1861) 1 Bom. H. C. R., App. xviii, pp. xxxv, xxxvi.
(5) (1885) 10 Bom. 233.
(6) (1891) 16 Bom. 281.
(7) (1888) 13 Bom. 429.
(8) (1888) 11 Mad. 450.

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Sri Sadagopa Ramanuja Pedda v. *Sri Mahant Rama Kisore Dossjee*[1] relief was granted as the defendant's action amounted to an attempt to deceive by misrepresentation implied in the use of the word "vegayre."

We further contend that no exclusive right to assume the title of Shankaracharya and to receive the offerings in that capacity has been proved by the plaintiff. The *onus* on this point was on the plaintiff. No work proved to have been written by the original Shankaracharya himself confers or refers to such right. The works of Anandgiri, Madhav and other authoritative biographers of Shankaracharya's life prove the absence of such a right. Aiyar mentions no such right as having existed. Mathamnaya, on which the plaintiff relies, is not a work of Shankaracharya and could not have come down from him.

It is extremely unlikely that limits would be fixed by one who was himself an itinerant preacher and who wanted to spread his own religion. If *Sanyasis* could go everywhere, then why not the head of the *Sanyasis*? No right as such to receive gifts had accrued to Shankaracharya and he could not hand it down, fixing limits for the exercise of the right. Different Vedas, Gods and Goddesses having been assigned to each principal Math and the followers having the liberty to elect either in all the parts of India, the fixing of territorial limits would be absurd and anomalous. In no analogous institution do we find such limits fixed. The fixing of territorial limits would be inconsistent with an increase in the number of the Maths. The Maths have undoubtedly increased numerically: *Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti*[2], Ghose's Hindu Law, p. 778 (2nd edn.). People of the Shringeri Math have been going to the remotest corners of India: Hunter's *Imperial Gazetteer*, Vol. XIII, page 79. A branch Math has grown up at Sankeshvar: *Bombay Gazetteer*, Vol. 21, pp. 601 and 602.

D. A. Khare (with *U. K. Trivedi*) appeared for the respondent (plaintiff) :—There is conclusive evidence in the case to show that the defendant is not entitled to the style, title and dignities

(1) (1898) 22 Mad. 189. (2) (1843) 3 Moo. I. A. 198 at p. 217.

of a Shankaracharya of the Jyotir Math. For several hundred years past there has been no Shankaracharya on the *gadi* of the Jyotir Math and the affairs of that *gadi* are in the hands of a Brahmin. The defendant cannot trace his descent from any actual occupier of the *gadi*. One is entitled to be called a Shankaracharya only if he occupies one of the four *gadis* founded by the original Shankaracharya. The four seats were endowed with separate and exclusive jurisdictions, the extent of which has been set forth in the Mathamnaya.

The jurisdictions being exclusive, the defendant, even if he be a genuine Shankaracharya, has no right to establish himself in Gujarath which is within the jurisdiction of the plaintiff. All plaintiff's witnesses and several of defendant's witnesses admit that Gujarath is within the jurisdiction of the plaintiff's Sharada Math.

The defendant's predecessors in title established themselves at Dholka so recently as 1873. Since that time to this their rights have been repeatedly challenged in Civil Courts and they have failed to establish those rights.

Shankaracharya's is a high religious office with *quasi*-judicial functions on questions of religion, law and ritual in the Hindu society, and the organization of the four Maths with exclusive jurisdictions was necessary to prevent conflicts of authority and jurisdiction.

The question has to be looked to from the standpoint of a Hindu sovereign. Would a Hindu sovereign tolerate an imposter and allow him to feign the office and dignities of Shankaracharya?

The plaintiff has cause of action as the office is instituted for public benefit. Although the emoluments consist of merely voluntary gifts the plaintiff has a cause of action because according to the rules of ascetic life admitted by the defendant no *Sanyasi* can accept a pecuniary gift unless he is a Shankaracharya. The defendant himself admits that nobody would give him any gift if he did not style himself Shankaracharya. The defendant being not entitled to the style and privileges of Shankaracharya, his act in assuming the same is fraudulent and

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wrongful, and the cause of action so accrued to the plaintiff, he being the rightful claimant of the privileges of Shankaracharya in Gujarath. We do not, however, press the claim for damages, but we maintain that the decision of the lower Court as to the other relief, declarations and injunction is correct, and as given by a Hindu Judge of high learning and experience is entitled to great weight.

SCOTT, C. J.:—The plaintiff brought this suit for a declaration that the defendant is not entitled to the style, title and dignities of a Shankaracharya and that he is not entitled to call for or receive any offerings from the people of Ahmedabad and other places in Gujarath either in his assumed capacity of a Shankaracharya or of a Shankaracharya of the Jyotir Math or of a branch of that Math; for an account of the money received by the defendant as a Shankaracharya in Gujarath with a decree for payment to the plaintiff of the sum found to have been so received by the defendant, and for an injunction restraining the defendant from styling himself a Shankaracharya in Gujarath and from claiming or receiving offerings in Gujarath as a Shankaracharya or as a Shankaracharya of the Jyotir Math or of a branch of the Jyotir Math of Badrinath. The Subordinate Judge made a declaration that the defendant is not entitled to call himself a Shankaracharya of the Jyotir Math of Badrinath or of a branch of it at Dholka and to claim or receive any offerings from the people of the Judicial District of Ahmedabad in his assumed capacity of a Shankaracharya of the Jyotir Math of Badrinath or of the so-called branch of it at Dholka; and an injunction against the defendant so styling himself and claiming or receiving offerings. He held, however, that the claim for an account and recovery of offerings received by the defendant was unsustainable, as the offerings might or might not have been made to the plaintiff. From the decree of the Subordinate Judge the defendant has appealed to this Court.

It is not disputed that the religious reformer Shankar, about the 8th century A. D., established four Maths or Monasteries for Sanyasis or Ascetics in the North, South, East and West of India, namely, the Jyotir Math at Badrinath in the Himalayas,

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the Shringeri Math in Southern India, the Sharada Math at Dwarka in Gujarath and the Govardhan Math at Puri in Cuttack.

The name Shankaracharya, which means 'the preceptor Shankar,' properly belongs to the reformer Shankar alone, but after his death some of his leading followers appear to have adopted the name as a title, probably, as Mr. Ghose in his work on Hindu Law (p. 784) suggests, because they thought themselves incarnations of the reformer.

The doctrines of Shankar having obtained a permanent footing in India there naturally arose in the course of centuries other preachers besides the Mohunts of the original Maths who claimed to be incarnations of the founder and established new Maths in his honour. On the other hand, the original Maths did not continuously preserve their early prestige. Thus we find the Mohunt or head of the Shringeri Math writing in Shake 1774 (A. D. 1852) to the Mohunt of the Sharada Math a letter (exhibit 333) in which he thought it necessary to make "a statement of the conventional practice bearing in mind the disrespect with which it is treated in the present generation." He relates how the Acharyas of the Govardhan and Jyotir Maths degraded themselves to the position of Gosains and thus these two Maths remained without any Acharya although the Govardhan Math was subsequently revived by a Sanyasi from Gougak Nakhal. He describes how Sanyasis of the Shringeri Math have established Maths and set themselves up falsely as independent Acharyas and he combats the doctrine that any branch Maths can exist. He then proposes that certain areas should again be recognized as the territories of the respective Maths. We note from the report in 3 Moore's Indian Appeals, p. 199, that it was proved or alleged in the case of *Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti*[1] that the Shringeri savasthan had by 1835 A. D. been divided into five or six Maths, the Swamis of each of which claimed equal privileges as successors of Shankar.

It is claimed on behalf of the defendant that his predecessor in 1872 established or re-established the Jyotir Math at Dholka.

(1) (1843) 3 Moo. I. A. 198.

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This was not the first time that rival Shankaracharyas had appeared in Gujarath; thus the witness Maneklal Keshowlal (exhibit 244) states that in Gujarath before Raj Rajeshwaranand, the defendant's predecessor, two other Shankaracharyas had come but as they proved to be false they went away.

The establishment of the Math at Dholka followed by visitations and preaching by its Mohunt in various parts of Gujarath caused dissension amongst the Smart Brahmins, particularly at Sidhpur, and soon aroused opposition from the Mohunt of the Sharada Math.

The opposition was based upon practical as well as sentimental grounds, for it is customary for a successful preacher to receive money offerings from his admirers, and the attraction of followers to the Dholka Mohunt involved the withdrawal of probable or possible donors of offerings from the Dwarka Mohunt. In order to put a stop to the competition of the Dholka Mohunt the plaintiff in 1887 with the concurrence of his preceptor the then Mohunt of the Dwarka Math filed a criminal complaint at Sidhpur against Raj Rajeshwaranand, the then head of the Dholka Math, charging him with cheating by personating the Shankaracharya of the Jyotir Math. This complaint was dismissed and three other complaints of a similar nature brought against Raj Rajeshwaranand by Brahmin followers of the Dwarka Mohunt suffered the same fate.

The present suit is the first attempt made in a Civil Court to challenge the right of the occupant of the Dholka Math to preach as a Shankaracharya in Gujarath.

It is contended on the plaintiff's behalf that he has, throughout that part of India where Gujarathi is spoken, the exclusive privilege of preaching as a Shankaracharya and receiving the offerings of the followers of Shankar. This contention is based upon passages in certain versions of the Mathamnaya or traditional precepts of the Maths produced by some of the plaintiff's witnesses.

There is no authoritative version of the Mathamnaya and witnesses for the defendant have produced other versions of it

which differ in material particulars from those relied upon by the plaintiff. Thus, the plaintiff's versions after prescribing certain territorial limits for each Math contain the following precepts (see exhibit 335, paragraphs 25 and 26): —"The head preceptors should never enter into each other's territories, that is the rule. Good rules would be violated by transgression of the boundaries. It gives rise to an abode of quarrels; one should avoid that."

The defendant's versions do not contain these precepts nor any definition of territorial limits. It is not argued that the Mathamnaya was composed by Shankar himself and a learned witness for the plaintiff, Anandshankar Bapubhai, says that he has not read any work of the first Shankar in which he has defined the territories of the Maths. If there ever was any strict reservation of areas for the Mohunts of the different Maths certain facts proved in the case indicate that the reservation has long been disregarded. Thus, in recent times the Mohunt of the Shringeri Math and the deputy of the Mohunt of the Govardhan Math have visited Gujarath and taken offerings from their admirers while the plaintiff's predecessor visited Mathura and Benares and received offerings in those places. Again, when Raj Rajeshwaranand, the defendant's predecessor, came to Sidhpur in Gujarath as a Shankaracharya it is on record that the plaintiff who was then a disciple of the Mohunt of the Sharada Math made a mental obeisance in his honour.

It is clear from the above references to the evidence that the plaintiff has not succeeded in proving any exclusive and unbroken customary privilege for himself and his predecessors to preach and receive offerings as Shankaracharya in Gujarath. But, even if he had succeeded in discharging this burden, his suit would still fail, unless he could show that his claim was of a civil nature such as the Court will entertain: see Civil Procedure Code, section 11.

To decide disputes as to precedence or privilege between purely religious functionaries is no part of the business of the Civil Courts, nor will they grant injunctions to prevent preachers from preaching where they like under any title they please,

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provided no office or property is disturbed or interfered with. The Subordinate Judge has treated the case as one of disturbance of an office, namely, the office of Mohunt of the Sharada Math, although his decree is to restrain the defendant from styling himself Shankaracharya of the Jyotir Math and from claiming or receiving offerings in that capacity. Here there is clearly a confusion of ideas. The office of Mohunt of the Sharada Math is in no way endangered by the defendant's action in claiming to be a Shankaracharya of the Jyotir Math, nor are voluntary offerings made to Shankaracharyas in Gujarath fees claimable as of right by the holder of the plaintiff's office. The office, its property and appurtenant fees remain absolutely unaffected by the defendant's action. The defendant has never tried to represent himself or pass himself off as the Mohunt of the Sharada Math. The conclusion arrived at by the Subordinate Judge that the defendant was not truly the Shankaracharya of the Jyotir Math could not help the plaintiff's case. Even if we assume that conclusion to be correct it was irrelevant, for if the plaintiff had an exclusive privilege of preaching which could be enforced in a Civil Court, it could not matter what the real status of the defendant might be, while if he had no such privilege his suit must fail. The appearance of the defendant and his predecessors as Shankaracharyas in Gujarath may have affected the prestige as preachers of the heads of the Sharada Math, but for interference with a mere dignity no suit can be maintained: see per Lord Campbell in *Sri Sunkur Bharti Swami* v. *Sidha Lingayah Charanti*[1], *Sangapa* v. *Gangapa*[2], *Rama* v. *Shivram*[3]. Their appearance may also, by attracting offerings to themselves, have reduced the sums which would have been received by the Sharada Mohunts as voluntary offerings; but for voluntary offerings received no suit will lie: see *Boyter* v. *Dodsworth*[4]. On this ground the Subordinate Judge seems to have refused an account though he inconsistently granted an injunction to restrain the receipt of further offerings.

(1) (1843) 3 Moo. I. A. 198 at p. 217.
(2) (1878) 2 Bom. 476.
(3) (1882) 6 Bom. 116.
(4) (1796) 6 T. R. 681.

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For the above reasons we hold that this suit is not maintainable. We allow the appeal, set aside the decree, and dismiss the suit with costs throughout on the plaintiff.

Cross-objections dismissed with costs.

Decree reversed.

G. B. R.

APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Batchelor.

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November 19.

UMABAI KOM MANGESHRAV AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* VITHAL VASUDEV AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), section 28—Lands situate at different villages and in possession of different persons under different titles—One suit to recover possession of the lands—Misjoinder of parties or causes of action—Interlocutory judgments against different defendants—Final judgment for possession to be reserved till the conclusion of the trial.

The plaintiff, one of the reversionary heirs, sued to recover possession of a moiety of certain lands which were situate at different villages and in possession of different persons who were alienees by sale, mortgage or lease from the widow of the last male holder. In the lower Courts the suit was dismissed for misjoinder of parties or causes of action.

Held, on second appeal, that though the lands were situate in several different villages, provided the venue for the trial is the same, the right of the plaintiff to have her claim tried in one suit is the same as if the diffe ent holdings were all in the same village. It is never any bar to a suit in ejectment that many persons are in possession. The only possible objections were on the ground of inconvenience. The difficulties arising from variety of defences can be cured by the successive trial of the issues separately affecting different defendants. Following the English practice interlocutory judgments may, if the plaintiff succeeds, be given against different defendants as their cases are disposed of, final judgment for possession of the whole property being reserved till the conclusion of the trial of the whole case.

Ishan Chunder Hazra v. *Rameswar Mondol*(1) and *Nundo Kumar Nasker* v. *Banomali Gayan*(2) approved.

* Second Appeal No. 232 of 1906.

(1) (1897) 24 Cal. 831. (2) (1902) 29 Cal. 871.