APPELLATE CIVIL.

Before Mr. Justice Chandavarkar.

TRIMBAK GOPAL PARICHARAK AND OTHERS (ORIGINAL DEFENDANTS 6, 7, 10, 8, 11), APPELLANTS, *v.* KRISHNARAO PANDURANG AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS 1, 4, 12), RESPONDENTS.*

1909.

February 9.

KRISHNARAO PANDURANG AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* VISHVANATH GOPAL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 9—Civil Court—Jurisdiction—Suit of a civil nature—Suit by temple committee against temple servants for declaration as to their right to have the services performed.

The plaintiffs, as members of the committee of management of a temple, received annually from Government a sum of money for defraying the expenses of certain kinds of religious worship in the temple, and it was obligatory upon them to get the worship performed by the hereditary officers or servants attached to the temple. Those officers, owing to quarrels among themselves, failed to perform the worship, with the result that the duties owing to the deity were neglected and the funds in the hands of the plaintiffs remained undisbursed for the purposes for which they were held in trust. The plaintiffs, therefore, filed this suit against the temple servants for a declaration of the former's right to disburse the funds by getting the worship performed by a suitable person or persons of their own choice in the event of the hereditary officers or servants of the temple concerned failing to perform it, and for an injunction to restrain those officers or servants from obstructing the plaintiffs in the exercise of the right so declared. It was objected to the suit that it was not triable by a Civil Court because its prayer was for a bare declaration of the plaintiffs' right either to perform by themselves or to get performed certain religious ceremonies in a temple, and there was no contest as to any right to property or to any office.

Held, that the suit was of a civil nature.

An action would lie against the plaintiffs by the Advocate General acting on behalf of the public to compel them to a due execution of their particular acts of duty. The obligation cast on them by the trust gave them a corresponding right to disburse the funds after getting the religious worship for which those funds were intended, properly performed. Such a right was not the less of a civil nature though the funds were to be appropriated to religious ceremonies. The Court was not called upon to enter into the adjudication of any rites or ceremonies as such. What it had to decide was the right of the trustees to fulfil the trust unhindered.

* Cross Appeals Nos. 454 and 589 of 1907.

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SECOND APPEALS from the decision of V. M. Bodas, First Class Subordinate Judge, A. P., at Sholápur, confirming the decree passed by T. R. Kotwal, Subordinate Judge at Pandharpur.

Suit for declaration and injunction.

The plaintiffs were the committee of management of a temple at Pandharpur and as such were in receipt from Government of a certain allowance to meet the cost of certain religious ceremonies which came to be known as the *Sarkári puja*.

The defendants were the representatives of the families known as Badves and Shevadharies. The right to perform all the worship of the deity in the temple appertained to the former and it was their hereditary right. The other, the Shevadharies, performed a subordinate part in the worship and their right also was hereditary.

On the 4th July 1902, these two classes of temple officers quarrelled among themselves the result of which was that the *Sarkári puja* and all other ceremonies in honour of the deity were left unperformed that day and for ten consecutive days.

The plaintiffs therefore sued for a declaration that the defendants were not entitled to leave unperformed the usual worship of the deity, and that they were entitled to get the *puja* performed by the defendants, or if the latter refused, by other fit persons; and for an injunction against the defendants restraining them from obstructing the plaintiffs in getting the worship performed.

The plaintiffs' claim was decreed by the Court of first instance. And, on appeal, it was upheld by the lower appellate Court, on the following grounds:—

"The conduct on the part of the Badves and the Sevadharies certainly gives the plaintiffs a cause of action to sue for the relief which they have now claimed, because what happened in July 1902 may happen again at any time; and the only question, so far as I can see, is, whether having regard to the provisions of section 11 of the Code of Civil Procedure, 1882, the suit can be maintained. I agree with the lower Court in holding that it can be. It is to be remembered that the present allowance from Government is the continuation of the old grant which the former Governments had made especially for defraying the expenses of particular *pujas* and other services to the deity. From the first, the money has been applied rigidly to those purposes and to no other.

Not only that but till the annexation of the Sátára Raj the application of the money had actually been made by the officers of Government themselves. In sanctioning the continuance of the allowance, the present Government has also specifically mentioned the several *pujas* and services to which the money shou'd be applied by the committee of management appointed by them. It is admitted and proved that the Badves and Sevadharies have no right to stop the morning and other *pujas* and the plaintiffs' right to have them done through the Sarkári Badves that is, a descendant of Bhimáji or his representative. All this goes to show that the present is a suit not to vindicate plaintiffs' right to a mere dignity or merely for a declaration of their right to have certain religious ceremonies performed, but for something more which is one of a civil nature."

The parties appealed to the High Court.

G. S. Rao for the Shevadhari defendants:—This suit is not of a civil nature. It is brought to enforce religious duties; and is therefore not cognizable by a Civil Court. See *Vasudev* v. *Vamnaji*[1]; *Ramrao* v. *Rustumkhan*[2]; *Waman Jagannath Joshi* v. *Balaji Kusaji Patil*[3]; *Vanamamalai Bhashyakar* v. *Krishnaswami Thathachariar*[4]; *Subbaraya Mudaliar* v. *Vedantachariar*[5]; *Kooni Meera Sahib* v. *Mahomed Meera Sahib*[6]; *Krishnasami Ayyangar* v. *Samaram Singrachariar*[7].

Chamier (with *S. S. Patkar*) for the Badve defendants was heard in support of Mr. Rao's contentions.

D. A. Khare, with *P. D. Bhide*, for the plaintiffs:—The suit is not of a religious but of a civil nature. It is brought to vindicate the natural rights of each private individual to enter a temple and perform the worship. In this the plaintiffs in common with other private individuals were obstructed and they have brought this suit to vindicate their civil rights.

CHANDAVARKAR, J.—It is contended for the appellants, on the authority of this Court's decision in *Vasudev* v. *Vamnaji*[1], that a Civil Court has no jurisdiction to try a suit of the present character because its prayer is for a bare declaration of the plaintiffs' right either to perform by themselves or to get performed certain religious ceremonies in a temple, and there

(1) (1880) 5 Bom. 80.
(2) (1901) 26 Bom. 198.
(3) (1888) 14 Bom. 167.
(4) (1905) 16 M. L. J. 150.
(5) (1904) 28 Mad. 23.
(6) (1906) 30 Mad. 15.
(7) (1903) 30 Mad. 158.

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is no contest as to any right to property or to any office. Carefully analysed, the suit is not of that nature. The plaintiffs are members of the Committee of Management of the Temple of *Shri Vithoba* and *Shri Rakhmabai* at Pandharpur. They hold the office under a *sanad* from Government and receive annually a certain sum of money for defraying the expenses of certain kinds of religious worship in the Temple known as *Sirkari Puja*. The obligation is attached to that office to get that worship performed by the hereditary officers or servants attached to the Temple. The plaintiffs complain that those officers, owing to quarrels among themselves, have failed to perform the worship with the result that the duties owing to the idol are neglected and the funds in the hands of the plaintiffs undisbursed for the purposes for which the plaintiffs hold those funds in trust. Accordingly, they ask for a declaration of their right to disburse the funds by getting the worship performed by a suitable person or persons of their own choice in the event of the hereditary officers or servants of the Temple concerned failing to perform it; and they ask for an injunction to restrain those officers or servants from obstructing the plaintiffs in the exercise of the right so declared.

The facts above stated, which are found proved by both the Courts below, distinguish the present case from that in *Vasudev* v. *Vamnaji*[1]. The latter was a case of bare religious worship. Here the plaintiffs are trustees of a public charitable trust holding moneys in their hands for disposal in a certain manner for certain defined purposes. They hold the funds on behalf of the public for the benefit of the deity of the Temple, who, in Hindu Law, is considered as a sacred entity, or ideal personality possessing proprietary rights: see *Thackersey Dewraj* v. *Hurbhum Nursey*[2]. The deity of the Temple being, according to that law, a juridical person as "the ideal embodiment of a pious or benevolent idea as the centre of the foundation, this artificial subject of rights is as capable of taking offerings of cash and jewels as of land. Those who take physical possession of the one as of the other kind of property incur thereby a

(1) (1880) 5 Bom. 80. (2) (1884) 8 Bom. 432.

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responsibility for its due application to the purpose of the foundation. . . . They are answerable as trustees . . . and a remedy may be sought against them for mal-administration by a suit open to any one interested:" *Manohar Ganesh* v. *Lakhmiram Govindram*(1). It would be so in the case of non-administration also. An action would lie against them by the Advocate-General acting on behalf of the public to compel them to a due execution of their particular acts of duty. The obligation cast on them by the trust gives them a corresponding right to disburse the funds after getting the religious worship, for which those funds are intended, properly performed. Such a right is not the less of a civil nature though the funds are to be appropriated to religious ceremonies. The Court is not called upon to enter into the adjudication of any rites or ceremonies as such. What it has to decide is the right of the trustees to fulfil the trust unhindered.

The suit was brought against two sets of defendants—one consisting of the *Badves* and the other consisting of the *Shevadharis*, of the Temple. The lower Courts have given to the plaintiffs a decree as against both the classes of defendants. But it is urged in this second appeal that the decree is erroneous in law so far as it affects those *Shevadharis* who are not Pujaris, because these had nothing to do with the dispute between the *Badves* and the other *Shevadharis* which led to the stoppage of the worship and compelled the plaintiffs to file the suit. This objection does not appear to have been raised in the lower appellate Court. That Court has found that the plaintiffs had to sue because of the conduct of the *Badves* and the *Shevadharis*. That finding of fact included all classes of *Shevadharis*. Even assuming that the *Shevadhari* defendants, who are not Pujaris, had done nothing before suit to give the plaintiffs a cause of action against them, the denial of the plaintiffs' right by them in their written statements is sufficient in law to cure that defect and entitle the plaintiffs to the declaration claimed as against them under section 42 of the Specific Relief Act.

The decree of the lower Court declares the right of the plaintiffs to get the worship performed by "their *Badves* appointed

(1) (1887) 12 Bom. 247 at p. 265.

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perpetually, *viz.*, the descendants of Bhimaji." For the appellants it is complained that this term of the decree ignores the rights which they have according to the decrees passed by this Court in litigation between them and the *Badves*. I do not think that the declaration was intended by the lower Courts to have any such result. But to prevent all ambiguity or misconstruction, I would add the words, "with due regard to the judicially declared rights of the other *Badves* and the *Shevadharis*", after the words above quoted. As to the Second Appeal preferred by Mr. Chamier's clients (S. A. 488 of 1907) I do not think that there is any conflict or inconsistency between the decree passed by the Subordinate Judge Mr. Kotval, and that passed by the Subordinate Judge Mr. Karkare, both of which have been confirmed by the lower appeal Court.

The lower Court's decree is imperfect in that it does not give to the plaintiffs the particular relief for which the suit was brought. They asked for a declaration that in the event of the *Badves* and the *Shevadharis* refusing or failing to perform the *Sirkari Pujas*, they (the plaintiffs) were entitled to get the *pujas* performed by a suitable person or persons of their choice. This declaration must be added to the decree.

The result is that the lower Court's decree must be modified by adding the words and the declarations above mentioned. As to costs, the appellants in Second Appeal No. 454 of 1907 must pay the costs of the respondents (separate sets for plaintiffs and the respondent defendants). In Second Appeals 588 and 589, the appellants must have their costs from the respondents. In Second Appeal 488 of 1907 each party should bear his own costs.

Decree varied.

R R.