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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.

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THIS was a special appeal from the decision of F. D. Melvill, Assistant Judge of the Puná District, in Appeal Suit No. 267 of 1864, reversing the decree of the Munsif of Puná in Original Suit No. 116 of 1863.

The case was argued before TUCKER and GIBBS, JJ.

Páṇḍurang Balibhadra for the appellant.

Ganesh Hari Patvardhan for the respondent.

The facts are fully stated in the judgment of the Court, which was this day delivered by

TUCKER, J.—The plaintiff, the widow of one Náráyaṇbhaṭ son of Bábúbhaṭ, brought this action to recover two sums of Rs. 32-8-0 and Rs. 16, total Rs. 48-8-0, to which she alleged she was entitled as a sharer in a *varshásan*, or annual allowance paid from the Government treasury to the defendant for the maintenance of certain religious services at the temple of Mahádev at Baṇeshvar, near Puná.

It was stated that the allowance was originally granted to one Rámkrishṇabhaṭ, and descended to his four sons, Gaṇeshbhaṭ, Bálábhaṭ, Bábúbhaṭ, and Bhikambhaṭ, who discharged the duties for the performance of which the allowance was granted, in rotation, and shared the allowance in certain fixed proportions for each year of service and of non-service: That the plaintiff represented one of the three sons of Bábúbhaṭ, who had separated from his brethren and the other branches of the family, and was entitled to the same portion of the allowances which her husband would have received had he lived, namely, Rs. 32-8-0 for the year, Shake 1783 (A.D. 1861-62), in which the duties devolved upon Bábúbhaṭ's branch of the family, and Rs. 16 for Shake 1784 (A.D. 1862-63), when no services on the part of that branch of the family were necessary.

The defendant answered that plaintiff, being a woman, could not perform any of the services for which the annuity was granted; and as she discharged none of the duties in

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1783, she was not entitled to any share of the allowance. That the said allowance had been continued by Government in his sole name, and for his lifetime; and, being in the nature of an endowment for a temple, the other descendants of the original grantee were not entitled to share in it. He also raised a question of jurisdiction, namely, that the claim, being for a money debt alleged to be due to the defendant, was only cognisable by a Small Cause Court.

The Munsif of Puná rejected the plaintiff's claim, as he considered that she had not established any right to share in the allowance, which had been continued by Government to the defendant personally, for the maintenance of certain religious services in the temple.

On appeal, the Assistant Judge of Puná, Mr. Melvill, found that the suit had been properly brought in the Munsif's court; that the allowance belonged to the entire descendants of the original grantee, and was distributable amongst them; and that the plaintiff, as the widow of a separated member of the family, was entitled to such portion as her husband would have received during his lifetime; that in the year 1783, when the term of the service devolved on the branch of the family of which she was a member, the duties had been performed by her son, who was then alive, but has since died, and, subsequent to her son's illness, by her brother-in-law; and that, consequently, she was entitled to the sums claimed, which were the portions of the allowance which would have been payable to her husband or son, had they lived, according to the customary distribution in the family.

In special appeal it has been urged that a female cannot share in an allowance of this description, as she cannot adequately perform the services for which it is granted, either in person or by deputy; also, that such an allowance is not properly divisible among the descendants of the original grantee, but should be devoted to the temple of which it

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formed the endowment; further, that the suit was not brought in the proper court.

We consider that the suit has been brought in the proper court, and that it is not cognisable by a Court of Small Causes. It is not a claim "for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages;" but it is a demand for the arrears of a certain stipend attached to a particular temple, and enjoyed by a particular family, which plaintiff alleges to be due to her in virtue of a right of inheritance derived from her husband and son.

It does not appear to us that the words used by the Legislature, in Sec. 6, Act XI. of 1865, which define the jurisdiction of Courts of Small Causes, include a claim of this description. It has been argued that the debt, if due at all, is due on account of an implied contract between the parties; but this proposition we think cannot be maintained, as the plaintiff's alleged right to share in the allowance is not founded upon any contract, express or implied. It has also been contended that an annual money payment from the treasury is personal property. We hold, however, that the meaning of the words "personal property" as used in Sec. 6 of the Act, previously quoted, must be limited to "chattels moveable," as it would seem from the sentences which precede and follow those words, that the Legislature did not intend to include under them, claims to money other than those which are distinctly specified in the statute. Using, then, the term "personal property" in the restricted sense which appears to have been given it in the Act, we consider that the present suit is not a claim to personal property, and that the question of jurisdiction has been rightly determined in the lower appellate court.

With respect to the other points raised in special appeal, we consider that, as it has been clearly found in the lower court, that it has been the custom in the family to perform the duties which attach to the office in rotation, and to

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distribute the stipend among the descendants of the original grantee in fixed proportions, it was not competent to the defendant, in answer to a claim brought by the legal representative of another coparcener, for arrears which had accrued due, to raise the question of non-divisibility.

As the annuity paid from the treasury appears to partake of the character of a religious endowment, it may be a question whether the appropriation of it as private property by the descendants of the original grantee, is an act justified by Hindú law, although, from the number of suits similar in character to the present one, which are brought in the Civil Courts in this presidency, it would seem probable that the proceeding is sanctioned by general custom. But, however this may be, the issue does not legitimately arise in the present suit; and can properly only be determined when some member of the community, who may be beneficially interested in the endowment, shall bring an action against the managers for the time being, or against the entire body of trustees, for a misapplication of the trust property.

Finally, with respect to the objection, that a Hindú female cannot perform the duties which attach to the office for the maintenance of which the allowance was granted, it may be observed that the defendant has not proved the existence of any usage in conformity with his allegation.

It has also been found as a fact that in Shake 1783, the last year in which the turn of duty devolved on plaintiff's branch of the family, the plaintiff's son was alive, and performed during a portion of the year the required services, which were continued after his illness and death by the plaintiff's brother-in-law. The defendant's pleader has not been able to inform the court of the precise date of the death of the plaintiff's son; but, from what has been disclosed, it is but fair to conclude, that the arrangements for worship during the said year were made by the plaintiff's son; and, as no interruption is alleged, it may be considered established

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that all that was necessary was done during that year, while in the following year the obligation to perform the service fell upon another branch of the family.

Under these circumstances, we consider that the defendant is not justified in resisting the payment of the arrears claimed in this suit, on the ground of the incompetence of the widow to minister in the temple, either in person or vicariously; and, without determining that point, which we consider does not arise in the present suit, we affirm the Assistant Judge's decree so far as it awards the payment of the said arrears, and order that the special appellant pay all the costs of the special appeal.

ORDER:—The Court confirm the decree of the Assistant Judge so far as it awards the payment of the money claimed and costs to plaintiff; but without prejudice to the defendant's right (if so advised) to raise the question of the competence of a Hindú female to perform, either in person or by deputy, the services for the maintenance of which the *varshásan*, or annual allowance, has been granted, in any fresh suit which may be brought by the plaintiff to share in the stipend in future; on which question the High Court by its present judgment has given no decision. All costs of special appeal on special appellant.

Decree affirmed.