

**(1935) 11 BOM CK 0021**  
**In the Bombay High Court**

Dhanu Lal Suchanti

APPELLANT

Vs

Hukum Chand

RESPONDENT

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**Date of Decision :** 15-11-1935

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

**Citation :** (1936) 38 BOMLR 336

**Hon'ble Judges :** Thankerton, J;John Wallis, J;George Rankin, J

**Bench :** Full Bench

**Final Decision :** Allowed

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## Judgement

John Wallis, J.—This is an appeal from an order and decree of the High Court at Patna affirming an order of the Subordinate Judge of Patna in execution of a decree obtained by the plaintiffs, who represent the Digambari sect of Jains, against the defendants, who represent the Svetambari sect, in a suit instituted pursuant to Order I, Rule 8, of the CPC in respect of the rights claimed by the Digambaris in three ancient temples at Pawapuri and Porkharpur in the Patna District. The dispute which is the subject of this appeal arises out of the centuries-old differences between the two sects of Jains as to whether the wearing of clothes or adornments is prohibited by their religion. The Digambaris who are necessarily debarred from fully observing this prohibition are under no such restriction as to the images which they venerate or worship. It is alleged in the plaint that images which do not represent the natural figure of man as born without any clothes or adornment are not "worshippable" by the Digambari Jains. On the other hand the images worshipped by the Svetambaris are both clothed and adorned; and it is stated in the plaint that in one of the suit temples there are two sets of images one clothed and the other unclothed which are worshipped by the Svetambaris and the Digambaris respectively. Both sects also venerate or worship charans or representations of the footsteps of their Tirthankaras or saintly personages at the places where in times long past they attained Nirvana or salvation. Most of these charans are situated on the Parasnath Hill in Chota Nagpore, and were the subject of the suit which recently

came before this board in *Hukum Chand v. Mahmaj Bahadur Singh* (1933) L.R. 60 I. A. 313 : 35 Bom. L.R. 990.

2. The charan of Mahabir Swami, the twenty-fifth and last of the Tirthankaras, is placed on a niche in one of the suit temples, where it is worshipped by both sects. During worship by the Svetambaris the charan is clothed and adorned, but these coverings and adornments are removed for worship by the Digambaris. It is alleged in the plaint that the plaintiffs had come to know that the Svetambaris had placed an image of Swami Mahabir of Svetambaria type, that is to say, clothed and adorned, near the charan already mentioned and had thus interfered with the right of the Digambaris to worship the charan undisturbed by any object not worshippingable by them. It appeared from the evidence that the defendants had installed a small metal image of the Swami at the back of the niche on which the charan is placed. The plaintiffs accordingly prayed for an order that the image be removed, and that the defendants " be permanently restrained from permanently placing an adorned image in the temple in question.

3. It was alleged by the defendants in the written statement that the image had been there from time immemorial, but it was found by the Subordinate Judge that it had been placed there at some time in or after 1915. It was also found by the Subordinate Judge that the presence of the image was calculated to disturb the Digambaris in their prayers and meditations at the shrine. The decree dated August 18, 1930, gave the plaintiffs a declaration that the Digambaris were entitled to a free and unrestricted right of worship : according to their own mode in the temple without any interference whatsoever by any Svetambari Jain, to an order for the removal of the image from the temple and, also, " to a perpetual injunction to the effect that no adorned image should ever be permanently installed within the Jalmandir temple.

4. This injunction was in the terms prayed for in the plaint, and the defendants have stated in their grounds of appeal from the decree that they were satisfied with it and therefore did not appeal from the decree. The only question in the present appeal is as to due interpretation of the injunction and, as in the case of all injunctions, it must of course be strictly construed.

5. On October 8, 1931, the plaintiffs filed an application for execution of the decree in which they alleged that since the passing of the decree, instead of honestly and properly obeying the orders of the Court and carrying out the terms of the decree in spirit of letter (sic) the defendants had adopted the device of circumventing them by taking the image daily and sometimes at intervals to the temple and taking it out in the evening or the afternoon, which had the effect of interference with the plaintiffs' rights of worship of the footprints of Mahabir Swami. They accordingly prayed that the decree should be executed (fl) by ordering the removal of the image, (b) by ordering the defendants not to bring the image into the temple except on the ceremonial occasion of the Nirwan day, the 15th of Kartik, that is to say on the day when the Svetambaris celebrated the feast of the Swami, and that they should be ordered to remove it

immediately the Nirwan worship was over, and (c) that the first defendant, who was the manager of the institution and had wilfully disobeyed the injunction, should be committed to prison and his property attached.

6. On August 13, 1932, the Subordinate Judge dismissed the application for the committal of the first defendant and the attachment of his property on the ground that he was not shown to have wilfully disobeyed the injunction, but held that the injunction should be interpreted to mean that the defendants were not to be entitled to take the image into the temple except on occasions when there was no likelihood of any Digambari Jain visiting the temple, and that there was only one such acknowledged occasion, the 15th day of Kartik, when the Svetambari Jains celebrate the Nirwan of Mahabir Swami; and by his order the defendants were directed to obey the decree accordingly.

7. The defendants preferred in the first instance a civil revision petition to the High Court, but afterwards filed a memorandum of appeal, as the order being appealable no civil revision petition lay. They alleged that the order of the Subordinate Judge was likely to create embarrassment to them in the exercise of their unrestricted right of worship according to the tenets of their religion and the rituals of their sect, and that the order of the Subordinate Judge was illegal and ultra vires as not being in accordance with the decree. On November 8, 1932, the High Court affirmed the order of the Subordinate Judge subject to the modification by consent that the defendants were to be at liberty to install the idol from dawn of the 15th day of Kartik till sunset of the next day.

8. Their Lordships find some difficulty in understanding the reasoning by which the Courts below arrived at the conclusion that an injunction restraining the defendants from permanently installing the image in the temple could be interpreted as restraining them from temporarily installing the image on any day in the year but one or two. The substance of the plaintiffs' case was that the Svetambaris had permanently installed behind the charan a Svetambari image which interfered with their worship of the charans, and they accordingly prayed for an injunction against such permanent installation. Not only is the injunction directed against permanent installation only, but in their Lordships' opinion it is not shown that the defendants could not temporarily install the image for their own periods of worship without interfering with the Digambaris' rights of worship, in the same way as the coverings and adornments which Svetambaris put on the charans are removed when the Digambaris come to worship. If what the defendants did in fact interfered with the plaintiffs' right of worship, they no doubt had their remedy; but that remedy was by a separate suit, and not by invoking an injunction which has no application to the circumstances of the case. In their Lordships' opinion the appeal should be allowed, the judgment and decree of the High Court of November 8, 1932, and the order of the Subordinate Judge of August 13, 1932, should be set aside, and the respondents' application of October 8, 1931, should be dismissed, and their Lordships will humbly advise His Majesty accordingly.

9. The respondents will pay the appellants' costs here and in the Courts below.