

*Special Appeal No. 704 of 1863.*

1864.

Feb. 22.

KRISHNAMBHAT bin SHIVRÁMBHAT & another. *Appellants.*  
LAKSHUMANBHAT bin GANESHBHAT ..... *Respondent.*

*Fees, Suit for—Judgment recovered—Estoppel.*

In an action to recover fees claimed for services as an hereditary family and village priest, it appeared that a deceased brother of the plaintiff had recovered judgment against one of the defendants and others in an action for similar fees.

*Held*—That the former judgment was not conclusive in favour of the plaintiff, nor as against a brother of one of the original defendants.

**T**HIS was a Special Appeal from a decision by A. T. Crawford, Senior Assistant Judge of Ratnágirí, in the Konkan District.

Lakshumanbhat, the respondent, sued to recover fees which he claimed for services performed as Gharupádhyá (house or family priest), Grámupádhyá (village priest), and Joshi (astrologer), on the occasion of the death of the defendants Krishnambhat and Vámanbhat bin Shivrámbhat's mother.

The defence set up was that the plaintiff was not the family priest of the defendants, nor Joshi, and that the services in question had been performed by another party, who had been paid for them, and that the plaintiff was present at the ceremonies in question as an assistant, and had been paid for his attendance.

The Munsif, who tried the case, found that the plaintiff was family priest to Shúdras and Goud Bráhmaṇs alone, and not to Chitpávan Bráhmaṇs, to which caste the defendant belonged; and rejected the claim with costs.

The following is an extract from the judgment of the Senior Assistant Judge of Ratnágirí, on appeal from the decision of the Munsif:—

“Lakshumanbhat contends that, not only by evidence, but by a decree of the Šadr Diváni Adálat, he has been declared hereditary Gharupádhyá, Grámupádhyá, and Joshi of Amberre, and that, moreover, he actually performed the duties for which he claimed remuneration.

"The Court finds that the lower court has misapprehended the decision of the Şadr Diváni Adálat in Special Appeal No. 3674, in which that court held that Krishnambhaṭ bin Gaṇeshbhaṭ (brother of the present appellant, Lakshumanbhaṭ) was the hereditary Gharupádhyá, Grámu-pádhyá, and Joshi of the village of Amberre, and, being entitled by hereditary right to perform certain ceremonies, is entitled to be paid his fee, whether he performed them or not.

1864.  
 KRISHNAM-  
 BHAT  
 SHIVBA'MBHAT  
*et al.*  
*v.*  
 LAKSHUMAN-  
 BHAT  
 GANESHBHAT.

"The appellant did, however, assist in some minor ceremonies not connected with those which he, the appellant, claims to perform and to be paid for as an hereditary right, and received remuneration for the same. This, however, is beside the question.

"The appellant sued for his fees as hereditary 'Gharupádhyá,' and, by the decision of the Şadr Diváni Adálat above quoted, he is entitled thereto, whether he performed the ceremonies or not.

"The respondent has nowhere objected to the amount claimed, and the Court finds that, in proportion to the amount admitted by the respondent to have been paid as fees to assistants, the amount claimed is very reasonable. The lower court's decree is reversed; Krishnambhaṭ and Vishṇu Shivrám are to pay Lakshumanbhaṭ nine rupees twelve annas and three pias (Rs. 9-12-3), and to bear all costs."

On special appeal from this decision by the original defendants, registered as No. 441 of 1862, the High Court made the following decree on 28th February 1863:—

The Court holds that the Senior Assistant Judge has erred in law in holding the claim of the original plaintiff, Lakshumanbhaṭ, established on a decree in another case, to which the present appellants were not parties. The Court, therefore, reverses the decree of the Senior Assistant Judge, and remands the case, in order that the right of the original plaintiff may be determined, and that a new decree may be passed in the case on the merits.

Under this order the case went down to the Senior Assistant Judge for re-trial, whereupon the Assistant Judge

1864.  
 KRISHNAM-  
 BHAT  
 SHIVRÁMBHAT  
*et al.*  
 v.  
 LAKSHUMAN-  
 BHAT  
 GANESHBHAT.

adhering to his former decision, recorded the following judgment :—

“ With the greatest respect and deference to the Honorable Court (High Court), the Acting Senior Assistant Judge cannot but think there has been some serious clerical error in the decree of the Honorable Court, for in the Original Suit decided in Special Appeal No. 3674 of 17th July 1857 the parties were—

“ Krishnambhat bin Ganeshbhat (the original plaintiff), appellant, *own* brother of Lakshumanbhat bin Ganeshbhat, the original plaintiff in the present suit, *versus* Anant Gan-gádharbhat Vishvanáth Bháskarbhat, Krishnambhat bin Shivrámbhat, and two others.

“ Krishnambhat bin Shivrámbhat and Vishrámbhat bin Shivrámbhat, his brother, the appellants in the late Special Appeal No. 441 of 1862, were, therefore, parties to the former suit decided in Special Appeal No. 3674.

“ Under these circumstances the Senior Assistant Judge adheres to his former decree.”

The original defendants again preferred a special appeal.

The Appeal was heard by FORBES and NEWTON, JJ.

*Mádhavráv Krishná*, for the appellants, submitted that the decree in No. 3674 was not binding on the defendant in the present suit, and could not give the respondent any title, as he was not the plaintiff in that action.

FORBES, J., delivered judgment :—The Senior Assistant Judge has assumed that the appellants, Krishnambhat and Vishrámbhat, sons of Shivrámbhat, are bound by a decree obtained by Krishnambhat bin Ganeshbhat (who is said to be a brother of the present respondent, Lakshumanbhat) against Krishnambhat bin Shivrámbhat, one of the present appellants, and others, among whom the present appellant, Vishrámbhat, was not included. It is not to be assumed, however, that a decree in favour of Krishnambhat bin Ganeshbhat is sufficient ground for making an award in favour of Lakshumanbhat, even if they be brothers, nor is it to be assumed that a decree against Krishnambhat bin Shivrámbhat is sufficient ground for making an award against his brother, Vishrámbhat bin Shivrámbhat. The Senior Assistant Judge

should inquire and decide how far, if at all, Lakshumanbhat is entitled to avail himself of the decision in favour of his brother Krishnambhat, and how far, if at all, Vishrámbhat bin Shivrámhat is concluded by the decree against his brother, Krishnambhat; and for that purpose should receive all such evidence as may be offered by either of the parties.

1864.  
KRISHNAM-  
BHAT  
SHIVRAMBHAT  
*et al.*  
*v.*  
LAKSHUMAN-  
BHAT  
GANESHBHAT.

*Decree reversed.*

VALLABHĀ' M JAGJIVAN *et al.* ..... *Plaintiffs.*  
WOODHOUSE *et al.* ..... *Defendants.*  
*Jurisdiction—Public Servant—Munsif.*

A Munsif has not jurisdiction to try an action brought against a public servant for acts done by him in his official capacity.

*Semle*—The only judicial officers having jurisdiction to try such cases would be the Judge or Assistant Judge of the District in which the cause of action arose.

THIS case was referred by the Judge of Súrat, requesting the opinion of the High Court whether, under the alterations recently introduced into the procedure of the Civil Courts of the Mofussil, it was competent to judicial functionaries below the grade of the District Judge and his Assistants to try cases in which a public officer was sued for acts done in his official capacity. The circumstances under which the reference was made fully appear in the following minute, recorded by the District Judge of Súrat, R. H. Pinhey:—

*“Original Suit No. 217 of 1863.*

VALLABHĀ' M JAGJIVANDA'S and SHEK SARFULLA' FARZULLA',  
Plaintiffs, *v.* R. WOODHOUSE, Esquire, Executive Engineer  
of Súrat, and DANKAR MA'L.

*“Rs. 300.*

“This case is referred to the District Court by A'zam Krishnaráv Vithóji, Munsif at Orpár, under the provisions of Sec. 43 of Reg. II. of 1827, because the second defendant, R. Woodhouse, Esquire, Executive Engineer of Súrat, is a public servant, and the suit is brought for acts done by him in his public capacity.

“Under the Code of 1827, the law which gave jurisdiction to the Civil Courts over actions of this nature was Sec.