

---

**(1909) 03 BOM CK 0011**  
**In the Bombay High Court**

Virupaxappa Fakirappa

APPELLANT

Vs

Sherif Sab Mulla Masud Sab

RESPONDENT

---

**Date of Decision :** 02-03-1909

**Acts Referred:**

Bombay District Police Act, 1890 — Section 44

**Citation :** 2 Ind. Cas. 494

**Hon'ble Judges :** Heaton, J;Chandavarkar, J

**Bench :** Division Bench

---

**Judgement**

Chandavarkar, J.—The suit No. 505 of 1905, out of which this second appeal has arisen, was brought by the present respondents as representatives of the Mahomedan community of Betigiri against the appellants as representatives of the Hindu community, for a declaration that the plaintiffs were entitled to pass in procession with music by the temple of Shri Malikarjuna in Uppin Betigiri, and for an injunction restraining the defendants from preventing or obstructing the plaintiffs in the enjoyment of the plaintiffs' right.

2. The suit was brought in consequence of an order which had been passed by the District Magistrate of Dharwar on the 20th of November 1905, u/s 44 of the Bombay District Police Act. The learned District Judge has allowed the right claimed by the plaintiffs in this suit in a qualified manner, that is, he has held them entitled to pass in procession with music by the temple and restrained the defendants from making, any noise during certain hours. And it is urged before us in second appeal that the plaintiffs are entitled to the absolute right in the manner claimed in their plaint.

3. But the first objection to the suit, in my opinion, is that there is no cause of action disclosed in the plaint or pleadings or evidence. The plaintiffs claim a public right and their complaint is that they have been hindered in the exercise of that right by the defendants. It is an elementary principle of law that no individual or class of individuals can sue in respect of such a right unless the obstruction caused has resulted in special damage: Sathu valad Kadir Sausare v.

Ibrahim Aga valad Mirza Ago 2 B. 457 and Kazi Su-jaudin v. Madhavdas 18 B. 693. The suit, therefore, ought to have been rejected by the Court below upon that ground.

4. But the learned District Judge holds that the present case is distinguishable from the decisions above mentioned, because this suit has been brought to set aside an order passed by the District Magistrate of Dharwar and the right of suing is given by Section 44 of the Bombay District Police Act. Now, the District Police Act was not intended to confer any right upon any individual or class of His Majesty's subjects which had not been given by the common law. The Act was passed in the interests of public peace, and all that Section 44 contemplates is that where a District Magistrate has passed an order in the interests of peace, it is open to any party to go to a Civil Court and get an adjudication in favour of his right, if any. The Legislature merely assumes that there is a right which the District Magistrate's order has opposed and which can be vindicated in a Court of law. Here the only right that could be asserted in a Court of law by the plaintiffs is one in which it is necessary to prove substantial damage. But no damage is alleged, much less proved. Under these circumstances the decree of the Courts below must be reversed and the claim rejected, each party bearing his own costs throughout. As to the suit brought by the Hindus against the Muhammadans (Suit No. 77 of 1906) for the vindication of a similar right, the same law should apply.

5. Therefore, the decrees of the Courts below must be reversed and the plaintiffs' suit dismissed, each party bearing his own costs throughout.

Heaton, J.

6. I concur in the orders proposed and I agree that Section 44 of the Bombay District Police Act does not confer a right to sue though it recognizes any right to sue which existed at the time of making an order u/s 44.

7. The parties are representatives of the Mussalman community on the one hand and of the Hindu community on the other. Each community churned a right to pass in procession with music along a public street, passing in the one case a temple, in the other a mosque; and each asked for a declaration of their right to do this. The occasion or provocation for those suits was an order made by the District Magistrate u/s 44 of the Bombay District Police Act ordering that music should be stopped while passing those places of worship. It is not contended that the order is unlawful, but merely that it is against the rights of the Mahomedans; for the Hindus in this Court have declared themselves content with the District Magistrate's order.

8. It seems to me that no declaration such as is sought for can be made. I very greatly doubt whether such a right, if right it can properly be termed, as is here claimed by one community against another, viz., that of going in procession with music along a public street should ever be made the subject of a declaration by a Civil Court. I am quite sure that it should not in this case, where the public peace

has been secured by a lawful order, be made by the District Magistrate and where such a declaration would disturb that order.