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NARSINVA'CHA'RYA *et al.* v. SVA'MI RA'YACHA'RYA.

The late Court of Sadr Adálat recommended the introduction of a special clause in the Stamp Act, declaring that claims to periodical payments should be valued at ten times the amount of the particular payment claimed, but this recommendation seems to have been overlooked (*vide* Circular letter No. 1706 dated the 2nd of July 1864, p. 4).

Application to be returned.

April 6.

Special Appeal No. 38 *of* 1868.

KISANDRA'M valad HIRA'CHAND .....*Appellant.*
JETHIRA'M valad MAGNIRA'M.....*Respondent.*

Small Cause Court—Title to Land—Special Appeal.

Where, in a suit cognisable by a Court of Small Causes, in order to determine the question at issue between the parties, it was *necessary* for the court of appeal in the first instance to determine a question of title to land (which had been raised by the Munsif) : *Held* that a special appeal lay to the High Court, though the court below had omitted to determine such question of title.

THIS was a special appeal from the decision of J. L. Warden, Assistant Judge at Ahmednagar, in Appeal Suit No. 172 of 1867, amending the decree of the Munsif of Sinar.

The action was brought by Jethirám to prove his right to a half-share in a crop of *bázari* grain, which was attached and sold, in pursuance of a decree obtained by Kisandrám, the first defendant, against Khandu, the third defendant. The land was bought by Bápu, the second defendant.

The defence was, that there was no partnership between Khandu and the plaintiff, and that the whole crop belonged to Khandu.

The Munsif found for the plaintiff, on the ground that it was proved that he bought the land in question at an auction sale, and took Khandu into partnership to cultivate the field.

In appeal, the Assistant Judge laid down the issues for decision to be—'1*st*, Can Jethirám prove his right to half of

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the crop; 2*ndly*, What was the value of the crop; and 3*rdly*, Supposing Jethiram's title to be good, from whom ought he to recover. The Assistant Judge, however, did not record a distinct finding on the first and second points raised for decision.

The case was heard this day before NEWTON, Acting C.J., and GIBBS, J.

Dhirajlál Mathurádás, for the respondent :—I have a preliminary objection to make, viz., that no special appeal lies in this case. Though the question of partnership is raised, the plaint and decree show that the suit is of the nature cognisable in a Court of Small Causes, under Sec. 6 of Act XI. of 1865. [NEWTON, Acting C. J. :—We have held that a Court of Small Causes can incidentally determine title, to ascertain whether the amount claimed is due, but that such determination would not be binding on the Civil Courts.] The Assistant Judge has not gone into the question of title, nor was it necessary for him to do so. The field was cultivated on *surkat*, by which the cultivator or tenant gives half of the produce to the owner. Here the claim rests upon a lease, and if that is proved, there is no necessity to go into the title.

Shántárám Náráyan, for the appellant :—This suit arises under Sec. 246 of the Code of Civil Procedure, and the practice is that the court before which the attachment pended tries the suit. [NEWTON, Acting C.J. :—The suit is allowed by the last part of the section, but the suit must be filed in the right court. The clause merely gives a right of suit. Here the grain was cut, and it had become moveable property.] In this case the title of Khandu to the land is directly involved, and the Assistant Judge ought to have determined it, as he could not have found Khandu's right to the crop without determining his title to the land itself.

PER CURIAM :—This is not, in our opinion, a case that can be properly treated as coming under Sec. 27 of Act XXIII. of 1861. The Munsif went into the question of the plaintiff's title to the land, and it was necessary, therefore, that the Assistant Judge should determine the first and second issues.

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A special appeal lies, on the principle laid down in the case of *Díkshít* v. *Díkshít* (*a*); and we reverse the decree, and remand the case that the issues indicated may be decided. Costs to follow the final decision.

Suit remanded.

(*a*) 2 Bom. H. C. Rep. 4.

April 8.

Civil Petition.

DIPSANGJI JITSANGJI .....*Petitioner.*
FATTESANGJI JASVATSANGJI .....*Opponent.*

Pauper Suit—Inquiry—Civil Proc. Code, Secs. 305, 306.

When a pauper petition comes on for hearing, under Sec. 306 of the Code of Civil Procedure, the Judge has no power to inquire into any other circumstance than the pauperism of the petitioner.

THIS was an application to the Court, in the exercise of its extraordinary jurisdiction, under Cl. 2 of Sec. v. of Reg. II. of 1827.

The petitioner, Dipsangji, applied for permission to file a suit *in formâ pauperis* against Fattesangji Jasvatsangji in the court of the Principal Ṣadr Amín of Súrat, to establish his right to succeed to the principality of Ahmod, and to recover arrears of revenue &c. due to him, on the ground of his being the son of the late Jitsangji, and as such entitled to the property left by him.

The Principal Ṣadr Amín, after examining the application and the petitioner, fixed the 17th of December 1867 for receiving such evidence as the petitioner might adduce in proof of his pauperism, and for hearing any evidence which the defendant might wish to bring forward in disproof of it, and served a notice upon the defendant to that effect. The notice further stated that the court had seen no reason to refuse the application.

The defendant accordingly appeared, and prayed the Principal Ṣadr Amín to reject the petition, on the ground that the petitioner had no cause of action, as his claim was barred