

Nanabhai, and Four ors. Vs. Shriman Goswami Girdhariji

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Court : Mumbai

Decided On : Feb-13-1888

Reported in : (1888)ILR12Bom331

Judge : Nanabhai Haridas and ;Jardine, JJ.

Appellant : Nanabhai, and Four ors.

Respondent : Shriman Goswami Girdhariji

Judgement :

Nanabhai Haridas, J.

1. We are of opinion that this appeal should be dismissed with costs. It is established, and indeed was never denied, that the plaintiff, as the Takait Maharaj by right of primogeniture obtaining in his family for generations past, was in possession of the idol of Shri Nathji belonging to the family and inherited from his ancestor Vithalnathji, with all the property dedicated to that idol, till 8th May, 1876. The property now in dispute is admittedly a part of such property; and the Subordinate Judge has found, and we think rightly, upon the evidence, that all the defendants, except the defendant No. 5, were holding the same as his agents, the same having been made over to them for management as the plaintiff was residing at Nathdwar within the territory of the Rana of Udepur in Mewar. In this suit by the plaintiff to recover such property from them, the defendant No. 5, who is his son, was made a party-defendant on his own application, in order to enable him to contest the plaintiff's right if he could. The son put in a written statement denying that the plaintiff had now any right to recover. He urged that the Rana had deposed the plaintiff from the gadi of Tikait Maharaj and deported him from his territory; that he himself had been placed on such gadi by the Rana in 1876; and that, therefore, he was entitled to possess and manage all the property belonging to the idol. The fight is thus one really between the father and the son. The fact of such deposition and deportation is not denied by the plaintiff. It was in consequence of some disputes of a political character between the Rana on the one side and the plaintiff on the other that the deposition and deportation took place. What those disputes were it is not necessary for us to enquire. It is enough for us to say that the Rana's order cannot be regarded as a foreign judgment between the parties. Being an independent prince within his own territory we are not called upon to pronounce any opinion as to the propriety of his act or as to its effect within such territory. But the property in dispute in this case is situated in the Poona district, beyond his jurisdiction, and is governed by the law obtaining there. That property descended to the plaintiff on the death of his father several years ago, and, as found by the Subordinate Judge, was held by him through his agents, defendants Nos. 1 to 4, until his son, defendant No. 5, asserted his own right to it under the Rana's order. It has not been shown to us that the Rana

has ever before deposed a high priest from his office on any ground whatever. The right of primogeniture obtaining in the family, the son has no right to it during the father's lifetime. The Subordinate Judge is therefore right in awarding possession to the plaintiff. Whether the plaintiff is the owner of it as well as of the idol and the shrine, or merely a trustee for the idol and the shrine, is a question which does not really arise in this case, for in either case he is entitled to recover possession. If he is the owner of the idol and of all the property dedicated to it by his followers from time to time, as he alleges he is, he has not, we think, in law lost his right as such in consequence of the Rana's act. If he is merely a trustee, he has not yet been removed from his office by any competent tribunal. Such being the case, we must confirm the decree of the Subordinate Judge and dismiss the appeal with costs.

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