

ALLAHABAD HIGH COURT

Babu Ram Singh

Vs

Subhan Mochi

(Boys and Bennet, JJ.)

04.04.1929

JUDGMENT

Bennet, JJ.

1. This is a defendants' appeal arising out of a suit by two Mahomedan plaintiffs asking for two reliefs, the material portions of which are as follows:

(a) It may be declared by the Court that the plaintiffs are authorized to take out the "duldul" procession on the fourth of Muharram of every year without any obstruction or interference.

(b) A perpetual injunction may be issued to the Hindus... and the Secretary of State for India restraining them from offering any obstruction in future to the "duldul" procession... As the stoppage of the "duldul" procession is due to the interference and orders of the Government servants and officers, it is necessary to implead the Secretary of State for India....

2. The facts are broadly stated in the judgment of both the two lower Courts and no objection has been taken on either side before us that the facts have not been correctly stated. The case comes from the district of Ghazipur, and trouble between the Hindus and Mahomedans is said to have started as long ago at any rate as 1911, but does not appear to have come to a head in the particular locality concerned till 1920. In 1920, as the trial Court has found, a finding concurred in by the lower appellate Court, the Mahomedans for the first time proceeded to take out the "duldul" procession. Petitions indicated that this was likely to result in serious trouble, and it is clear that the authorities collected the leaders of the various parties and effected a settlement. An agreement was entered into on 7th October 1920, a translation of the material portion of which is to be found on p. 29 of the paper book. Counsel on either side before us have expressly stated that they had no fault to find with that translation. It is vital to this case, and we reproduce it from the judgment of the lower appellate Court. It reads:As often Hindus and Mahomedans and Aryasamajists carry out new sorts of processions inside the qasba which hurt the feelings of some party, so we agree that we will not carry out a new procession without applying beforehand to the District Magistrate and obtaining his sanction thereto. There is no necessity of taking sanction for

ancient processions.

3. This agreement was signed by ten Mahomedans and some 20 Hindus, the latter including, as we are told, those who signed it on behalf of the Hindus generally and those who signed it particularly on behalf of the Aryasamaj. In subsequent years, 1921, 1922 and 1923, there was some friction; but counsel for the plaintiffs has not been able to show us that there is any evidence that the "duldul" procession was actually taken out either with or without the District Magistrate's sanction in 1921, 1922 or 1923. The present suit asking for the reliefs which we have set out at the commencement of this judgment was filed on 10th day of May 1924.

4. The trial Court gave the plaintiffs a decree to the effect that they have a right to take out "duldul" procession with its appropriate observances on the 4th of Muharram of every year on the public streets of Rasra town without interference or obstruction by anybody provided....

5. After the word "provided" follow a number of restrictions and conditions governing the right to take out the procession. These restrictions and conditions were apparently intended, as the lower appellate Court in upholding the decree suggests, to make "full provisions for the executive to interfere when necessary." Defendants, certain Hindus, have appealed on the ground that the lower Courts were wrong in interpreting the agreement, which we have set out above, of 7th October 1920, as an agreement which was only intended to have a temporary effect and to patch up a peace for the occasion only between the parties. We have no hesitation in accepting the plea of the appellants that the agreement was intended to be and was an agreement making permanent provision for securing peace between the parties so far as it might be possible. The whole language of the agreement is plainly inconsistent with any idea that it was the result of an endeavour merely to smooth over the trouble that was threatening on the particular occasion. In the first place the "duldul" procession had already been taken out on 17th September 1920, i.e., nearly three weeks prior to the signing of the agreement. Next, we have the initial phrase: As often Hindus and Mahomedans and Aryasamajists carry out new sorts of processions.

6. Again, "so we agree that we will not carry out any new procession." Again, there is no necessity of taking sanction for ancient processions." The last phrase obviously referred to the future indefinitely. And finally we have the fact that in this "particular agreement there is the reference to processions carried out and to be carried out by the Aryasamajists. It is in our view impossible to interpret this agreement as anything, but an endeavour to settle permanently for the future the trouble which had been arising. On behalf of the respondents three points have been taken. It has been urged that there is a finding of fact that the agreement was only intended to settle the immediate trouble and not intended to have any binding effect for the future. We do not agree that the interpretation of the legal effect of this agreement is in any sense a finding of fact. Nor can we agree that this finding was not challenged in appeal to the lower appellate Court. It is expressly challenged in ground 3 of the memorandum.

7. The next point taken is that even if the agreement is binding on plaintiff 2, who has been found definitely to have signed it, it is not binding on plaintiff 1, who did not so sign. It has to be contended that the signatories of the agreement did not sign in a representative capacity, and that even if they purported to do so, others who did not sign are not bound by those signatures. That there is no force in this contention we are satisfied from a consideration of the circumstances. It is manifest that the parties did summon the leaders of the various communities and that they were summoned as representatives of their various communities. From the point of view of the authorities any other intention would have been absolutely futile. This of course is not sufficient in itself. The attitude of those whom the leaders were supposed to represent must also be considered. We find it quite impossible to believe in the circumstances of the case that the other Mahomedans of Rasra were not fully aware of the meeting to which their leaders had been summoned, and their subsequent conduct in the ensuing years shows that during those years, at any rate, they accepted the representative capacity of the leaders who had signed the agreement. It is manifest that for at least three years no single Mahomedan made any endeavour to repudiate the authority of those leaders. We notice, moreover, that in this very suit the plaintiffs themselves have recognized this principle of representation, for the suit is brought against ten Hindus as representative of the Hindu community for an injunction to be issued against the Hindus generally. That it is right and proper to infer the representative character of the signatories to the agreement from the surrounding circumstances is amply supported by a reference to Section 187, Contract Act.

8. Thirdly, it is contended that even if the agreement is binding the relief asked for by the plaintiffs is not inconsistent with that agreement. The plea is manifestly untenable. The agreement provides for the sanction of the District Magistrate being required before any new procession is taken out. We have set out earlier the reliefs and they in the most unmistakable terms ask for a declaration of the right of the Mahomedans to take out the "duldul" procession, though both Courts have found it to be a new procession, without any obstruction or interference, and they expressly ask that the Secretary of State may be restrained from offering any obstruction in future to the "duldul" procession, and refer to the fact that the stoppage of that procession is due to the interference and orders of the Government servants and officers. To grant the plaintiffs a relief on terms that they might take out any new procession such as the "duldul" procession, subject to the control and sanction of the District Magistrate, would be to declare that they had a right which nobody has ever in fact challenged. It is to us manifest that a wise and reasonable agreement was arrived at between the parties on 7th October 1920, and it is most regrettable that anybody should have advised one of the parties to resile from that agreement subsequently. We think, therefore, that the plaintiffs' suit should have been dismissed. The appeal is allowed with costs and the suit of the plaintiffs is dismissed with costs.