

*Special Appeal No. 9 of 1867.*1867.  
March 6.

GUNDO ANANDRA'V and another ..... *Appellants.*  
KRISHNA'BA'V GOVIND..... *Respondent.*

*Act XIV. of 1859, Sec. 1., Cl. 13 and 16—Limitation—Watan—Interest—Co-sharers—Manager—Remuneration—Volunteer.*

In a suit to establish a right to share in a watan, and to recover a portion of the profits thereof for seven years :—

*Held* that the case was governed, as to limitation, by Cl. 13 (and not Cl. 16) of Sec. 1. of Act XIV. of 1859; and that arrears for seven years were, therefore, properly awarded.

There is no law by which interest can be awarded in such a case.

A volunteer, who acts as manager, cannot claim remuneration from his co-sharers without showing a previous consent on their part to pay him.

**T**HIS suit was brought by Krishnaráv, to recover a  $\frac{1}{4}$  share of the profits in a certain watan, payable out of three villages, for seven years.

The Şadr Amín originally gave judgment for the plaintiff; and the Joint Judge, in appeal, affirmed his decree.

In Special Appeal (No. 672 of 1865) the decrees of both the lower courts were reversed; and the case was remanded to the Şadr Amín for re-trial, in order to determine the following issues :—(1) Whether any provision was made by the Collector, under Sec. 13 of Act XI. of 1843, for the officiating officer; (2) Whether there was any excess over and above such assignment made by the Collector; (3) If any, what was the plaintiff's share of that excess.

The Şadr Amín found the plaintiff to be entitled to the  $\frac{3}{4}$  share in the watan; and awarded Rs. 277, including Rs. 50 as interest.

On appeal, R. W. Hunter, Acting Senior Assistant Judge at Sholápur, found that no provision was made by the Collector for the officiating officer, under Act XI. of 1843; and that Krishnaráv's share in the watan was  $\frac{1}{4}$ , but inclusive of the shares belonging to Malhár Narsu and Chintáman Govind, members of the same undivided family. He affirmed the Şadr Amín's decree.

1867. The case was heard by COUCH, C.J., and NEWTON, J.

GUNDO  
ANANDRA'V  
v.  
KRISH-  
NA'RA'V  
GOVIND.

*Dhirajlál Mathurádas*, for the appellants, contended that arrears of the profits of the watan for more than six years could not be recovered, the same being barred by Act XIV. of 1859; that this was not a suit in which interest could be legally awarded; and that the defendant should have been allowed some remuneration for officiating as manager of the watan.

*Nánábhái Haridás*, for the respondent, contended that this was a suit to share in the watan, and therefore did not come under cl. 16, but under cl. 13, of Sec. I. of Act XIV. of 1859; and that, as the defendant did not officiate as manager, at the previous request or with the subsequent consent of the plaintiff, he was not entitled to any remuneration.

COUCH, C.J.:—This is really a suit to establish a right to share in the watan; and to recover a portion of the profits of that watan. The whole case comes under cl. 13, and not under cl. 16, of Sec. I. of Act XIV. of 1859. The lower courts have, therefore, properly awarded arrears for seven years.

There is no law, however, which enabled the lower courts to award interest. The sum of Rs. 50 must, therefore, be deducted from the sum awarded to the plaintiff in the lower courts.

With reference to the demand for remuneration to the defendant for his services as manager, it must be observed, first, that the defendant puts in no such answer in the lower courts; and secondly, that if he be one of the co-sharers, and did service as a volunteer, he cannot charge the plaintiffs for remuneration, unless he can show that they previously consented to pay him. On the contrary, it appears that he performed the services in opposition to their wishes.

We, therefore, amend the decree of the lower court by disallowing Rs. 50; and order the costs of this special appeal to be paid in proportion.

*Decree amended.*