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Court : Allahabad

Decided On : Jul-17-1920

Reported in : AIR1921All374; (1921)ILR43All159

Judge : Tudball and ;Sulaiman, JJ.

Appellant : Bansi and ors.

Respondent : Kanhaiya and ors.

Judgement :

Tudball and Sulaiman, JJ.

1. This is a plaintiffs' appeal. The facts of the case are as follows: On the banks of the Ganges, not far from Allahabad, is a spot where a ferry crosses the river; it is named Kubrighat. This, apparently, is a convenient spot for pious Hindus to bathe in the Ganges, and apparently many of them do this in connection with religious ceremonies connected with deaths and other circumstances in their families. The contending parties in this case are Mahabrahmans, the plaintiff's, and Gangaputras, the defendants; they may both be described as parasites of Hindu society. These persons go down to the Kubrighat and when a pious Hindu is about to bathe they offer what they call kusha that is, a small bunch of grass. They pronounce a Mantra, and he returns the grass together with a small pecuniary present, The spot where it occurs is private property belonging to the zamindars of two villages, Swadkhat and Taj Mullahan.

2. Between the Gangaputras and the Mahabrahmans there have been constant disputes in the past, each seeking to prevent the other from obtaining these alms which are given by the bathers. In the year 1904 there was a dispute, and a Magistrate, by an order, dated the 2nd of July, 1901, passed apparently under Section 144 of the Cole of Criminal Procedure, restramed the plaintiff. (the Mahabrahmans) from taking any such gifts within a distance of 13 yards of the water's edge. The order held good only for two months, and it was passed to prevent a breach of tie peace taking place during that time. It was a period of festival dining which many Hindus frequented the ghat.

3. Shortly before the present suit was instituted in the year 1913 there was further trouble between these two classes, and a Magistrate took action aid bound down each party under Section 107 of the Code of Criminal Procedure. At the same time he published the old order of the 2nd of July, 1904, for the information of the parties. Section He did not take action under Section 144 of the Code of Criminal Procedure himself, but merely published the order for their information.

4. Thereupon the plaintiffs brought the present suit. In paragraph 1 of their plaint it is stated that they and their ancestors had been receiving these alms, from people who came to bathe at Kubrighat, by giving them kusha on the bank of the Ganges. They admitted that the defendants that is, the Gangaputras, had all along been receiving similar gifts by sitting on a mat and tying up a calf on the bank of the river, and they also admitted that the defendants used to pay Rs. 150 as rent to the zamindars for the piece of land which they thus occupied. They recited the order of the 2nd of July, 1904, and the occurrences of the year 1913, and the orders passed by the Magistrate. In paragraph 6 they admitted tint the gifts given by the pious Hindus were purely voluntary acts. They went on to say the it the Criminal Court had improperly infringed their rights as against the rights of the defendants and that the parties were entitled to receive whatever 'offerings were given to them by the bathers who frequented the bank. They asked for three reliefs:

(1) That the order of the Criminal Court, dated the 23rd of June, 1918, Should be set aside.

This relief has been denied to them by both the Courts below and they lay no claim to it before us.

(2) That be decluerd that, they have a right to take dan. that is alma, by offering kusha on the bank of the Ganges at Kubrighat; and

(3) That a perpetual injunction be issued to tie defendants restraining them from interfering with the plaintiffs in receiving alms en the bank of the river.

5. The court of first instance framed five issues. Tie defendants in their defence admitted that they paid Rs. 150 as rent every year to the zimindars as mentioned by the plaintiffs, but nit for the right of tying a calf and spreading a mat, but according to a decree pissed by the Civil Court it a certain case; they also admitted the incidents which hid occurred in the Criminal Court. They claimed that they had an exclusive right to take the gifts offered by the Hindu bathers and maintained that the Mahabrahmans had only a right to receive such gifts when the ceremony with which the giver was concerned was a funeral ceremony; otherwise, the Gangaputras had an exclusive right to tike all gifts offered by bathers in the river. They maintained that the plaintiffs improperly interfered with their rights to take gifts. They maintained that the right of a Gangaputra is birt jajmani (which was a voluntary gift) and that a man birt was a purely personal gift. The court of first instance framed the first issue as follows: 'Have the plaintiffs got any cause of action'? It held that they had none and dismissed the suit. An appeal was preferred to the District Judge He held that the plaintiffs had cause of action and reminded the suit for decision on other issues.

6. The first court then held that a gift made by the bathers in the river constituted man birt, that is, a purely personal gift and not birt jajmani. It held in favour of the plaintiffs that they had a perfect right to go to Kubrighat and accept gifts by giving kuaha to Hindus, and it finally gave the plaintiffs the following declaration and injunction: 'That the plaintiffs have always a light to accept dun by giving kusha on the bank of the Ganges at Kubrighat.' It granted an injunction against the defend inks restraining them from interfering with the plaintiffs in taking dan by giving kushi to bathers on the bank of the Ganges at Kubrighat. There was no issue framed as to the alleged lease of the land used by the defendants. The defendants

appealed and in their appeal they did not attempt to base their case in any way on the alleged lease. The court of appeal came to the conclusion that the plaintiffs were only entitled to accept such gifts as were ordinarily offered to Mahabrahmans and that their rights were not co-extensive with those of the defendants. It, therefore, set aside the decree of the first court so far as the declaration was concerned and it gave the plaintiffs an injunction restraining the defendants from interfering with the plaintiffs in taking dan which bathers gave to them as Mahabrahmans at Kubrighat on the bank of the Ganges. The plaintiffs have come here in second appeal. They contend that they are entitled to a declaration, such as was granted to them by the first court, that they are entitled to accept any gifts whatsoever that are made to them, whether they are connected with funeral rites or not, that the injunction granted by the court of appeal is of no use to them, and that they seek both the declaration and the injunction to maintain their right to accept alms of any sort offered to them by any body. The defendants have filed objections. One of the pleas which they have taken is that the right claimed by the plaintiffs is not recognized by law. They further contend that the plaintiffs are neither entiled to the declaration nor to the injunction granted by the court below. The third place taken is that, the defendants being lessees of the banks of the river at Kubrighat, the plaintiffs are not entitled to any injunction which interferes with the defendants' admitted right of birt jajmani within a distance of thirteen yards from the river. In view of the fact that there had been no finding as to the lease throughout the litigation nor had the defendants based their rights on their capacity as lessees, this third plea cannot be allowed to be taken before us.

7. The first question for consideration is whether in view of the facts the plaintiffs are, in any way, entitled to any relief whatsoever, either to the declaration or to the injunction. Section 42 of the Specific Relief Act lays down that 'any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.' In the present case the plaintiffs have come forward with no legal character whatsoever. The character they have assumed for the purposes of this litigation is the character of a beggar, that is, a person who begs from a person who is charitably

inclined to give. Inmost countries this would render him liable to punishment in a Criminal court. Even in this country no beggar has a legal character; the character that he has is more likely illegal than legal. Therefore, the plaintiffs are not entitled to a declaration so far as their character is concerned.

8. The next question is whether they have any right as to any property which is in dispute in the present case. It is impossible to hold that a beggar's right to receive alms is a right to property in any way. On their own showing the plaintiffs admit that what they call man birt is nothing less and nothing more than a pure gift made by a Hindu bather and is a personal offering to the decree. This fight is not claimed in connection with any property such as a temple or shrine or any other immovable property. It is impossible, therefore, to hold that what the plaintiffs claim in the present case is property. It appears, therefore, to us that under Section 42 of the Specific Relief Act it is impossible to give the plaintiffs the declaration which they now seek. Injunctions are dealt with in Section 54 of the Specific Relief Act. Under that section 'a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction.' It seems to us that on the facts of the present case it is impossible for us to say that there was any breach of any obligation existing in favour of the plaintiffs. The question, of course, is simple. Nobody is obliged to give to them nor are the defendants, the Gangaputras, under any obligation towards them. Again, it cannot be said that the Gangaputras invade or threaten to invade the plaintiff's right to, of enjoyment of, property. As we have pointed out right to beg cannot constitute property as it is understood in law. Therefore, on the facts of the case it appears to us that the plaintiffs are in no way entitled either to an injunction or to a declaration. We do not think the the remand order of the District Judge under which he sent lack the case at all precludes us from coming to this conclusion The plaintiffs might well have a cause of action and yet be not entitled to the reliefs they claimed. It is not necessary for us to go into and decide the question whether the defendants, the Gangaputras, have any exclusive right or any right whatsoever as against the present plaintiffs appellants. It may be that they equally are, with the plaintiffs, only beggars, and as such they have no right whatsoever greater than that of the

plaintiffs. It may be, on the other hand, that they are lessees of the land and as such they are entitled to keep the plaintiffs off the land. But as to these two points we express no opinion whatsoever. On the facts of the case the suit was bound to fail. The appeal, therefore, fails and is dismissed with costs.

9. We allow the second objection, namely, that the right claimed by the plaintiffs is not recognized by law. The plaintiffs' suit will stand dismissed with costs in all courts.

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