(1869) 05 CAL CK 0010

Calcutta High Court

Case No: Special Appeal No. 17 of 1869

Sudharam Patar		APPELLANT
	Vs	
Sudharam and Others		RESPONDENT

Date of Decision: May 8, 1869

Judgement

Bayley, J.

I am of opinion that this special appeal should be dismissed with costs. The plaintiff laid his case thus:--He said that he invited the defendants to a party; that the defendants accepted the invitation, but did not come and partake of the food provided for them; that since that time the defendants never asked the plaintiff to their parties of a similar character; and that as ha the plaintiff and the defendants are members of one and the same Somaj or Society, he (plaintiff) sues for a decree declaring his right to a membership of that Society. The case of the defendants was, that the plaintiff by his own act became separated from their Society.

2. The first Court held that as the plaintiff and the defendants in fact lived in one Society, and were in the habit of eating together, the plaintiff was entitled to a decree. The first Court therefore gave the plaintiff a decree to be restored to the Somaj or Society.

3. On appeal, the lower appellate Court held that such a suit would not lie, inasmuch as there was no law which empowered a man to compel another against his will to come and dine at his house, and that such a decree would be in fact a direct interference with personal liberty.

4. We have a special appeal against this decision, in which it is contended that a suit for a decree declaratory of the right of a person to membership of a Society is cognizable by the Civil Court.

5. I will now consider the cases cited in support of this contention. The first case cited is Sonaram Gazor v. Obhoyram Gazor S.D.R. (1847), 106, where the suit of the plaintiff was to gain re-admission to caste, involving the question of the payment of

a certain sum for that purpose; and the valuation of the suit was laid accordingly, viz., at Rs. 62-8 annas. The only thing done in that case was that a special appeal was admitted on the certificate of a single Judge, and the case was ordered to be brought to the file of the Court, and returned to the Principal Sudder Ameen to be disposed of as a suit for the re-admission to caste, on the ground that that particular suit was admissible. But in the present case there is no question of caste at all. It is a simple question of compelling a man to dine and keep up Somaj or associate with another against his will. The second case cited is Soonaoolla Kolal v. Mohussun Kolal S.D.R. (1848), 541. In this case both the parties were Mahomedans, and the plaintiff sued to be reinstated into caste from which he alleged he had been expelled by the defendants refusing to admit him to their feasts, and thus depriving him of his privileges, on the ground that he had reared and sold pigs. The Futwa of the Cazee in this case declared that the act of the plaintiff, although it was an improper one, was not such as could subject him to the loss of caste (the word used in the report), and under this exposition of the Mahomedan law by the Cazi, the plaintiff was declared entitled to retain his position in caste. This, at any rate, cannot be said to be a question of right to the membership of a Hindu Society, and therefore this present case cannot in any way be determined from this exposition of the Mahomedan law.

6. The third case cited is Ramgutree Biswas v. Mohadeo Bunnick S.D.R. (1850), 64. This was a suit for the right to be summoned at all marriages, and to receive on such occasions a pawnbuttee or present of pawn from the members of a particular community, and also for damages laid at rupees 1,100 in consequence of the disgrace thrown upon the plaintiff by the defendants not having presented to him the complimentary offerings above stated. The majority of the Judges in that case held that a decree in such a suit as that was not capable of regular enforcement, and that the practice of inviting to festivals and giving presents depended on the voluntary acts of the parties celebrating those festivals. The majority of the Judges therefore dismissed the plaintiff''s suit. The opinion of Mr. Abercrombie Dick however was in favour of the view taken by the present special appellants. As however the opinion of the majority was the judgment of the Court, the order dismissing the plaintiff''s suit prevailed; and consequently that case cannot be cited as one in support of the contention of the present special appellant.

7. The fourth case cited is Phagoona Nayee v. Menye Matha S.D.R. (1854), 465. This was a suit brought by 13 persons against 26 barbers to compel them to shave them. The Sudder Court held that such a decree compelling the barbers to shave the parties suing was one not susceptible of execution, and the suit was consequently dismissed.

8. We now come to the fifth case, Ramkanth v. Ramlochun Acharj S.D.R. (1859), 535, which is the strongest case on the point in favour of the plaintiff, special appellant. Although the question in this case is not distinctly stated to have been one of caste,

still it is clear that the Court looked upon the matter as one of that class, and in that view gave an order declaring the plaintiff''s right to be re-admitted to membership of a dal or society, but refused to the plaintiff the cost of the food provided for the entertainment. The judgment of the Court in that case was based on an analogy drawn between that case and a supposed case of exclusion from caste, and upon the consideration that the provisions of section 8, Regulation III of 1793, empowered the Civil Courts to take cognizance of all suits and complaints respecting rights connected with caste. No other case has been shown to us between the date of this fifth case and the sixth case, which I now proceed to notice.

9. This case, Joychunder Sirdar v. Ramchurn 6 W.R. 325, was decided by Mr. Justice Norman and Mr. Justice Seton-Karr in the High Court on the 20th December 1866, in which the Judges considered the Sudder Dewanny Decision of 1859; and it was held by that Division Court that there was no rule, either in that judgment of 1859 or in the Hindu law, to compel a Hindu against his will to ask other Hindus to an entertainment at his house, and that a suit of this nature was not one coming under the description of caste described in section 8, Regulation III of 1793.

10. The seventh case is Sri Sunkur Bharti Swami v. Sidha Lingayah Charanti 3 M.I.A. 198. It is a Madras case. It was held there that a suit would lie in that particular case for a declaration of exclusive right in the privilege of administering purohetam (religious service) to pilgrims resorting to Rameswaram, inasmuch as the right was one capable of alienation or delegation, and ceased to be a subject of religious sentiment, and became a pure matter of proprietary right. But in the case now before us, there is no question of proprietary right involved.

11. The eighth is also a case of Her Majesty''s Privy Council, Namboory Setapaty and Others vs. Kanoo-Colanoo Pullia . Their Lordships held that as the question whether an action will lie or not for a declaration of right to perform certain religious ceremonies was one not argued before them, it was unnecessary for them to pass any opinion on that point. This therefore has no effect in this special appeal.

12. The ninth case is Gopal Gurain v. Gurain 7 W.R. 299, in which Mr. Justice Pundit and I held that a suit would lie for restoration to caste and for damages and compensation for the cost of such restoration, inasmuch as in that particular case a party in a respectable sphere of life was likely to lose his character and position under an accusation of the defendant that he was guilty of adultery and loose conduct, and that in consequence the relations and friends of the accused would not eat with him except after due fine and penance. This was a case of damages and loss of money by fine, and is therefore not one similar in its facts to the case now before us.

13. I have thus reviewed all the decisions that have been brought to our notice bearing upon the point at issue, and the only authority that now remains to be considered is that contained in Menu, section 41, Chapter VIII, page 194 of

Colebrooke''s edition of 1794, which states that "A king who knows the revealed law, must enquire into the particular laws of classes, the laws or usages of districts, the customs of traders, and the rules of certain families, and establish their peculiar laws if they be not repugnant to the law of God." But on questions like the present we are not to be guided by Menu''s directions to the king when there is express provision of law. Now section 8, Regulation III of 1793, enacts that the Civil Courts shall take cognizance of questions of caste, successions, and marriages. But caste is not the matter now before us and the matter before us is not provided in the above section.

14. On the whole, I am of opinion that, for the reasons above given, this is a matter in which the lower appellate Court has rightly held that an action would not lie. I think that the case which governs this is that of Joy Chunder Sirdar v. Ramchurn 6 W.R. 325. No decree can be executed declaring a person''s right to the membership of a Society, as the effect of such a decree would be to require that other persons do accept plaintiff''s invitations and do partake of his food though against their will, and that they in their turn must give him similar invitations and dine with him whether they like to do so or not.

15. In this view of the case, I would dismiss the special appeal with costs.

Markby, J.

16. I am entirely of the same opinion, and after the very full and elaborate judgment which has just been delivered in the case by Mr. Justice Bayley, I feel it hardly necessary to add any thing. As however the question is one of some importance, I would say a few words upon it.

17. It seems to me to be of the very first importance to see what the plaintiff in this case alleged in his plaint, and asked the Court to do in his favour. What is stated to us that the plaintiff alleged was this, that on a certain occasion be invited the defendants to dine at his house; that the defendants accepted the invitation, but afterwards refused to come and dine at the plaintiff''s house; that from that time they ceased to ask the plaintiff on such occasions, although they invited all other members of a certain Society called Somaj, of which the plaintiff was likewise a member, and it is said that by these acts the defendants showed that they refused to recognize him as a member of that Society. The plaintiff therefore sues for a declaration of his right to the membership of that Society. It is assumed, and as far as I am aware, correctly, that the refusal to eat with the plaintiff does in effect exclude him from the Society of which he claims to be a member.

18. It is distinctly admitted that the effect of these acts on the part of the defendants is not such as to exclude him (plaintiff) from caste, and it is not contended that the membership of this Society involved in it, directly or indirectly, any right of property whatever, but that it only laid certain social disadvantages on the plaintiff not to be a member of that Society. Nor is it contended that the plaintiff has been excluded

from any house, or any room, or the enjoyment of any right of any kind whatever, except the bare right of membership of a Society; and the form in which the first Court gave its decree which was in plaintiff''s favor, was that the plaintiff and the defendant do live in one Society and mess together. It is therefore quite clear to me that there is no right of property whatever involved in this suit, but only a question as to whether or not the plaintiff was entitled to continue a member of the Society which partakes of a character partly social and partly religious.

19. I have no doubt whatever that the Court has no jurisdiction to entertain a suit of this kind. It appears to me that the exclusion of questions of this kind from the Courts of Law rests upon principles common to English and Hindu law. Both the English law and the Hindu law appear to me to draw a clear distinction between interference for the protection of rights of property and of personal liberty, security, and reputation and interference in matters of a purely social nature. Even where rights of property are involved in the membership of Society or Associations, yet if the main object of the Association be of a social character, the members of the Association are the sole judges whether a particular individual has so conducted himself as to entitle him to continue to be a member of the body. This was so held in the case of Hopkinson v. Marquis of Exeter 37 L.J. Ch. 173, before the Master of the Rolls. There a member of a Club sued for his restoration to the membership of that Club from which he has been, as be thought unjustly, excluded. The Club in that case was partly of a political character, but its objects were mainly social, and the Court refused to interfere with the decision of the other members who had excluded the plaintiff, notwithstanding that rights of property were involved. Much less should we interfere here where there are no such rights.

20. It also appears to me very desirable to point out another distinction. The plaintiff does not allege that the defendants asserted any thing of the plaintiff which was untrue, or they had indirectly or directly done any thing which could be made the subject of an action for damages as defaming his character.

21. In addition to this, it appears to me that with one exception only, all the cases and expressions of opinion are against the view taken by the plaintiff. Whether or not in all the cases quoted, the Court was right in treating the matter before them as a question of caste, is perhaps a doubtful point, but I think that in all the cases in which it was allowed that the suit would lie, it was upon the ground that the question involved was one of caste. It seems to me that rightly or wrongly the Court so treated the question, and on such a consideration interfered in the matter. The only exception is the judgment of Mr. Abercrombie Dick in Ramguttree Biswas v. Mahadeo Bunnick S.D.R. (1850) 64 dated 21st March 1850. Now from all that I have heard of that learned Judge, I should have great respect for any thing that fell from him especially upon matters of Hindu law, but it appears to me that he was in that case mistaken. He would no doubt give a wider jurisdiction to the Court in questions similar to that which is now before us, but he rests his opinion chiefly on a passage

of Menu, which, I think, he entirely misunderstood. I think that section 41, Chapter VIII, to which he refers, relates to an entirely different subject. It says: "a king who knows the revealed law must enquire into the particular law of classes, the laws or usages of districts, the customs of traders, and the rules of certain families, and establish their peculiar laws, if they be not repugnant to the law of God." It seems to me that the so-called Menu was there only laying down a principle which is alike applicable to English, Hindu, Mahomedan and other laws. It is this, that when Courts have before them a question over which they have jurisdiction they are not only to look to what Menu calls revealed law and we generally call "written law," but to the particular law of classes, usages of districts, customs of traders, and sometimes also of families. But it appears to me clear that Menu had no idea of laying down the limits of the jurisdiction of the Court. He was merely laying down a salutary principle to guide persons in ascertaining what the law is.

22. The only legislative authority which has been referred to by the special appellant is the provision of section 8, Regulation III of 1793, but that seems to me rather the other way, because while the Legislature there specifies various questions which are cognizable by the Civil Courts, and among those questions makes mention of caste, it makes no allusion whatever to any question of rights which affects the status of a person independently of caste in Society.

23. On the other hand, we have the clear and decided opinion of Norman and Seton-Karr, JJ., in Joy Chunder Sirdar v. Ram Chunder 6 W.R. 325, the case already referred to, that a suit of this nature would not lie. It seems to me therefore that whether we look to the course of decisions in this Court, or to general principles, we ought equally to hold that a suit of this kind, at all events where no question of caste is involved, will not lie; and that the decision of the lower Court ought to be affirmed.

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(1) See Dhurm Chund Abeela v. Nana Bhaee Goolalchund, 1 Borr., p. 13. In Hurrukchund Motelchund v. Khooshalchund Goolabchund, it was held that the members of a caste possess the right of expelling one of their body except when done from malicious motives.-- 1 Borr., p. 38, See also Sumbhoodas Raeechund v. Doolubh Poorshotum, 1 Borr. p. 386. Bhugwan Koobeer v. Hunsjee Natha, 1 Borr. p. 402. See Ragoonath Jetha v. Purshotum Sunkur, 1 Borr. p. 440, Ghelajea Nana Bhaee v. Uumv Singh, 1 Borr. 430.

(2) Reg. III of 1793, section 8.--"The zillah and city Courts respectively are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, contracts, partnerships, marriage, caste, claims to damages for injuries, and generally of all suits and complaints of a civil nature in which the defendant may come within any of the description of persons, &c."