

1865.
June 28.

Special Appeal No. 781 of 1864.

DA'DO RA'VJI' *Appellant.*
DINA'NA'TH RA'VJI' *Respondent.*

Endowment—Samsthán—Former Suit.

It having been decided in a former suit, wherein the present plaintiff and appellant was the defendant, and the present defendant was the plaintiff, that the latter could not claim from the former a share of certain property set apart for the maintenance of a samsthán or religious establishment:—

Held that it was not competent to the present defendant, after that decision, to collect the rents of the property. He was, accordingly, ordered to make them over to the present plaintiff.

THIS was a special appeal from the decision of A. St. J. Richardson, District Judge of Ahmednagar, in Appeal Suit No. 80 of 1864, confirming the decree of the Munsif of Serúr in Original Suit No. 295 of 1861.

The case was heard before FORBES and WARDEN, JJ.

McCombie for the appellant.

Shántarám Náráyaṇ and *Gaṇesh Amrut* for the respondent.

The facts are stated in the judgment,

FORBES, J.:—Dínánáth, the defendant in this case, sued Dádo, the plaintiff, his brother, to recover a third share of some lands and other property, moveable and immoveable. Dádo's defence was that the immoveable property had been set apart for the expenses of a samsthán or religious establishment. The ultimate decision in the case was pronounced in the Sadr Court on the 15th of September 1858, and was as follows:—

“The Court find that when the property was divided in 1822, Rs. 7,504-14-0 of it was assigned to Rávji, in trust for the management of the samsthán, and Rs. 7,389 divided among the three descendants of Dádo, viz., Rávji, Viṭhal, and Rámchandra; that Rávjí's sons, in 1837, entered into an agreement concerning the property possessed by their father, not discriminating between that left with him in trust for the management of the samsthán, and that which fell to his

own share of the family property; and Dínánáth, upon that agreement, sued to recover one-third share of the whole property held by Rávjí, and obtained a decree in his favour, though not to the full amount, in the Court of the Zillá Judge; but this Court are of opinion that the Zillá Judge's decree affects the endowment of the samsthán, which cannot be disturbed without the consent of all the parties to the endowment. The Judge's decree is, therefore, reversed, and Dínánáth's original claim is thrown out, he bearing all costs in all courts."

1865.
DA'DO RA'VJI
v.
DI'NA'NA'TH
RA'VJI.

Subsequently, Dínánáth sued Dádo to recover possession of a half-share of eighteen mirás fields in the village of Daithan; but his claim was ultimately rejected by the High Court, on the 20th of August 1863, on the ground that the suit was on a cause of action which had been heard and determined by court of competent jurisdiction in a former suit between the same parties. The decision referred to was the above-quoted decision of the Sadr Court.

On the 18th of March 1860, the plaintiff, Dádo Rávjí, brought the present action to recover certain sums collected by the defendant, Dínánáth, from the cultivators of the village of Daithan. The Munsif of Serúr rejected the plaintiff's claim, on the ground that the defendant was competent to make the collections, and that he had expended the money collected on religious objects; and the District Judge confirmed the Munsif's decree, because he considered that the suit was brought upon a cause of action which had been heard and determined.

A special appeal has been made to this court by the plaintiff, Dádo, on the ground that the Sadr Court's decision of the 15th of September 1858 is conclusive of his sole right to collect and disburse the monies in question.

In consequence of a mistake made by the Judge in his description of the plaint, this court was compelled to remand the suit. The Acting Judge, in re-trial, corrected his predecessor's error; and it now appears that the defendant, Dínánáth, admits both that he collected the sums claimed in

1865.
DA'DO RA'VJI
 v.
DI'NA'NA'TH
RA'VJI.

the plaint from the cultivators of the village of Dev Daithan, and also that the said village is part of the estate assigned for the support of the samsthán in 1822 ; and it having been decided by the Sadr Court, in the judgment above quoted, that the existing arrangement regarding the samsthán could not be disturbed without the consent of all the parties to the endowment ; and the defendant, Dínánáth, having, in his plaint in that suit, admitted that the whole property held by Rávji, of which he sued for a share, was in the possession of the plaintiff, Dádo ; we consider that Dínánáth was not justified in making the collections which are the subject of the present suit, and that the plaintiff, Dádo, is entitled to a judgment in his favour.

We, therefore, reverse the decrees of the District Judge and Munsif ; and order that the defendant, Dínánáth, pay the plaintiff, Dádo, the sum of Rs. 484-4-0 : all costs upon the defendant, Dínánáth.

Appeal allowed.