

representations made to him of the alleged needs of the estate, and the motives influencing his immediate loan." "The case before their Lordships is one of a mixed character; the existing security represents loans and transactions at various times and under varying circumstances; it is a consolidating security; and as to part, at least, namely, the ancestral debt, there is, in the opinion of their Lordships, ground to raise a *prima facie* presumption in the appellant's (the mortgagee's) favour of a consideration that binds the estate." These observations are, in our opinion, as applicable where all the members of the family are adults as where one of them is an infant. The lower court, in determining the question now put before it, should be governed by these remarks, and should receive any further evidence which either of the parties may desire to give.

1867.  
 GANE BHIVE  
*et al.*  
 v.  
 KANE BHIVE  
*et al.*

*Decree reversed and suit remanded.*

*Special Appeal No. 539 of 1867.*

Nov. 2 0.

RATANSHANKAR REVA'SHANKAR ..... *Appellant.*  
 GULA'BSHANKAR LA'LSHANKAR..... *Respondent*

*Jurisdiction—Varshásan—Gáikwád—Title—Small Cause Court—Extraordinary Jurisdiction.*

In an action brought to recover a third-share of *arrears* of a *varshásan*, or annual allowance, paid by the Gáikwád of Barodá to the defendant, and in which the plaintiff alleged that he was entitled to a third-share:

*Held* that such an action can be maintained in a Munsif's Court, although it may be necessary to determine the title of the plaintiff to share in such *varshásan*.

*Semble* that such an action is maintainable in a Court of Small Causes.

Where the District Judge reversed the decree of the Munsif *for want of jurisdiction*, although the amount of the claim was under Rs. 500, the Court, in the exercise of its extraordinary jurisdiction, interfered.

**T**HIS was a special appeal against the decision of C. G. Kemball, District Judge of Súrat, in Appeal Suit No. 74 of 1867, reversing the decree of the Munsif of Súrat.

The original suit was brought to recover arrears of a third-share of a *varshásan*, or annual allowance, collected for six years by the defendant.

1867.  
 RATANSHAN-  
 KAR REVA'.  
 BHANKAR  
 v.  
 GULABSHAN-  
 KAR LA'LSHAN-  
 KAR.

The defendant answered, *inter alia*, that the allowance was paid by a foreign power (the Gáikwád of Barodá), and could not be claimed in this court, and that, even if the *varshásan* be claimable, he had another claim against the plaintiff in respect of expenses incurred for another member of his family.

Upon appeal the District Judge recorded as follows :—

“The appellant’s principal ground of objection against the decree passed against him is, that it was not competent to our courts to decide upon a *varshásan* allowance granted by the Gáikwád, and paid in the Gáikwád’s territory ; and it appears to me that this is a valid objection. The respondent admits that the *hak* is receivable from the Gáikwád, but argues that this action is not to establish his right to a portion of the *hak* as against his relative, but simply to recover arrears of his money, withheld by the appellant. But the action is virtually to try the right to the *hak* in question—a right which a foreign court is not competent to adjudicate on ; for, assuming that the respondent’s statement is correct, and that he merely sues to recover money ‘had and received to his use,’ it is impossible to decide the question without determining also the question of title.

“I consider the decision of the lower court was wrong for want of jurisdiction ; and therefore reverse the decree with costs.”

The grounds of objection taken in Special Appeal were—that it was contrary to law : in that (1) the Judge was wrong in holding that the court had no jurisdiction ; and (2) the decision was opposed to the High Court’s ruling in Special Appeal No. 63 of 1867.

The case was heard before COUCH, C.J., and NEWTON, J.

*Nánábhái Haridás* :—There is no jurisdiction here, as it is a suit cognisable by a Small Cause Court. It is simply an action for debt ; and, under Sec. 27 of Act XXIII. of 1861, whether the Judge has gone into the question of title or not, this court has no jurisdiction.

*Bhairavanáth Mangesh* (with him *Dhirajlál Máthurádás*) :—The Judge has gone into the question of the title. It has

been held (a) that where the question of title incidentally comes in, this court has jurisdiction.

*Náinábhái*, in reply :—Looking at it as a case of money had and received, the judgment cannot be supported, as the property (*varshásan*) is situated at Barodá, where the court had no jurisdiction. [Couch, C.J. :—The question is, whether the money was received by the defendant on his own account or for others.] As no special appeal lies, the proper course is to dismiss the special appeal, and leave the party to apply for a review of judgment.

Couch, C.J. :—The question to be determined was, whether the money which had been received by the defendant from the Gáikwád had been received on the plaintiff's account. If, in determining it, it became necessary incidentally to try the question of title to the money, that would not deprive the court of jurisdiction.

The Judge, therefore, was wrong in holding that the Munsif had no jurisdiction; and, as this is a question of jurisdiction, the Court thinks that, although no special appeal lies to this court (under Sec. 27 [b] of Act XXIII. of 1861), it should exercise its extraordinary power, and correct the error.

*Case remanded.*

(a) *Dikshit v. Dikshit*, 2 Bom. II. C. Rep. 4.

(b) "No special appeal shall lie from any decision or order which shall be passed on regular appeal after the passing of this Act by any Court subordinate to the Sadr Court, in any suit of the nature cognisable in Courts of Small Causes under Act XI. of 1865 (for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter), when the debt, damage, or demand for which the original suit shall be instituted shall not exceed five hundred rupees; but every such order or decision shall be final."

1867.

RATANSHAN-  
KAR BEVA'-  
SHANKAR  
v.  
GULABSHAN-  
KAR LALSHAN-  
KAR.