

## APPELLATE CIVIL

Before Bhandari, C. J., and Khosla, J.

RATTAN SINGH AND OTHERS,—Defendants-Appellants

versus

1953

July, 15th

BELI RAM AND OTHERS,—Plaintiffs-Respondents

Letters Patent Appeal No. 85 of 1951

*Code of Civil Procedure (Act V of 1908)—Section 9—Civil Suit—Whether maintainable to enforce the right to enter a temple for worship bare-headed—Conditions precedent to the filing of a suit stated.*

The plaintiffs claimed to enter a temple for worship bare-headed to which the defendants objected. It was not denied that the plaintiffs had a right to worship in the temple but they were not allowed to enter the temple whenever they went there bare-headed. The plaintiffs filed a suit for an injunction restraining the defendants from preventing them from entering the temple bare-headed. Objection was raised that such a suit was not maintainable.

*Held*, that the plaintiffs had admittedly the right to worship in the temple and that the defendants were preventing them from exercising their right. They had thus a good cause of action and were entitled to bring the present suit. The matter whether the plaintiffs can worship in the temple when their heads are not covered can be decided after an appropriate issue has been framed and the entire evidence in the case recorded.

*Held further*, that a person's right to sue can be established if, and only if, the following conditions concur:—

- (i) There should be good cause of action. A cause of action consists of three factors, viz. (1) the

plaintiff's primary right, (2) the defendant's corresponding primary duty, and (3) the wrongful act or omission of the defendant by which the primary right and duty have been violated.

- (ii) All conditions precedent to the bringing of the action must be performed, whether they are prescribed by statute, fixed by agreement of the parties or implied by law.
- (iii) The right to bring the suit must vest in the person instituting it.
- (iv) The plaintiff must sustain some injury for which he may bring a suit for damages or other appropriate relief. The law presumes that when a legal right is invaded or infringed, damage is caused even though no loss or pain results.

*Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice J. L. Kaur, dated the 26th July 1951, in S.A.O. No. 9 of 1951 (Rattan Singh, etc. v. Beli Ram, etc.) affirming that of Shri Sheo Parshad, Senior Sub-Judge, Gurdaspur, dated the 26th December, 1950, and who reversed that of Shri A. S. Gillani, Additional Sub-Judge, 1st Class, Batala, District Gurdaspur, dated the 4th July, 1950, and remanded the case for trial on merits.*

H. S. GUJRAL, for Appellants.

H. R. MAHAJAN and P. C. JAIN, for Respondents.

### JUDGMENT

**KHOSLA, J.** The plaintiffs-respondents claiming the right to worship in a shrine called Mandir Baba Nam Dev, brought a suit against the appellants because the appellants had objected to their entering the temple bare-headed. In the suit the plaintiffs prayed for an injunction against the defendants restraining them from interfering with their rights as devotees in the temple and from preventing their entering the temple bare-headed. A preliminary objection was raised to the effect that no civil suit lay to enforce a right of this type and that the plaintiffs were merely seeking to enforce a certain type of ritual with regard to religious worship. This objection was allowed by trial Judge and the plaint was rejected. On appeal the Senior Subordinate Judge held that a civil suit lay and that the question of head-dress had nothing

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to do with what kind of ritual the plaintiffs wish to enforce. A second appeal came before Kapur, J., and he dismissed it holding that the plaintiffs could maintain the suit. Against the decision of Kapur, J., an appeal under clause 10 of the Letters Patent was filed, and in support of this appeal, Mr. Harbans Singh Gujral has urged that the plaintiffs cannot bring a suit to enforce a form of ritual in relation to religious worship. Upon a reading of the plaint, however, it is clear that the plaintiffs claim to worship in this temple. Their right is being challenged and denied by the defendants who prevent them from going into the temple whenever they are bare-headed. The trustees of the temple have no objection to the absence of head-dress on the worshippers. The appellants are also worshippers and their contention is that nobody should enter the temple bare-headed. They, therefore, stop the plaintiffs from entering the temple and worshipping therein whenever they come bare-headed. According to the plaintiffs their civil right to worship in the temple is being denied to them by the defendants. It is admitted that the plaintiffs have a right to worship in the temple. The plaintiffs claim that they can go to the temple bare-headed and since the defendants prevent them from doing so the plaintiffs have a right to go to a Court of Law and ask for an injunction against the defendants. The defendants can naturally plead that the rules of the institution do not permit a person to enter it bare-headed. They can oppose the plaintiffs' claim on any other ground that may be open to them. But it cannot be argued that the plaintiffs have no right to go to a Court of Law. Since the right to worship is being denied by the conduct of the defendants, the plaintiffs can seek their remedy in a Court of Law. Supposing the defendants prohibit every worshipper from entering the temple unless he wore a red waistcoat, the person so prohibited would undoubtedly have the right to go to a Court of Law and say that his right is being denied to him and the Court should determine whether he can enter the temple without a red waistcoat or not. In the present case the plaintiffs certainly have a right to maintain their suit and their claim must be considered on merits. This

appeal must, therefore, fail and is dismissed with costs.

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The parties have been directed to appear before the trial Court on the 17th of August, 1953.

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BHANDARI, C. J. As this appeal raises a general question as to the circumstances in which a person can approach a Court of Law for the enforcement of his legal rights, I have considered it desirable to add a few lines.

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It is a well known maxim of law that there can be no wrong without a remedy or, in other words, that every right to do a certain thing carries with it the corresponding right to seek redress at the hands of the Court, if and when that right is invaded or infringed. The Courts are always at pains to give effect to this maxim and to supply an adequate remedy if and when they are satisfied that a legal right has been invaded and broken. In the celebrated case of *Mambury v. Madison* (1), it was pointed out that the essence of civil liberty consists of the right of every individual to claim protection of the laws whenever he receives an injury.

But a person's right to sue can be established if, and only if, the following conditions concur. It is essential, in the first place, that there should be a good cause of action, that is, the fact or facts which give rise to the right of remedy. A cause of action arises when a legal right vests in the plaintiff to do a certain thing, when a corresponding legal duty devolves on the defendant to permit that thing being done and when by means of a wrongful act or omission of the defendant, the plaintiff is prevented from exercising his right. The cause of action consists of three factors, viz. (1) the plaintiff's primary right, (2) the defendant's corresponding primary duty, and (3) the wrongful act or omission of the defendant by which the primary right and duty have been violated. To put in a slightly different language, a cause of

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action cannot exist without the concurrence of a right, a duty and a default. The law presumes that it is the duty of a person to refrain from indulging in tortuous or illegal acts which violate the legal rights of others.

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The second essential prerequisite to the right to sue is that all conditions precedent to the bringing of the action must be performed, whether they are prescribed by statute, fixed by agreement of the parties or implied by law. Section 80 of the Code of Civil Procedure, for example, imposes an obligation on the plaintiff to give two months' notice before he can bring a suit against Government.

The third essential condition to the validity of an action is that the right to bring the suit must vest in the person instituting it.

The fourth and last necessary condition to the right to sue is that the plaintiff must sustain some injury for which he may bring a suit for damages or other appropriate relief. The law presumes that when a legal right is invaded or infringed, damage is caused even though no loss or pain results.

It is common ground that the plaintiffs in the present case have a right to worship in the temple and that the defendants are preventing them from exercising their right. They have thus a good cause of action and were entitled to bring the present suit. The real matter in controversy is not whether they have a right to sue or whether they have a right to worship in the temple but whether they can do so when their heads are not covered. This is obviously a matter which can be decided after an appropriate issue has been framed and the entire evidence in the case recorded. I concur in the order proposed.