

(1887) 08 CAL CK 0010
In the Calcutta High Court

Mamat Ram Bayan and Others

APPELLANT

Vs

Bapu Ram Atai Bura Bhakat and Others

RESPONDENT

Date of Decision : 17-08-1887

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (1888) ILR (Cal) 159

Hon'ble Judges : Mitter Offg., C.J;Beverley, J

Bench : Division Bench

Judgement

1. This suit was brought for the purpose of obtaining a declaratory decree confirming the plaintiffs' hereditary title to the office of musicians in a satra at a village called Sundaridia, within the jurisdiction of the Sub-division of Barpita in Kamrup. The defendants resisted the claim upon various grounds, and objected also that the suit could not be maintained in any Court.

2. The Munsif overruled the objection, holding that the Civil Court has jurisdiction to try all suits of a civil nature, and that the present suit is of a civil nature. The Court of first instance decided in favour of the plaintiffs on the merits also, and decreed the claim.

3. On appeal by the defendants the District Judge, being of opinion that such an action as this would not lie u/s 11, decreed the appeal, and dismissed the suit. He says: "It is not pretended that any emoluments attached to the position of musician. Defendants are entitled to their share (if any) of the proceeds of the temple property as bhakats, not as musicians. Does the word "office" in the explanation to Section 11 of the CPC include the performance of a religious ceremony, or part of a religious ceremony, to which no emoluments are attached, which carries with it no profit or loss, which is purely honorary? I think not. I think that in order to establish a claim to an office, it must be shown that the office is one of profit." In that view of Section 11 the lower appellate Court held that an action like this would not lie, and accordingly dismissed the suit, without going into the other questions that arose upon the issues raised by the Court of

first instance. We are unable to concur in the view taken by the lower appellate Court as to the meaning of the word "office" in Section 11 of the Civil Procedure Code. The District Judge is of opinion that a charge or a trust to which no emoluments are attached is not an "office" within the meaning of Section 11. A charge or a trust of a shebait in a temple may not be one of profit; it may not bring to the person who is employed in the trust, or in the charge, any emoluments at all. On the other hand, it may subject him to expenditure out of his own pocket; still in a case like that, if a person undertakes a trust or a charge as a shebait, he, in our opinion, should be considered as employed in an "office," within the meaning of Section 11 of the Civil Procedure Code. Many cases were cited in the course of the argument in support of the view taken by the lower appellate Court, but none of them fully supports the view taken by the District Judge. They are to the effect that a suit for the vindication of an alleged dignity attached to an office, if the alleged dignity does not carry with it any pecuniary gain or profit, will not lie in a Civil Court. But this is not a suit for the vindication of any alleged dignity attached to any office, but this is a suit for the establishment of the plaintiffs' right to a hereditary office. In our opinion it is not necessary, in a suit of this description, to establish that the charge or trust is one which ensures some profit to the person claiming it. If it be a charge or trust for the performance of particular duties in a temple or the like, it would, in our opinion, be an "office" within the meaning of Section 11 of the Civil Procedure Code, whether any emoluments are attached to it or not.

4. We are, therefore, of opinion that the present suit will lie under that section. We, therefore, set aside the decree of the lower appellate Court, and remand the case to that Court to decide on the merits. Costs to abide the result