

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maina and Others v. Brij Mohan and Others, from the High Court of Judicature for the North-Western Provinces, Allahabad; delivered July 9th, 1890.

Present:

LORD WATSON.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

[*Delivered by Sir Barnes Peacock.*]

THIS was a suit brought by the Respondents and another for a decree declaratory of their right in a ghât, and also for certain relief specified in their plaint. The suit is governed by Act 1 of 1877, the 42nd section of which deals with declaratory decrees. By that section it is enacted 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. Provided that no Court shall make any such declaration where the Plaintiff being able to seek further relief than a mere declaration of title omits to do so." The Plaintiffs, representing the body of a sect called Sannadhias, set out in their plaint what they considered to be the rights of that sect, and they stated therein their grounds for asking for a declaratory decree. In paragraph 6 they say: "That Bindraban Das, when he was alive, laid

“ out Rs. 100 in the repairs of the ghât. He
 “ died at Mathra on or about the 5th of
 “ October 1879. When he was alive he de-
 “ posited Rs. 900 with Bhagwan Das, with
 “ instructions to use the money in the repairs
 “ of the Bisram Ghât, and Bhagwan Das having
 “ failed to use the money in the repairs of the
 “ Ghât, Panna, deceased, the father of Madan,
 “ Defendant, and Chatrban, Defendant, instituted
 “ a suit without joining Plaintiffs, and with a
 “ view of depriving them of their right in the
 “ Munsif’s Court at Mathra for Rs. 1,000, on
 “ declaration that they alone were the mutawallis
 “ (managers), and under a fictitious deed of com-
 “ promise obtained a collusive decree on 21st
 “ December 1882. Through collusion they had
 “ it recorded in the deed of compromise that
 “ Rs. 600 had been laid out in the repairs,
 “ and with reference to the balance of Rs. 400
 “ a payment by instalments of Rs. 80 a year
 “ had been agreed, and the application filed by
 “ the Plaintiffs in the Munsif’s Court at Mathra,
 “ praying to be joined as a party, was dis-
 “ allowed on 14th September 1883.” That was
 one of their grounds for asking the Court to
 exercise its discretion in making a declaratory
 decree. The next ground was: “That a
 “ fictitious suit was instituted by Changaji and
 “ others against Panna and others, Defendants,
 “ in this Court, and Plaintiffs filed an application
 “ in this Court, also praying to be joined as a
 “ party under section 32 of the Civil Procedure
 “ Code; but the said application was disallowed
 “ on 3rd July 1883, and Plaintiffs were not
 “ joined as a party. That all the Defendants
 “ to this suit have colluded with one another,
 “ and have taken collusive proceedings in the
 “ Munsif’s Court at Mathra, and in this Court,
 “ with a view of depriving Plaintiffs of their
 “ right. They declare themselves to be the

“ owners, and deny Plaintiffs’ right; hence the
 “ cause of action arose on 11th August 1882,
 “ the date of the institution of the suit in
 “ the Munsif’s Court at Mathra, and on 14th
 “ February 1883, the date of the institution of
 “ the suit in this Court at Agra.” They then
 stated what the relief was which they sought, and
 they prayed judgment for “ a decree for the
 “ declaration of the Plaintiffs’ right as Mutawalli
 “ and Manager of the Bisram Ghât, and all the
 “ Temples attached to the same, to the extent of
 “ one-third, be passed in favour of the Plaintiff
 “ as head of the Sannadhias against his brother
 “ Sannadhias” and that it might be likewise
 declared in the said Decree that “ Defendants
 “ alone were not owners, and Mutawallis of the
 “ said Ghât.” It appears to their Lordships that
 the Plaintiffs have made no case. They have not
 proved that they were entitled as Mutawallis and
 managers of the Bisram Ghât to one-third of the
 offerings made by their followers, and they could
 not be entitled to have a declaration that the
 Defendants were not the sole owners, unless they
 could prove a right on their parts to be part
 owners. Having asked for a declaratory decree,
 they go on in pursuance of the Relief Act to
 allege that, “ The collusive decree obtained
 “ by the Defendants from the Munsif’s Court
 “ at Mathra against Bhagwan Das, for which
 “ Defendants have declared themselves liable
 “ under the Deed of Compromise, having
 “ been set aside, its amount be recovered from
 “ the Defendants, and it be used in the repairs
 “ of the Bisram Ghât, either with the consent
 “ and management of the parties or through
 “ an official of the Court.”

There were many witnesses examined, and
 considerable discrepancies in the evidence given.
 The first Court laid down certain issues, the fourth

issue being, "Are the Plaintiffs guardians of
 " Bisram Ghât, vested with a right to receive the
 " offerings made in it, to superintend the repairs
 " and erection of the building there, or are they
 " priests at Swami Ghât, plying their professional
 " duty there?" It might be that they were priests
 of Swami Ghât, and yet might also have an interest
 in Bisram Ghât. The whole point of the issue
 is—were they guardians of Bisram Ghât, with a
 right to receive the offerings made in it, and to
 superintend the repairs and erection of buildings
 there? The Subordinate Judge delivered judg-
 ment, in which he said: "The Plaintiffs in this
 " case have no connexion with the Bisram
 " Ghât; they are Sannadhia Brahmins, having
 " no concern whatever with the property which
 " was used by the Chaubeys as the place of
 " their worship. Bisram Ghât is the worshipping
 " place of the Chaubeys, in the vicinity of which
 " the Plaintiffs, who are Sannadhias, have their
 " temples. My inspection of the place has fully
 " convinced me of this. The documentary and
 " oral evidence abundantly establish this con-
 " clusion to my entire satisfaction. Both sects, the
 " Sannadhias and the Chaubeys, are bitter enemies
 " to each other, and could not be expected to have
 " a common place for their worship." Having
 come to that conclusion he dismissed the
 Plaintiffs' suit with costs.

It is not necessary for their Lordships in
 concurring in the judgment of the Subordinate
 Judge to agree in all his reasons. It is quite
 consistent with the decree which he passed
 dismissing the suit that the Plaintiffs may have
 some right in Bisram Ghât; but they have not
 proved any right to have it declared that they are
 entitled as Mutawallis to have an interest to the
 extent of one-third of the offerings. The Sub-
 ordinate Judge dealt with the evidence in the
 most general terms. He did not allude to any

particular witness or any particular document, but he said: "I think the Plaintiffs have not made out their case."

The High Court dealt with the case in the same general terms. The Subordinate Judge had heard the witnesses. He had better opportunities of judging of the evidence, and of the several discrepancies, than the High Court, who did not hear the witnesses or see their demeanour. The High Court did not decide whether the Plaintiffs were the Mutawallis, entitled to one-third, but they said: "In support of their case " they produced a *firman* of the Emperor Furrukh " Shah." It appears to their Lordships that that firman, as it is called, did not vest any right in either party, and is not a document which can be held to support the case either of the one side or of the other, but the High Court attached some importance to it. The judgment continues: "The Plaintiffs produced oral evidence " of witnesses which go to support their " assertions; and it seems to be virtually " conceded that if they do belong to the Chaubey " sect they are entitled in respect to the ghât " to enjoy the privileges and rights of the " Chaubey community concerned therein." The learned judge who delivered the judgment then proceeds: "It seems to me to be established " beyond question that they do belong to the " Chaubey class, and no evidence is shown to " us on behalf of the Respondents to contradict " that produced by the Appellants. This being " so, and taking all the circumstances of the " case into consideration, I think the Plaintiffs " Appellants are entitled to the same decree as " that granted to the Plaintiffs Appellants in " F.A. No. 172 of 1885, decided this day," —referring to another suit. Their Lordships see nothing on the record to show that there was any concession by the Defendants of the

kind indicated by the High Court. The decree which follows is not confined merely to the order expressed in the Judgment. It proceeds: "It is ordered and decreed that this Appeal be decreed; that the Decree of the Subordinate Judge of Agra be set aside, and in lieu thereof it is hereby declared that the Plaintiffs Appellants aforesaid are entitled to have, exercise, and enjoy, all rights of care, use, and management of the Bisram Ghât, and the buildings appertaining thereto, situated on the bank of the River Jamna, in the city of Mathra, and in connexion with the expenditure of the sum of Rs. 1,000 bequeathed by the late Brindaban Das Khettri for the repairs of the said Ghât, so far as the same have not yet been expended as declared by the deceased Bindraban Das."

If their Lordships considered that the judgment of the High Court ought to be affirmed, it would be necessary to state in what manner that decree should be altered; but their Lordships are of opinion that the judgment of the High Court has gone upon a wrong principle, it merely stating that if the Plaintiffs belonged to the Chaubey class they were entitled to all they claimed, and that they did belong to the Chaubey class.

It appears to their Lordships that the learned judges of the High Court have not sufficiently kept in view the only real question raised in this case, namely, whether the Plaintiffs have proved that they, as Mutawallis or Managers of the Bisram Ghât, are entitled to one-third of the donations given by pilgrims to that Ghât, and also that the suits referred to were fictitious? In their Lordships' opinion the Plaintiffs have not made out a case for the declaratory decree which they claimed, and certainly they have not made out a right to have the Decree obtained

by the Defendants from the Munsif's Court, at Mathra, against Bhagwan Das, set aside and to have the amount recovered from the Defendants in that suit used in the repairs of the Bisram Ghât.

Their Lordships think, therefore, that the decree of the High Court ought to be reversed, and the decree of the Subordinate Judge affirmed ; but holding that the Plaintiffs are not entitled to the right claimed or to the relief sought, their Lordships wish it to be distinctly understood that they do not express any opinion with respect to any other rights, if any, which either of the parties to the suit may have or claim to have in the aforesaid Bisram Ghât.

Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the High Court, and to affirm the decree of the Subordinate Judge, and to order the Respondents to pay the costs in the High Court. The Respondents must pay the costs of this appeal.

