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respondent, Motírám Govindrám, and the other male heirs (if any) of Narsírám Gangárám, are entitled to the reversion of and in the said houses and lands, and the rents and profits thereof, on the death of the said Mahálakshmi.

The Court further orders that the parties to this special appeal shall respectively bear their own costs thereof; and that the said Mayárám Bháirám and the said Mahálakshmí shall pay to the said Motirám Govindrám all the costs of this suit in the courts below.

Decree amended.

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Special Appeal No. 652 *of* 1865.

BA'I VIJKOR, daughter of BHA'I'LA'L.....*Appellant.*
FAKI'RBHA'I TULJA'RA'M and A'TMA'RA'M BHAGVA'N ..... *Respondents.*

Deposit of Dower-jewels (Pallá) in contemplation of marriage—Legal Representative—Heir—Parties—Remand.

The High Court remanded the case in consequence of a misunderstanding of the District Judge as to the meaning of the term "legal representative," which he supposed to be identical with "heir."

New directions given as to parties.

THIS was a special appeal from the decision of C. H. Cameron, District Judge of Súrat, in Appeal Suit No. 82 of 1862.

The original suit was instituted by Vijkor to recover from Fakírbhái and A'tmárám certain ornaments of the value of Rs. 775: alleging that the same had been deposited by her late brother Nandlál, and the second defendant, A'tmárám, with the first defendant Fakírbhái's father, Tuljárám, on the occasion of his (Nandlál's) betrothal with Jaikor, daughter of Vallabh Haribhái; and that her said brother having died without the intended marriage having taken place between him and Jaikor, since dead, she, the plaintiff, was entitled to the said ornaments.

Fakírbhái answered that his deceased father had desired him not to deliver up the said ornaments, unless asked to do

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so by Fakír Haribhái and A'tmárám jointly; and that, accordingly, he would deliver them to the plaintiff, Vijkor, if Fakír Haribhái's heir (Fakír himself being dead) and Atmárám desired him to do so.

A'tmárám denied that the plaintiff was Nandlál's heir; alleged that Nandlál's heirs were his daughter and his brother's widow; denied that the ornaments in dispute were the property of Nandlál, and alleged that they belonged to his deceased sister Vijkor, whose heir was her son.

On the 18th of October 1861, the Principal Ṣadr Amín threw out the plaintiff's claim, on the ground that another suit was pending, between her and another person, for the purpose of having it determined who was the heir of Nandlál, and that this suit would not lie before that was concluded.

On the 11th of December following, the District Judge, in appeal, reversed the Principal Ṣadr Amín's decision; and remanded the case, with directions to dispose of it on its merits.

On the 15th of April 1862, the Principal Ṣadr Amín decreed in favour of the plaintiff; being of opinion that she was entitled to recover the said ornaments, Nandlál having made a will in her favour.

In appeal, that decision was, on the 14th of July following, reversed, by the then District Judge, A. B. Warden, on the ground that there was no evidence in the case to show "that the ornaments in question were given by Nandlál to Jaíkor."

In special appeal, this decision was on the 19th of August 1863, reversed by the High Court (FORBES and TUCKER, JJ.), which remanded the case for the determination of the following points:—(1) Is Vijkor the legal representative of Nandlál? (2) Did Nandlál, either singly, or in conjunction with A'tmárám, deposit with Tuljárám ornaments, forming the whole or part of Jaíkor's *pallu*, of the value claimed in the suit? (3) Are Nandlál's representatives entitled to recover these ornaments from Tuljárám after Jaíkor's death, and without Atmárám's concurrence.

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The case, accordingly, was sent back to the District Court, where, the vakíls of both parties saying that the proof of these points was not to be found in the record, it was, under Sec. 356 of Act VIII. of 1859, sent back to the Principal Sadr Amín to take such evidence as might be forthcoming on either side regarding those points.

The Principal Sadr Amín, having, accordingly, taken such evidence as was offered, returned the case to the District Judge, C. H. Cameron, who passed the following decision thereon, on the 12th of September 1865 :—

"Plaintiff's (respondent's) vakíl is called on to show what proof has been adduced respecting the first issue: whether Vijkor is the legal representative of Nandlál. The vakíl, Ratanrám Dáji, states that, in the proof now received, there is nothing to prove this issue; but that he relied on two exhibits, Nos. 34 and 35, and recorded in this case, as it was before it was returned by the Judges of the High Court. These are a will and a certificate of administration of Nandlál's property.

"Now the certificate of administration cannot prove that plaintiff is Nandlál's heir. It rather goes against that fact, as she would have certainly got a certificate of heirship, instead of administration, if she had had no doubts about the one being as easy to get as the other. The will has not been proved. The vakíl says that it does not require proof; it having been already proved in another case. It appears, however, that in that case the parties were different; and, moreover, the decree in that case is not recorded here. So there is positively no proof that plaintiff is Nandlál's heir. There is no excuse, as the vakíl, Ratanrám, acknowledged before me, on the 13th of June, that the proof of this issue was not on the record. He should, therefore, have taken measures to produce it.

"My finding on the first issue is, that it is not proved that Vijkor is the legal representative of Nandlál. No finding, therefore, is necessary on the other issues. No further issue was sought by either party.

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"On the ground above shown, I reverse the decree of the Principal Ṣadr Amín; and throw out plaintiff's claim, saddling her with all costs."

Hence the present special appeal, which was based on the following grounds of objection to the above decision:—

(1) That the District Judge has misunderstood the expression "*legal representative of Nandlál,*" occurring in this Honourable Court's order of remand, inasmuch as he has taken it to stand for "*Nandlál's heir;*" (2) that the appellant's *status* as Nandlál's representative having been determined in another suit, namely, in Suit No. 147 of 1861, the District Judge was wrong in holding that that decision could not affect the respondents, who were not parties to that suit; (3) that he was wrong in deciding the first issue against the appellant, in the face of the certificate of administration alluded to in his judgment; (4) that he has omitted to decide the second and third points mentioned in the said order of remand.

The case was heard before WESTROPP and GIBBS, *JJ.*

Nánábhái Haridás for the appellant.

Dhirajlál Mathurádás for the respondent.

WESTROPP, J.:—The Court is clearly of opinion, that the Judge has misunderstood the first point, laid down in the decree of this court bearing date the 19th of August 1862. It is not by any means a matter of course that the heir and legal representative of a deceased person should be one and the same individual. Such may or may not be the case.

The plaintiff has propounded an exhibit, No. 35, being a decree bearing date the 25th of November 1861, which decree, if genuine, confers upon the plaintiff the character of legal representative of the deceased Nandlál, in virtue of a will, made by him, and bearing date the 13th of January 1859, in which he appoints her to be his executrix. Without expressing any opinion whatever as to her right, under that will, to a beneficial enjoyment of any portion of his property, it and the decree of the 25th of November 1861,

founded upon it (and which is similar to a grant of probate at the Original Side of this court), if that decree be genuine, constituted, in our view, Vijkor the legal representative of the deceased Nandlál, and entitled her to sue all persons who may be debtors to his estate. If her allegations in law and fact be well founded, the defendant Fakírbhái is in the position of a debtor to the estate; and as such, has no right, nor has A'tmárám, to question the grounds on which the alleged decree of the 25th of November 1861, granting administration of the estate of Nandlál to Vijkor, was made, if in fact it were made, by the court, whose decree it purports to be.

The Judge has arrived at a decision upon the first issue, on the mistaken hypothesis that "heir" and "legal representative" are convertible terms: whereas the heir and legal representative are frequently wholly different parties; and in this very case, it may well be that, though Vijkor may be the legal representative of Nandlál, his daughter Manglágavari may be his heir, and may be entitled, when she thinks fit so to do, to call upon Vijkor to account for such part of Nandlál's estate as may come to the hands of Vijkor: a matter into which we shall not travel, it being wholly foreign to this suit.

By his finding on the first issue, the Judge conceived himself discharged from the necessity of determining the second and third issues, which, together with the first, we must now remit to the Judge for determination.

It appears that the defendants, Fakírbhái and A'tmárám, admit that they claim no beneficial interest in the property alleged to have been deposited; and contend that although it was deposited on the betrothal of Jaíkor to Nandlál, in anticipation of a marriage between them, and although that marriage, in consequence of the death of Nandlál, never took place, yet the property was finally parted with by Nandlál, and had become absolutely the property of Jaíkor, and, on her death, vested in her heirs; and that, therefore, the plaintiff, even if the legal representative of Nandlál, cannot recover it.

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On the other hand, the plaintiff contends that the property was deposited in trust with Tuljárám (the father of Fakírbhái) for Jaíkor, in anticipation of the intended marriage; and, that in the event, which happened, of that marriage never taking place, there was an utter failure of the consideration for that deposit for the benefit of Jaíkor, and there was a resulting trust in favour of Nandlál, or his legal representative if he were dead; and it was urged that Jaíkor or her heirs might as well contend, as that which they have contended, that if she refused to follow up the betrothal by marriage, she or they would be entitled nevertheless to hold the property, although there was a complete failure of the consideration for the deposit.

Such being the nature of the questions involved in the second and third issues, we think that the suit is defective for want of parties; and we must direct that the heir or heirs of Jaíkor be made parties to this suit.

We reverse the decree of the District Judge, bearing date the 13th of June 1864, and remand the case for a fresh trial on the merits, including therein the points laid down for his determination in the decree of this court, bearing date the 19th of August 1863.

Previously to his proceeding with such trial, we direct the Judge to cause the heirs or heirs of Jáikor to be made parties to this suit, and to have due notice of the day fixed for such trial, and that they be at liberty to adduce such evidence thereon as they may be advised; and we direct the costs of this special appeal to follow the final decision.

Suit remanded.