

Barsati and ors. Vs. Chamru and anr.

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SooperKanoon Citation : sooperkanoon.com/459700

Court : Allahabad

Decided On : Jul-24-1907

Reported in : (1907)ILR29All683

Judge : Banerji and ;Aikman, JJ.

Appellant : Barsati and ors.

Respondent : Chamru and anr.

Judgement :

Banerji and Aikman, JJ.

1. This appeal arises out of a suit brought by the respondents for a declaration that they are the chowdhris of the bazars of the villages Muhammadabad Gohna, Khairabad and Behna; that the defendants are not the chowdhris of the said bazars, and that they are not entitled to take chowdhris dues. The plaintiffs also asked for an injunction restraining the defendants from offering obstruction to the plaintiffs taking their chowdhris' dues and realizing the said dues themselves. They further claim damages, but that part of the claim has been dismissed, and we are not now concerned with it. The Court of first instance dismissed the suit, holding that it was not maintainable. The lower appellate Court has decreed it. The defendants appeal, and they contend that a suit like this is not maintainable. In our opinion the contention is well founded. The right claimed by the plaintiffs is a vague and indefinite right. They alleged in their plaint that they were appointed

chowdhris with the consent of the baqqals and others who sell grain, vegetables, etc., in the above-mentioned bazars. They do not say who appointed them, and the statement they make as to their duties is far from definite. It is manifest that the payments made to them by the baqqals, etc., for services rendered are voluntary payments and are not such as can be legally enforced. In the case of *Bhinuk Chowdhree v. The Collector of Jounpore N.W.P.*, H.C. Rep., 1867, p. 271 it was held that the claim to receive fees as chowdhri is not a right which can be enforced by the Courts of law. In that case the learned Judges observed that the plaintiff 'in substance wishes the Courts to declare him entitled to certain fees which he has heretofore been in the habit of receiving as chowdhri from persons using a certain market-place. But, although such fees may have been heretofore willingly paid to him, he had no right to such fees such as he could legally have enforced.' These remarks in our opinion apply to the present case. There is another case reported on page 80 of the same volume, namely, *Beharee Lall v. Baboo*, in which it was held as regards the rights of prohibits that 'each jujman has a right to select his own priest, and no suit to enforce such rights would lie in the Civil Court.' It was observed in the course of the judgment that there was no office recognized in law which had descended on the plaintiff and conferred on him a right of suit. The principle of this ruling applies here; In *Ram Deehul v. Chukhoo N.-W.P.*, H.C. Rep., 1869, p. 281 the plaintiffs sued for establishment of their right to the office of chowdhri of boats. It was held that the suit was not maintainable on the ground that 'the payments made to a person in the plaintiffs' position were voluntary payments, and those who made them were not under any legal obligation to render them to any particular individual in preference to another, nor to any person against their will.' In the present case it appears that certain baqqals, probably a majority of them, are in favour of the plaintiffs and are willing to make payments to them. On the other hand there are a number of baqqals willing to make similar payments to the defendants and not to the plaintiffs. Under such circumstances it cannot be held that the plaintiff have a right which can be enforced by a suit in the Civil Court. In our opinion the view taken by the Court of first instance was right. We allow the appeal, set aside the decree of the lower appellate Court, and restore that of the Court of first instance. The appellants will have their costs here and in the Court below.

