

(1911) 03 CAL CK 0002

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 3907 of 1910

Dwarka Missra and Others

APPELLANT

Vs

Rampratap Missra and others

RESPONDENT

Date of Decision : 01-03-1911

Acts Referred:

Citation : (1911) 03 CAL CK 0002

Final Decision : Allowed

Judgement

1. This is an appeal on behalf of the Defendants in a suit of a novel description. The Plaintiffs-Respondents allege that they are the descendants of one Sham Nath Misser, and that along with the Defendants, who are other descendants of the same person, they are entitled to officiate as priests at the offering of pindas on the banks of the sacred river Punpun in the District of Gaya. According to orthodox Hindu notions, it is the duty of the pilgrim to Gaya to shave his head on the bank of the river Punpun, to perform the sradh ceremony of his ancestors and to bathe in the waters of the river on his way to the holy city. The Plaintiffs allege that, as the descendants of Sham Nath Misser, they and the Defendants are exclusively entitled to officiate as priests at the offering of pinda, and that whoever amongst them may be employed by a particular pilgrim, he is bound to share with the other members of the family the offerings received and the emoluments earned by him. The Defendants resist the claim of the Plaintiffs, deny that the Plaintiffs are the descendants of Sham Nath Misser, and claim to be exclusively entitled to officiate as priests on the occasion of the ceremony mentioned. The Courts below have concurrently made a decree in favour of the Plaintiffs by which they are declared entitled to be restored to possession of the right claimed by them, to recover mesne profits and to have formal possession of the share of the disputed property, to be enjoyed jointly with the Defendants or alternately on different dates as might suit their convenience. The Defendants have appealed to this Court, and on their behalf, the decision of the Subordinate Judge has been assailed substantially on two grounds, namely, first, that the Courts below have erroneously found on evidence inadmissible in law that the

Plaintiffs are descendants of Sham Nath Misser, and, secondly, that the decree made in favour of the Plaintiffs is contrary to law, and grants them relief not enforceable in a Civil Court. In our opinion, the first of these grounds is unsustainable, but the second must prevail in part. In so far as the first contention is concerned we are unable to hold that the Courts below have relied upon any evidence inadmissible in law. Objection has been principally taken to statements made by the predecessors of the parties, but these statements are clearly admissible under sec. 32, sub-sec. 5 of the Indian Evidence Act. Consequently there is not substance in the first objection taken by the Appellants.

2. In so far as the second ground urged by the Appellants is concerned, it is manifest that the Courts below have completely overlooked the principles applicable to cases of this description. It is well-settled, as was pointed out by this Court in the case of Gourmoni Debi v. Chairman of the Fanihati Municipality 12 C. L. J. 70 : s. c. 14 C. W. N. 1057 (1910), that parties who require religious ceremonies to be performed for their benefit are at liberty to choose the priest by whom they shall be performed. The Plaintiffs are, therefore, not entitled to any declaration that they along with the Defendants are exclusively entitled to officiate as priests, when pilgrims, on their way to the holy city, perform the sradh ceremony of their ancestors on the bank of the sacred river Punpun. The Plaintiffs, however, can obtain a declaration that they are entitled to officiate as priests for such pilgrims as may choose to employ them for the purpose of religious ceremonies, and that the Defendants are not entitled to prevent the Plaintiffs from the exercise of their calling. This, however, is not the most important aspect of the case : the Plaintiffs seek a declaration that if any one among the Defendants assists in the performance of ceremonies by a pilgrim, the Plaintiffs are entitled to share with them the offerings and emoluments. To put the matter in another way the Plaintiffs allege that the right to officiate as priest is vested in the entire body of descendants of Sham Nath Misser, and that whoever amongst them may perform the ceremonies on a particular occasion and whatever sum or article he may earn thereby, he is bound to bring that into a common fund to be enjoyed by all the members of the family. In support of this extraordinary position, reliance was placed upon a decree in a suit of 1821 and a deed of partition of 1837. It appears that about the year 1821 there was a dispute between two families of Brahmins who may be called the Pandeys and the Missers, residents on opposite banks of the river Punpun. The Pandeys claimed that they as well as the Missers, the ancestors of the parties to this suit, were entitled jointly to perform religious ceremonies for the pilgrims on the banks of the river Punpun, and to divide the earnings amongst themselves. This claim was negatived on the 27th May 1822, and it was declared that the Pandeys were not entitled to officiate as priest. Subsequently, on the 28th October 1837, a deed of partition was executed amongst the predecessors of the parties to the present suit, in which it was arranged that each of the three branches of the family formed by the descendants of the three sons of Sham Nath Misser should have one-third share of the emoluments or the fees of the officiating priest at the

performance of ceremonies on the bank of the river Punpun. The documents in question obviously do not establish the right now claimed by the Plaintiffs. It is intelligible that members of a family may agree amongst themselves, that whoever amongst them may earn anything by officiating as a priest, the income is to be brought into a common fund and divided in certain proportion amongst them but such an arrangement cannot be obligatory upon the parties and their successors for all time and in spite of the wishes of members who may desire to terminate it. The learned Vakil for the Respondents has contended upon the authority of the cases of *Dino Nath v. Protap Chandra* I. L. R. 27 Cal. 30 : s. c. 4 C. W. N. 79 (1899) and *Bheema v. Kotha Kota* 17 Mad. L. J. 493 (1907) that the members of this family are entitled to a religious office and that it is open to one of them to maintain a suit against his co-sharers for recovery of his share of whatever may be given by pilgrims by way of offerings or emoluments. The cases relied upon however are clearly distinguishable ; they are cases in which offerings were made to an idol or some other image of the deity, and it was ruled that the offerings belonged to the entire body of shebaites. In such a contingency, it is rightly held that although a suit by the rightful owner of a religious office against an usurper for recovery of voluntary gratuities is not maintainable, a suit brought by a sharer in religious office against his co-sharers for recovery of his share of the voluntary gratuities is maintainable, because in the latter class of cases the basis of the claim is an arrangement, express or implied, that all the sharers should have a share in the gratuities. In the case before us, however, the initial difficulty of the Plaintiffs is that they have not established that there is any religious office to which they have a claim. It has not been proved that they have a hereditary right to officiate as priests at the worship of an idol and to have a share in the offerings made to the deity. The case, on the other hand, is more analogous to that of *Jowahur Misser v. Bahgoo Misser* S. D. A. for 1857, p. 362, where it was ruled that a claim was not maintainable for a share in the gratuity or voluntary gift to a priest officiating at a *sradh* ceremony, because the fee paid was in the nature of a voluntary gift to the person to whom it was directly paid. The reason assigned in support of this view is that where voluntary offerings were made to a priest who officiated at a *sradh* ceremony, they must be taken to have been intended for the very person who was then actually performing the ceremony, *Kashi Chandra v. Kailash Chandra* I. L. R. 26 Cal 356 (1899), *Sitaram v. Sitaram* 6 Bom. H. C. R. 250 (1869), *Shivapa v. Krishna Bhai* I. L. R. 3 Bom. 232 (1879). See also *Chamru Dutt v. Babu Nandan* 7 All. L. J. 529 (1910). The Plaintiffs have neither alleged nor established that they have any right to the holy spot, by grant or otherwise, nor have they alleged and proved that they have a hereditary right to officiate as priest at the worship of an idol to whom offerings are made, and to have a share in such offerings. Consequently the decree in so far as it declares such right cannot be supported, nor can the decree be maintained in so far as it entitles the Plaintiffs to recover mesne profits. The Courts below have neither realised the effect of such a decree, nor considered how the mesne profits can be determined in execution proceedings. If what was paid to the officiating priest was paid to him personally by a particular pilgrim the

Plaintiffs would not be entitled to claim a share in such sum. But it would be impossible to discover now, from any evidence that might be available, whether a particular pilgrim made a payment for the personal benefit of the officiating priest or whether it was intended to be paid to him as representative of a family. The result, therefore, is that this appeal must be allowed in part, and the decree of the Court below modified. The Plaintiffs will have a declaration that they are entitled to officiate at the pinda dehani ceremony on the southern bank of the river Punpun and that the Defendants are not entitled to obstruct the Plaintiffs when they officiate as priests at such ceremony. A perpetual injunction will also issue prohibiting the Defendants from interfering with and offering resistance to the Plaintiffs in the performance of the pinda dehani ceremony. The question, however, whether the Plaintiffs are entitled by grant or otherwise to joint possession, with the Defendants, of the spot where the ceremonies are performed and whether the Plaintiffs are entitled as shebait of any deity to have a share of the offerings given by pilgrims, is left open for consideration in a future suit, if occasion should arise. Each party will pay his own costs throughout this litigation.