

**(1893) 12 CAL CK 0008**  
**In the Calcutta High Court**

Akali Dassia and Others

APPELLANT

Vs

Jagannath Churn and Others

RESPONDENT

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**Date of Decision :** 31-12-1893

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 11

**Citation :** (1894) ILR (Cal) 463

**Hon'ble Judges :** Rampini, J; Banerjee, J

**Bench :** Division Bench

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## Judgement

Banerjee and Rampini, JJ.—This appeal arises out of a suit brought by the plaintiffs, respondents, who are some of the bhakats, or members of a religious fraternity, in Assam, against the satria, or head of the fraternity, and the other members, for the establishment of their right to enter into and perform their prayers and other rites in a kirtanghar, or prayer-hall from which they allege they have been wrongfully dispossessed by the defendants, for having the said kirtanghar made over to them and for perpetual injunction restraining the defendants from interfering with the plaintiffs in the performance of the said rites. The plaintiffs allege in their plaint that the management of the business connected with the satra, or religious union, including the distribution of honorarium and offerings and the appointment and dismissal of the satria, or head, is entrusted with the samuha, entire body of bhakats; and that they and their forefathers have been from generation to generation in receipt of honorarium and offerings and have been performing rites and ceremonies according to custom.

2. The defence was that the suit was bad for misjoinder of plaintiffs, that its true value was beyond the limits of the pecuniary jurisdiction of the Court; that it was barred by limitation; that the plaintiff's were not entitled to the rights they claimed for themselves as bhakats; and that plaintiff" No. 1 having received mantra, or initiation from one Saruram, contrary to the rules of the fraternity, and having been convicted of a criminal offence, and he and his partizans having

disobeyed the order of the fraternity directing them to pay a fine, they had been debarred from entering the kirtanghar.

3. The first Court overruled all the pleas in bar, and on the merits it found that the plaintiff as bhakats were entitled to the rights they claimed; but that plaintiff No. 1, by receiving mantra from Saruram, had disobeyed the rules of the brotherhood, and had been justly fined for that offence. It held, however, that the amount of the fine, which was Rs. 100, was excessive, and it reduced the amount to Rs. 20, and gave the plaintiff's a decree upon condition of their paying Rs. 20 to the satra.

4. On appeal by the defendants, the lower Appellate Court has held that the defendants, who form the majority of the bhakats were entitled by the customary rules of the fraternity to impose the fine of Rs. 100 and to enforce the payment of the fine by excluding the plaintiff's from the kirtanghar and it has further held that the Civil Courts have no jurisdiction to alter the amount of the fine imposed, and it has accordingly varied the decree of the first Court and decreed the suit on condition of the plaintiff's conforming to the rules of their order and complying with the decision of the majority of the bhakats.

5. Against that decree the defendants have preferred this second appeal, and it is contended on their behalf, first, that the suit should have been dismissed as it was not cognizable by the Civil Courts, it being a suit not of a civil but of an ecclesiastical nature; secondly, that even if the suit was of a civil nature, still the Courts below should have held that they had no jurisdiction to interfere with the decision of the majority of the bhakats by which the plaintiffs had been excluded from the prayer-hall; and, thirdly, that even if the Civil Courts had jurisdiction to interfere with the decision of the majority of the bhakats, upon the facts found by the lower Appellate Court, that the fine had been justly imposed and the plaintiffs justly excluded by reason of its non-payment, the present suit should have been dismissed.

6. We do not think that the appellants are entitled to succeed upon the first point. Having regard to the prayer for possession of the kirtanghar and to the allegations made in the plaint about the position and privileges of the bhakats and their rights to honorarium and offerings, and to the defendants' denial of those rights and of the plaintiffs' right to enter the kirtanghar, we think the suit must be regarded as one in which right to property and to an office within the meaning of the explanation to Section 11\* of the CPC is contested, and that being so, the suit must be regarded as a suit of a civil nature and cognizable by the Civil Courts. That similar suits have been entertained by our Courts will appear from *Debendro Nath Mullick v. Oditi Churn Mullick* ILR Cal. 390, *Auandrav Bhikaji Phadke v. Shankar Daji Charya* ILR 7 Bom. 323, and *Vengamuthu v. Pandaveswara Gurukul* ILR Mad. 151.

7. It was argued that the honorarium and offerings were of trifling and merely nominal value, and that the fact of the suit involving a dispute as to these was

not, therefore, sufficient to make it a suit of a civil nature; and in support of this argument *Narayan Vithe Parab v. Krishnaji Sadashiv* ILR 10 Bom. 233 was referred to. But there is no finding as to the value of the honorarium and offerings, nor were the Courts below called upon to arrive at any finding on this point when no objection was raised before them that the suit was not cognizable by the Civil Courts.

8. In support of the second contention of the appellants, namely, that even if the suit was of a civil nature, within the meaning of Section 11 of the Code of Civil Procedure, it was not competent to the Civil Courts to interfere with the decision of the majority of the bhakats, we were referred to *Sudharam Patar v. Sudharam* 3 B.L.R. A.C. 91 : 11 W.R. 457, *Advocate-General of Bombay v. Haim Devakar* ILR 11 Bom. 185, *Hopkinson v. Marquis of Exeter* L.R. 5 Eq. 63, and *Dawkins v. Autrobus* L.R. 17 Ch. D. 615.

9. Now in the first place we do not think that the rule laid down in these cases is applicable to the present case. The English cases cited are cases of expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins any such association may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules. The case, however, is very different with regard to castes or religious fraternities like the one before us. As a rule, people do not join them as a matter of choice; they belong to them as a matter of necessity; they are born in their respective castes or sects; and the consequences of exclusion from caste or sect are far more serious and affect a person's status in a far greater degree than those on expulsion from a club. The protection of Courts of Justice, even though presided over by Judges of a different religious persuasion, against expulsion seems, therefore, to be much more needed in the one case than in the other. The case of *Sudharam Patar v. Sudharam* 3 B.L.R. A.C. 91 : 11 W.R. 457 is expressly stated to be one in which the exclusion complained of was not one from caste, but only from a samaj or association of a purely social nature, whereas the fraternity from which exclusion is complained of here is altogether of a different character. The Bombay case [*Advocate-General of Bombay v. Haim Devakar* ILR 11 Bom. 185] is no doubt more in point, but as it is opposed to the decisions on this side of India [See *Gopal Gurain v. Gurain* 7 W.R. 299 and *Ramkant v. Ram Lochan* S.D.A. 1859, p. 535,] with all respect for the learned Judge who decided that case, we must follow, as we are bound to do, the decisions of our own Court in preference to it.

10. In the second place, even if the rule laid down in the cases cited by the learned vakil for the appellants was applicable here, still that rule is subject to an important qualification which leaves it open to Courts of Justice to interfere with the decision of a private association, if it is shown, in the first place, that the rules of the association according to which the decision is arrived at, to use the language of Lord Justice Brett in *Dawkins v. Antrobus*, are contrary to natural justice, or, secondly, that the decision is against the rules of the association, or

thirdly, that the decision has not been come to bond fide. Now, in the present case the decision of the majority of bhakats has been left untouched by the Lower Appellate Court, so far as the propriety of their imposing the fine of Rs. 100 goes, and so far also as the propriety of their excluding the plaintiffs from the prayer-hall until the payment of the fine is concerned; and the only extent to which the decision of the learned Judge below is against the wish of the defendants, appellants, is that he has ordered the re-admission of the plaintiffs into the kirtanghar upon their complying with the order imposing the fine. Is this such an interference with the decision of the domestic tribunal of the parties as is opposed to the cases cited? We think not. However reasonable it may be that the payment of the fine imposed should be capable of being enforced by exclusion from the prayer-hall until such payment, there is no finding that a refusal to pay the fine should, according to the customary rules of the congregation of bhakats, produce permanent disqualification to enter the kirtanghar, which cannot be removed by any subsequent payment of the fine. And, even if there had been a finding that there was any such rule, we should have felt bound to hold that it was contrary to natural justice. The very fact of the congregation, in the first instance, imposing a fine for the offence of the plaintiffs, whatever it was, shows that it was expiable by payment of money and did not in itself entail permanent exclusion from the fraternity; and it would be contrary to natural justice to enforce such exclusion even after the reason for it has ceased. We are, therefore, of opinion that the second point urged before us must also fail.

11. It remains now to consider the third point, which was very strongly pressed before us, namely, that upon the finding of fact arrived at by the Lower Appellate Court, that the exclusion of the plaintiffs from the kirtanghar was justified by their refusal to pay the fine imposed on them, their present suit should have been dismissed and the conditional decree made should not have been granted. It was argued that, upon the facts found, the plaintiffs had no cause of action. We do not think that this contention is sound.

12. Let us see whether there was or was not a cause of action, and for that purpose let us examine the statements of the plaintiffs in their plaint, and let us also examine the statements of the defendants in their written statements; not that the defence can in any way give rise to a cause of action that did not exist before, or complete a, cause of action that was incomplete before, but the statements of the defendants may throw light on the question what was the real nature and extent of the infraction of right complained of.

13. Now the plaintiffs in their plaint (see paragraph 6) allege that the defendants wrongfully expelled them from the temple, denying all their rights and forbidding them to perform their prayers any longer in the satra, and they claim to be entitled to re-admission. Here there is an allegation of complete and not merely temporary exclusion from the prayer-hall. It is true that the plaint most disingenuously omits all allusion to the fine of Rs. 100 which is now found to have been justly imposed, and asks for an unconditional decree for re-admission.

This is certainly most reprehensible. But the proper penalty for that is disallowance of costs and not dismissal of the claim. In answer to the claim made, the defendants did not deny that there was a permanent exclusion, nor did they contend that there was no cause of action because the plaintiffs' right to enter the prayer-hall had only been suspended so long as the fine imposed on them remained unpaid, and that they were not entitled to sue for re-admission into the temple until the fine was paid, but, on the contrary, they asserted (see paragraphs 9 and 13 of the written statement) that the plaintiffs had been expelled from the satra for refusal to pay the fine, and that they were debarred from entering it; and there being no denial of the existence of a cause of action, no issue was raised on the point, and no finding has been arrived at by either of the Courts below as to whether there was or was not a complete cause of action. For this, however, the plaintiffs should not suffer. The real fault in the plaintiffs' case then is not that the plaintiffs ask for relief--when there was no occasion for their doing so,--but that they ask for relief unconditionally when they ought to have asked for it on condition of their obeying the order for fine. They may not be entitled to the larger measure of relief they ask for, but that does not show that they are not entitled to any relief at all.

14. The grounds urged before us therefore all fail.

15. The decree of the Lower Appellate Court, however, requires to be made more explicit as to the condition imposed, and that should be done by expressly stating that the relief that is granted to the plaintiffs is granted on the condition that they conform to the rules of their order, and within three months from the date of this judgment pay to the treasury of the satra, or to the defendants, or deposit in Court for the purpose of being so paid the sum of Rs. 100 which the plaintiffs were required by the decision of the majority of bhakats to pay. In all other respects that decree will stand. Under the circumstances each party will bear his own costs.

\* Courts to try all civil suits unless specially barred.

[Section 11 : The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

Explanation.--A suit in which the right to properly or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.]