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attesting witness. It is, therefore, not established that he was. That being so, it is not established that the mortgage deed in this case was a duly executed mortgage deed. Therefore I think the appeal must be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

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WAMAN BALWANT KASHIKAR AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS, v. BALU HARSHET SHETE AND OTHERS (ORIGINAL
DEFENDANTS) RESPONDENTS. °

*Civil Procedure Code (Act V of 1908), section 9—Suit of a civil nature—
Right to worship—Temple—Right to carry processions through public
streets with music—Practice.*

A suit to establish the right to worship a deity according to one's own belief and to carry processions accompanied with music through a public street, is a suit of a civil nature within the meaning of section 9 of the Civil Procedure Code, 1908.

SECOND appeal from the decision of T. R. Kotwal, Assistant Judge at Ratnagiri, confirming the decree passed by S. A. Gupte, Subordinate Judge at Chiplun.

The facts of the case are fully stated in the judgment of Shah, J.

K. H. Kelkar, for the appellants.

Jayakar, with *S. S. Patkar*, for respondents Nos. 1 and 3.

SHAH, J. :—The question in this second appeal is whether the plaintiffs' claim is cognizable by civil Courts.

° Second Appeal No. 818 of 1917.

The plaintiffs allege that their ancestors set up a new Bahiri temple at Chiplun for worship and devotional sports many years ago, that the present defendants' ancestors, who worshipped the same deity installed as the old Bahiri, filed suit No. 28 of 1844 in the Court of the Munsiff of Chiplun against the worshippers of the newly installed deity, and that in that suit they in effect sought to restrain the then defendants (plaintiffs' predecessors) from carrying on the worship of the new Bahiri in the same manner as the worship of the old Bahiri. A decree was passed in the suit and ultimately upheld by the Sudder Diwani Adawlut in Special Appeal No. 4631 in the year 1852, under which the then defendants were restrained from performing certain ceremonies as being appurtenant to the village deity, but were allowed to perform them on their passing an agreement to the Collector that they would not perform the particular ceremonies as village ceremonies, but would perform them for sports and out of devotion. They further allege that in 1911 the District Magistrate passed an order under section 44 of the District Police Act at the instance of the present defendants restricting the plaintiffs in their worship to the four rites mentioned in the said decree and referred to in the prayer clause as items Nos. 1, 9, 11 and 13. They allege that they have been subsequently prohibited by an order made in October 1911 to use a *dhol* on the said occasions. They claim in this suit a declaration that they have a right to do certain acts of worship in connection with the new Bahiri and for an injunction restraining the defendants from obstructing them in the performance of the worship in that manner. They also claim damages to the extent of Rs. 5. The acts referred to in the prayer clause are these :—

- “ 1. *Palkhi* procession in the month of Falgun.
2. Performance of *tamasha* on the *sahan* before the God and *tamasha* procession along with the *palkhi* in the town.

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3. Moving about in the town playing *dhulwad* (playing with mud, &c.) along with *nishans* and *zendes* (banners) on the first day of the latter half of Falgun.

4. Moving about in town playing *shenwad* (playing with cowdung) along with *nishans* and *zendes* (banners) on the 2nd day of the latter half of Falgun.

5. Procession of *rang* (colours) through the town and the throwing of colours on each other's body on the 5th day of the latter half of Falgun.

6. Taking of the *palkhi* to Chetawali in Chaitra.

7. *Pal-kiraka* procession in Jeshta and Ashad and on occasions a *kiraka* procession of and killing of a goat.

8. To do *jagar* in Shrawan and on the full-moon day in Shrawan taking of a cocoanut in procession from the temple to the Bunder (harbour) for offering to the water-deity.

9. Tying *povtis* (cotton thread) round the wrist of the God in Shrawan.

10. Taking of the *palkhi* in procession to Uktad in Bhadrpad.

11. Setting up *घट* (*ghat*) in the temple in Ashwin.

12. Taking out *palkhi* on *Dasara* day for the worship of Shami-tree.

13. Waiving lamp about the idol in *Diwali*.

14. Raising of the banner and the God going to hunting on the full-moon day in Paush and the lowering of the banner and the return of the God on the full-moon day in Magh.

15. And other acts required to be done occasionally, and to use the *dhol* on those occasions."

The defendants contend that the claim is not cognizable by the civil Courts and that on merits the plaintiffs have no such rights. The plaintiffs gave a *purshis* to the effect that the right of performing the ceremonies mentioned in the plaint was not vested in the deity, but it was their right to perform the said ceremonies before the deity for sports and out of devotion.

Both the lower Courts have disallowed the plaintiffs' claim on the preliminary ground that the suit is not cognizable by the civil Courts.

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In the appeal before us we are not concerned with the merits of the plaintiffs' claim, nor with the extent and form of the relief, which the plaintiffs may be ultimately found to be entitled to. The only question that we have to consider is whether the claim is cognizable by the civil Courts.

It will be convenient to state the terms of the decree in the suit of 1844 and of the order of the District Magistrate. In the suit of 1844 the Court had made the following order :—

“ By doing ceremonies of *manasthiti* such as taking out *palkhis*, preparing *povtis*, &c., at the new temple in course of time it will not be possible to distinguish ceremonies of *manasthiti* from the other ; and plaintiff will thereby suffer. Therefore the ceremonies of *manasthiti* performed at the new temple, i.e.,

- (1) Taking out *palkhi* in Shimga,
 - (2) Preparing *povtis* in Shrawan,
 - (3) Setting up *ghat* घट in Ashwin,
- and
- (4) Waiving lamp in Diwali,

should not be performed by the defendants. But if the defendants pass a *muchalka* मुचळका (recognizance) or *karar* करार to Government that they will perform them not as village ceremonies (गावकीची मानस्थिती) but will perform them for sport and out of devotion (खेळदाखल भक्तीची), there is no reason to forbid them to do so. They should follow their own devotion. Performing ceremonies of *manasthiti* at the new temple is not approved by Government. If defendants do not pass a *karar* करार, they should not perform the ceremonies specified in the plaint.

The stone set up as idol by defendants is installed according to rites as stated by defendants' witnesses. There is therefore no reason to remove them. They will be treated like the several ones which some people set up out of devotion.”

The District Magistrate passed a considered order under section 44 of the District Police Act (Bombay Act IV of 1890) in which he directed in paragraph 16 (2) that—

“The new Bahiri people should perform only the four ceremonies mentioned in paragraph 13 above after passing the *karar* to Government that they would

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perform them for sport and out of devotion and not as of *manasthiti*; they shall not perform at all the other ceremonies referred to in paragraph 14 above neither out of sport nor out of devotion nor as of *manasthiti* and shall not be allowed to pass any *karar* concerning those other ceremonies."

The ceremonies referred to in paragraphs 13 and 14 of the order are the ceremonies which are now referred to in the plaint.

The question is whether the present claim of the plaintiffs is of a civil nature. There is no question in this suit as to the right to property or to an office and the explanation to section 9 of the Code has no application. It is not suggested in this case that the cognizance of this suit is either expressly or impliedly barred. In fact section 44 of the District Police Act expressly, provides that any order made by the District Magistrate under sub-section (1) shall be subject to a decree, injunction or order made by a Court having jurisdiction. The question, therefore, simply is whether the suit as framed is of a civil nature within the meaning of section 9 of the Code. Almost all the prayers in the plaint relate to some processions to be carried in the town of Chiplun on some occasions accompanied with some ceremonies in connection with the new Bahiri. The plaintiffs claim the right to worship the deity in any manner they please and to use the public streets for the purpose of processions connected with the worship of the deity as detailed in the plaint and to use the *dhol* on these occasions; and they make it clear that they do not claim to carry on any worship in connection with the new Bahiri as if it was the worship of the village deity (Gram Devata). The order of the District Magistrate makes it clear that they are prohibited altogether from performing any of these ceremonies except the four which are mentioned in the decree in the suit of 1844, even for sport or out of devotion. The pleadings in the present case and the terms of the order of

the District Magistrate make it quite clear that the real dispute between the parties is as to whether the plaintiffs are entitled to carry on the worship of the new Bahiri as they please so long as they do not perform it as of *manasthiti* or whether the defendants have the exclusive right to perform those ceremonies with reference to the village deity and to prevent other persons from performing similar worship in connection with another deity of the same name. The prayers in the suit also involve the claim to use the public streets for the purpose of certain religious processions as detailed in the plaint. The question in this case is not whether the defendants shall be required to perform any ceremony or that the plaintiffs shall be required to do so, but whether the ordinary right of a citizen to worship, according to his own belief, any deity and in such manner as his belief requires him to do so long as he does not prevent others from carrying on similar worship according to their own belief, is a right of a civil nature. After giving the best consideration to this point it seems to me that in substance the plaintiffs' suit is of a civil nature, and if they have a right to worship the new deity in any manner they please, any interference with that right is a matter with reference to which they can get relief in a civil Court provided they are found entitled to that relief.

It has been held in several cases that the right to conduct religious processions in the public streets is a right inherent in every person, provided he does not thereby invade the rights of property enjoyed by others or cause a public nuisance or interfere with the ordinary use of the streets by the public and subject to such directions or prohibitions as may be issued by the Magistrate to prevent obstructions to the thoroughfare or breaches of the public peace. Further the right to carry on the worship of any deity in any manner that a

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person pleases subject to similar conditions is also a right inherent in every person, and it is an important right. I do not think that the lower Courts are right in holding that the suit is not of a civil nature. In the present case the question does not relate to any religious rites or ceremonies, but to the right of the plaintiffs to be protected in the performance of the worship of their deity in any manner they please subject to the conditions which I have already stated with reference to the right to use the public streets, and to their right to prevent the defendants from interfering with the performance of the worship in their own way.

This conclusion in the present case appears to me to be consistent with the view which the Sudder Diwani Adawlut took in the suit of 1844 which came up to that Court. It was held by the learned Judges then that the suit was cognizable by a civil Court under Regulation II of 1827, section 21, as it then stood, having regard to the nature of that suit and the relief claimed by the plaintiffs in that suit. The present suit seems to me to be of a similar nature. The present plaintiffs seek to be protected in the performance of their worship of the deity. I do not express any opinion as to the effect of the decree in that suit on the merits of the present claim. The District Magistrate has referred to this decree in his order; and it is a point in dispute between the parties as to whether the effect of the decree is in favour of the plaintiffs or the defendants in the present case. That is a matter which the Court dealing with the suit on the merits will have to consider and to decide. I refer to that suit at present only for the purpose of showing that it was held to be of a civil nature.

Several cases have been cited in the argument at the Bar; but I do not consider it necessary to discuss them. The nature of the present suit must be determined with

reference to the allegations and the pleadings in the present case. The observations in the reported cases which have been relied upon on either side must be read with reference to and in the light of the nature of the particular suit in which they are made. I do not think that any decision referred to in the argument conflicts in any way with the view which I take of this case.

I would, therefore, allow this appeal, set aside the decrees of the lower Courts and remand the suit to the trial Court for disposal according to law.

All costs to be costs in the suit.

HAYWARD, J.:—I agree. The cause of action is, in my opinion, of a civil nature in so far as it relates to the conduct of the defendants tending to prevent the exercise of the ordinary rights of freedom of worship of the other side whether in private or in public. It would seem, broadly speaking, that every citizen has a right to worship as he pleases so long as he does not thereby trench upon the rights of office or property of other persons. He has, broadly speaking, similarly a right to go in procession so long as he does not interfere with the rights of others to the unrestricted use of the public roads and streets. But the exercise of these rights is always subject to such orders as might be necessary to prevent disorder or riot by the Magistrates under section 44 of the Bombay District Police Act or section 144 of the Criminal Procedure Code.

Appeal allowed.

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