Special Appeal No. 826 *of* 1865.

VISHVANA'TH GANGA'DHAR .....*Appellant.*
KRISHNA'JI GANESH and others .....*Respondents.*

Hindú law——Re-union after Partition (Samsrishta).

Held that re-union must be made by the parties, or some of them, who made the separation. If any of their descendants think fit to unite, they may do so; but such a union is not a re-union in the sense of the Hindú law, and does not affect the inheritance.

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THIS was a special appeal from the decision of C. B. Izon, Acting Assistant Judge of the Konkaṇ, in Appeal Suit No. 179 of 1865, affirming the decree of the Munsif of Bhivandi in Original Suit No. 21 of 1865.

Gangádhar, Gaṇesh, and Káshináth, sons of Balkrishṇabhaṭ, who were full brothers constituting an undivided Hindú family, separated in food, worship, and estate, after which they all consecutively died, without any re-union having taken place between them.

The three brothers, before separation, had been in joint possession of certain land inherited by them from one Mahádev, deceased.

Each of the three brothers left sons; and Vásudev, the son of Káshináth, dying first, and without leaving any issue surviving him, Krishṇáji and Rámchandra, the sons of Gaṇesh, took possession of the whole of the one-third share of the estate of Mahádev, which Vásudev had inherited from his father, Káshináth: alleging that they were the heirs of Vásudev, as having been in a state of re-union with him before his death, and having performed his funeral ceremonies.

The special appellant, Vishvanáth, the son of Gangádhar, then brought the original suit: seeking to recover from the sons of Gaṇesh a half share of Vásudev's one-third of the land inherited from Mahádev.

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The Munsif threw out the claim, finding that the defendants were the heirs of Vásudev, and that they had re-united with him.

On appeal, the Acting Assistant Judge laid down the following (among other) issues: (1) whether Vásudev and respondents were shown to have become united again, or not; (2) if they were re-united, then is plaintiff also, by Hindú law, Vásudev's heir, or not.

On the first issue he recorded as follows:—

"The plaintiff, in his examination, admitted the fact of defendants and Vásudev being united—this being given as a reason why defendants' and Vásudev's shares of Mahádev's estate had not been divided. * * *. I find, on plaintiff's own admission, that re-union had taken place between Vásudev and respondents.

"In Sir T. Strange's Hindú Law, Chapter 9 (*a*), it is stated: 'A re-united parcener dying while the re-union continues, leaving no issue, but a widow, according to the Mitákshará (*b*), she is entitled to maintenance only, the deceased's share vesting by survivorship in his coparceners;' and the whole doctrine of re-union (Samsrishṭa) is explained in Chap. IV., Sec. IX. of the Vyavahár Mayúkha. From this it clearly results that the re-united coparceners will succeed to the estate of a deceased re-united member.

"The following passages seem particularly to bear on the point:—Yádnyavalkya's opinion in clause 5; * * *; the opinion of Brihaspati in cl. 4; and cl. 15 and 16 [of the Vyavahár Mayúkha] (*c*). On the whole I believe there is no doubt that by Hindú law, when re-union has taken place,

(*a*) 1 Stra. H. L. 234. (*b*) Mit. ch. II., Sec. IX., 4.—See also *Yádnyavalkya*, 3 Dig. 507, 476; *Vasishta*, Id. 477; *Váchespati Misra*, Id.

(*c*) The paragraphs of the Mayúkha above referred to have no bearing on the present case. The text of *Brihaspati* in para. 4 has reference to the *profectitious* acquisitions of re-united brethren; and paras. 5, 8, 15, and 16 to the succession after re-union of uterine brothers and sons.—ED.

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on the death of a re-united coparcener, the remaining coparceners will inherit in preference to other relatives.

"I therefore find on the second point that plaintiff is not Vásudev's heir."

The special appeal first came on for hearing on the 18th of June 1866, before COUCH, C.J., and NEWTON, J.

Vishṇu Moreshvar for the appellant.

Páṇḍurang Balibhadra for the respondent.

The Court referred the case to the lower court, in order to determine who were the persons by whom the separation was made, and in what relation they stood to each other; and the then Acting Assistant Judge, S. H. Phillpotts, recorded as follows :—

"My finding on the issue :—That the father of the parties in this case, and Vásudev's father, were the persons who made the separation, namely, Gangádhar, appellant's father, Gaṇesh, respondent's father, and Káshináth, father of the deceased Vásudev. That the persons who made it were own brothers, namely, sons of Balkrishṇabhaṭ; but that there is no proof of re-union on the part of Káshináth, father of Vásudev, with either of the brothers; but that Vásudev, at the time of his death, re-united with Gaṇesh; but whether his father was living at the time or not is not proved.

"In this case the only proof about re-union or otherwise of either of the brothers is the examination of plaintiff, in which he admits the property and person [of Vásudev] were united with Gaṇesh, respondent's father; but whether that was before or after Káshináth's (Vásudev's father's) death is not proved; the witnesses merely state that the fathers of plaintiff, defendant, and Vásudev were separate, being own brothers."

Cur. adv. vult.

COUCH, C. J. :—The plaintiff in this suit (the special appellant) sought to recover a half-share of certain land the estate

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of Vásudev, deceased, which Vásudev had received as one-third share of Mahádev, deceased.

The fathers of the plaintiff, of Vásudev, and of the defendants (the special respondents) were brothers and an undivided Hindú family; and it has been found by the Acting Assistant Judge, upon the case being referred back by this court, that they separated.

The defendants resisted the claim, on the ground that they were re-united with Vásudev, and on his death performed his funeral ceremonies.

The Munsif gave judgment for the defendants, on the ground that they were the heirs of Vásudev, because they had re-united with him.

On appeal, the Acting Assistant Judge found, on the plaintiff's own admission, that re-union had taken place between Vásudev and the respondents; and confirmed the Munsif's decree.

Another Acting Assistant Judge has now, on the case being referred back, found that there is no proof of re-union on the part of the father of Vásudev with either of the brothers, but that Vásudev, at the time of his death, was re-united with Ganesh, the father of the respondents; and he appears to base this finding (as the former Acting Assistant Judge did) on the admission made by the plaintiff in the original suit. It is not necessary for the decision of this appeal to ascertain which of these findings is correct.

The question we have to determine is, whether by Hindú law it was necessary, in order to alter the course of inheritance, and deprive the plaintiff of a share in Vásudev's property, that the re-union should be made by the parties who separated.

There is little to be found in Hindú law-books on the subject of re-union, and scarcely any reported cases in the courts bearing upon the subject. In *Tarachand Ghose* v. *Padam Lochan Ghose* (*a*) it was considered, and it was held that where re-union has taken place among

(*a*) 5 Calc. W. Rep., Civ. R. 249.

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certain members of a Hindú family after partition, the members of the re-united family and their descendants succeed to each other, to the exclusion of the members of the branch not re-united.

This effect of re-union is important in considering in what cases it is allowable, as it does not merely affect the interests of the parties to it. We proceed, then, to consider in what cases there may be such a re-union.

In 1 Strange's Hindú Law, 233, it is said: "Not only may an original partition be re-formed by means of a supplemental one, but there may be an entirely new one upon a re-union of any of the separated parceners, competent to the purpose, and this, as well after partition by a father, as among co-heirs."

Sir Francis Macnaghten, in his Considerations on Hindú Law, p. 107, says: "After separation, and a partition actually made, families may be again united. This, however, is an event which seldom happens. I do not know an instance of it, and the Supreme Court's Pandits inform me that none has ever fallen within their knowledge."

In the *Mitákshará* on Inheritance, Chap. II., Sec. IX., 3, it is said: "That (re-union) cannot take place with any person indifferently; but only with a father, a brother, or a paternal uncle: as Vrihaspati declares. 'He, who, being once separated, dwells again through affection with his father, brother, or paternal uncle, is termed re-united.'"

In the *Vyavahár Mayúkha*, Chap. IV., Sec. IX., 1, there is this passage: "Now we proceed to expound the doctrine of re-united coparceners. On this subject, Vrihaspati defines re-union: 'He who, being once separated, dwells again, through affection, with his father, brother, or paternal uncle, is termed re-united.' This re-union, according to the Mitákshará and others, can only take place with a father, brother, or paternal uncle, not with others, because no others are included in the text. But the proper sense is, that this [re-union] arises even from the joint location of the makers of the [first]

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partition. For the words father, and the rest, are merely as a part to denote the whole, of the persons who make the partition, after the example, 'He measures the altar, half within, and half without:' otherwise, there would be a division of the text itself [into three]. Hence, re-union may take place with a wife, a paternal grandfather, a brother's grandson, a paternal uncle's son, and the rest also. 'He who, being once separated [from the co-heirs] dwells again [in common, is termed] re-united:' from joint location [of such an one], the sense of separated brothers, [one's own] sons, and the like, does not result." This author differs from all others in his doctrine.

In the *Dáya-Bhága*, Chap. XII., 4, after quoting *Vrihaspati*, it is said: "A special association among persons other than the relations here enumerated, is not to be acknowledged as a re-union of parceners: for the enumeration would be unmeaning."

The following passages from the *Dáya-Krama Sangraha*, Chap. V., show what the author understood by the term "re-united" in *Vrihaspati*. After quoting the passage, he says—

"3. Therefore where a person has been once disunited from his father and the rest;—afterwards the former partition is annulled by mutual consent of the separated parties, and in consequence of an agreement being concluded to the following effect, 'the wealth which is thine is mine,—that which is mine is thine,' they resolve on dwelling in the same abode. This is considered re-union.

"4. Here, since the father and the others are particularly specified, re-union takes place with those who are alone described, and not with nephews and the rest who are not named; otherwise the specific mention of father and the others would be unmeaning. Such is the opinion according to the Dáya-Bhága.

"5. The followers of the Maithila school are of opinion, that the use of the term father, and the rest, is figurative, and that re-union takes place, when those, whose right to a share of the common property is established by their birth, re-associate,

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after having once separated: consequently that reunion can occur with nephews and the rest."

It appears to us that the meaning of the passage from *Vrihaspati* which is the foundation of the law is, that the re-union must be made by the parties, or some of them, who made the separation. If any of their descendants think fit to unite, they may do so; but such a union is not a re-union in the sense of the Hindú law, and does not affect the inheritance. Both the courts below having decided that the union in this case had disentitled the plaintiff from succeeding to any part of the property claimed, we must reverse their decrees; and remand the suit for a re-trial. Although no other defence was set up, the value of the share claimed by the plaintiff has not been ascertained.

The costs of the suit, including this appeal, will abide the result.

Decree reversed and suit remanded.

Special Appeal No. 804 *of* 1865.

KESHAVBHAT bin GANESHBHAT ....*Appellant.*
BHA'GI'RATHI'BA'I kom NA'RA'YANBHAT.... *Respondent.*

Endowment of Hindú temple—Annual stipend—Sharers—Hindú female—Act XI. of 1865*—Jurisdiction.*

In a suit by the widow of one of the descendants of the grantee of a *varshásan*, or annual allowance,—paid from the Government treasury for the performance of religious service in a Hindú temple,—to recover arrears due to her husband's branch of the family from another descendant, who had received the whole stipend; and where it was found by the court below, that by the usage of the family the duties of the office had been performed in rotation, and the stipend distributed amongst the descendants of the grantee in certain fixed proportions:—

Held that it was not competent to the defendant (the special appellant) to raise the question of the non-divisibility of the *varshásan*.

Held, also, that this was not a suit for money due on a contract, or "for personal property," or otherwise, within the meaning of Sec. 6 of Act XI. of 1865, cognisable by a Court of Small Causes in the Mofussil.

Quære, Whether the appropriation of an annuity which is in the nature of a religious endowment as private property is justified by Hindú law.

Quære, Whether a Hindú female is competent to perform, either in person or vicariously, the services for the maintenance of which a religious endowment has been granted.