

MOHAMMADU LEBBE *et al.* v. KOREEN *et al.*

D. C., Jaffna, 2,384.

1893.
October 20
and 31.

District Court—Jurisdiction to interfere in religious disputes—Right of holder of religious office to relief when disturbed in enjoyment of property attached to such office.

A District Court has no jurisdiction to interfere in the concerns of religious communities unless, in the rules which any religious community has made for its members in relation to the religious object which it has combined to maintain, a civil element enters, which brings the matter within the sphere of the civil jurisdiction of the courts.

A holder of an office who has been duly appointed thereto by the religious community to which he belongs will be supported in the exercise of that office, if there is attached to it as an incident some estate in tenure of or right to the possession and enjoyment of movable or immovable property.

THIS was an appeal by the plaintiffs from a decree of dismissal. The facts of the case appear in the judgments of the Supreme Court.

Dornhorst appeared for plaintiff appellant.

Cur. adv. vult.

31st October, 1893. WITHERS, J.—

The plaintiffs claim to be joint officiating priests of a Mohammedan mosque known as Meydisen Pallivásal, and they allege that the defendants have interrupted them in the exercise of their office, and refuse to allow them to enter the mosque for the performance of the duties incumbent on them as such high priests, and to exercise the rights and enjoy the privileges of their office. After hearing some of the witnesses called for the plaintiff, the learned judge stopped the proceedings and dismissed the action on the ground that his Court had no jurisdiction to interfere in the concerns of religious communities.

The plaintiffs appealed from this judgment. There was no appearance for the respondents.

1893.
October 20
and 31.
—
WITNESSES, J.

I think the proposition of law laid down by the learned District Judge requires some limitation.

In a recent case reported in *1 S. C. R. 354*, I had occasion to observe that a District Court has no jurisdiction to interfere in the concerns of religious communities unless, in the rules which any religious community has made for its members in relation to the religious object which it has combined to maintain and support, a civil element enters, which brings the matter within the sphere of the civil jurisdiction of the courts.

After giving illustrations of what I meant by the term civil element, I went on to observe that the holder of an office, who has been duly appointed thereto by the religious community to which he belongs, or who succeeds in due course of such office according to rules binding on the community, has been and will always be supported in the exercise of that office, if there is attached to it as an incident some estate in tenure of, or right to, the possession and enjoyment of immovable or movable property.

As at present advised, I adhere to that opinion, and, so thinking, I have no alternative to propose but that of remitting the case for further inquiry.

Incident to the tenure of the offices alleged to be held by the plaintiffs, and the performance of duties required of the holders, is said to be the privilege of receiving and keeping fees paid (gratuitously no doubt) by those for whom services are duly performed—services connected with prayers, marriages, funerals, &c. Whether the plaintiffs or either of them will make out a case for redress, is another matter, but, having regard to precedent, I am of opinion that the plaintiffs should be allowed fully to put forward their case on such material as they may be advised to submit to the Court, and for this reason the judgment of the lower Court should be set aside.

BROWNE, A.J.—

On the 8th February, 1867, one Seku Meiyadin Muhammado Meiyadeen and the first defendant executed and granted what is termed a charitable donation deed of a certain land “in order that all the Mussulmans who belong to and embrace the religion of the Prophet Mohamet, called Purukare Vedam, may, with the grace of our Master Muheyadeen Abdul Cader reasonably and in accordance with the religious rules conduct and observe for ever, without any objection, all the penance and other rites belonging to and mentioned in the religious rules.” The deed contained no other words than these to designate any trust or the manner or officers for its execution.

In their plaint plaintiffs assert that a mosque was then built and dedicated by this deed "as a place of worship for the use of "the Muhammadan public, to be used and managed according to "the will of such of the said public as form the congregation of "the said mosque," and that at that time also one Sejo Madar Lebbe was at a meeting of the said Muhammadan public appointed officiating priest of the said mosque, and held office until 1882.

1893.
October 20
and 31.
BROWNE, A.J.

Plaintiffs then assert in brief that at a meeting of the said Muhammadan public held in May, 1882, at the grand mosque, apparently some other mosque, the first plaintiff was appointed officiating priest and to receive the profits of the office, and that at another later meeting held in 1886, second plaintiff was appointed joint officiating priest, and that they officiated "in the "prosecution of the objects of the said dedication," and received the incomes and perquisites of their office until the 26th June, 1892, when the defendants forcibly turned them out of the mosque and prevented them from performing their ceremonies and keep them deprived of the profitable user of the said office; and that since such time second defendant has been wrongfully performing the ceremonies of the said priesthood, and both defendants have been receiving and enjoying the perquisites of the said office: and the plaintiffs pray for a declaration of their right to officiate and to receive the incomes, emoluments, and profits; their reinstatement; the inhibition of defendants from resisting plaintiffs and from officiating and taking the emoluments; and for damages and costs.

The defendants deny that the plaintiffs were ever appointed priests of the mosque, which first defendant says he built and dedicated as a place of worship, always remaining manager thereof, and that he (he does not say when) appointed second defendant priest thereof.

I agree with my brother that the District Judge should not have stopped hearing plaintiff's evidence, and that his statement that "a District Court has no jurisdiction to interfere in the "concerns of religious communities" is too general. Courts will not interfere in purely ecclesiastical matters, such as a complaint that a Muhammadan priest refused to perform funeral services [*R. (1867) 240*], or a question where a festival should, consistently with religion, be celebrated (*Morg. 51*), or in a mere matter of church discipline (*2 B. & V., 67*). But our own courts have, ere now, entertained and decided questions affecting such rights as to appoint a dean (*3 Lor. 238*) or priests [*L. M. sp. 17 (Muhammadan)*] and 13; and 1866. 60 (Christian)] or to celebrate a festival

1898. (Morg. 51) or rights to property, such as fabrics and ground and
October 20 revenues which were not voluntary as offertories and fish rents
and 31. (vide the last two cases cited).
—

BROWNE, A.J.

No doubt, so far as the case has as yet proceeded, the evidence of what emoluments the plaintiffs have received has tended to show them to be of such a character that plaintiffs could not show any right to them, viz., such a right as they could enforce against the contributories thereof to insist upon their payment. But even if the right to officiate was not functuous of any actual pecuniary or other benefit to the priest, it may be a right in and for the exercise of which he may claim the protection of the courts, and these plaintiffs appear *primâ facie* to be entitled to call upon the courts to decide whether they are entitled to have the prayers of their plaint or any of them granted to them. I agree that the case must be remitted for further trial, and in the possibility thereof I may draw attention to the fact that some of the questions which seem possible on the pleadings in this case, viz., as to who form the congregation of the mosque (assuming plaintiffs substantiate by proof all the averments of the first paragraph of their plaint), and what meeting thereof could validly elect a priest formed the subject of much discussion in the action 61,162. D. C. Colombo, dealing with the trust created by the award of Mr. Lorensz made in 5,214, testamentary, of that Court, respecting the administration of the Cinnamon Gardens mosque, which followed upon the litigation of the action 53,373 of that Court.
