

1869  
 Murar Daya  
*et al.*  
 v.  
 Nagria Ganeshia

December 1864, in a similar dispute.\* We, therefore, affirm the decree of the Senior Assistant Judge and direct that the special appellant pay the costs of this special appeal.

*Decree confirmed.*

*Special Appeal No. 470 of 1868.*

Jan. 29.

SHIVRAM VITHAL.....Appellant.  
 BHAGIRTHIBAI.....Respondent.

*Suing without written authority—Jurisdiction—Ratification—  
 Civ. Proc. Code. sec. 19.*

A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court. The defendants did not object to her want of authority in the Court of first instance, but did so in the Courts of Appeal and Special Appeal.

*Held*, that the objection was a valid one.

*Also* that the defect of jurisdiction could not be cured by the production of a written authority in the Court of Special Appeal.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge at Ratnagiri, in Appeal suit No 87 of 1868, confirming the decree of Ragho Narayan, Munsif of Vingurla.

\* PER CURIAM (FORBES and TUCKER J J.):— The Court is clearly of opinion that the question at issue between the parties in this Court is a 'caste question' and one which is consequently excepted from the cognizance of the Civil Courts. A man of the weaver caste sues to obtain a declaration of his right to be recognized as the head of the said caste, and to receive from certain other members of the caste, on certain public occasions, the privileges and precedence accorded to the holder of that office, notwithstanding that they have elected another person to that position. The case is clearly distinguished from the special appeal No. 3675 (4 Morris p. 118) and the other suits for *manpan* which have been cited. In those cases a person, claiming to be the head of a particular village or District, demanded a recognition of his right to precedence, on occasions of ceremony, from all the householders of the said village or district; but the present action is substantially a claim to enforce the recognition, by a particular caste, of the plaintiff as its head, and in determining it the Court would be called upon to interfere with the autonomy of the caste and might, by the application of the ordinary rules of inheritance, be called upon to compel the caste to accept a chief whom they were unwilling to acknowledge. Section 21 Reg. II. of 1827 appears to the Court to have expressly prohibited the interference of the Court in such matters, and, therefore, though the Court does not concur in the reasoning of the Assistant Judge, it is of opinion that the decree must be confirmed.

The suit was instituted by Bhagirthibai on behalf of her son, who was absent on Military service in a district beyond the jurisdiction of the Court, to recover a piece of land, which she alleged, had been let by him to the first defendant, but which he, combining with the second and third defendants, refused now to give up. The plaintiff also sought to recover Rs. 37 as mesne profits for two years.

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The summons was not served upon the fourth defendant, but his brother, Shivram Vithal, was, at his own request, made a defendant. He alone put in an answer, in which he stated that a part of the land had always been his, and that, though a part of it had been mortgaged to him, it had been redeemed by the plaintiff and he, the defendant, had no claim to it any longer.

The Munsif of Vingurla, finding the land sued for to belong to the son of Bhagirthibai, gave a decree in her favour.

The defendant Shivram appealed on the ground, principally, that Bhagirthibai could not sue on behalf of her son without a written authority.

The Senior Assistant Judge found that, from the evidence on the record, it appeared that Bhagirthibai was the manager of the property, her son Bapu, the real owner, being away on military service, and that, as no objection was raised in the Court of first instance as to the plaintiff's competency to bring the suit, no evidence bearing special reference to this point had been received. He therefore confirmed the Munsif's decree.

The special appeal was argued on the 18th January 1869, before NEWTON and WARDEN, J.J.

*Shantaram Narayan* for the Special Appellant.—On the face of the plaint it appears that the plaintiff, Bhagirthibai's son, is on military service in a district beyond the jurisdiction of the Court, and that, in accordance with the provisions in sec. 19 of the Code of Civil Procedure, the plaintiff is not provided with a written authority from the son—the owner of the property sued for, countersigned by his commanding

1869 officer. He relied on S. A. 1016 of 1864, decided on the 4th  
Shivram Vithal of October 1865 by TUCKER and WARDEN, J.J.

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*Bahiravnath Mangesh* for the Special Respondent. In a previous suit between the same parties for rent this objection of jurisdiction was not taken, nor was it taken in this case in the Court of first instance. It ought not, therefore, to be now allowed. This defect is one that can be cured by producing the written authority here. The defendant admits a part of the claim which should at all events be allowed.

*Cur. adv. vult.*

On the 29th of January the judgment of the Court was delivered by—

NEWTON, J.—We have carefully seen the presidents, and are of opinion that the law is clear. Mr. Shantaram has pointed out two cases. In S. A. No. 587 of 1867 (decided on the 29th November 1867, by WARDEN and GIBBS, J.J.) it seems that a woman was suing on behalf of her husband without proper authority, and it was held that she was not entitled to do so. There is another case, S. A. No. 370 of 1868, decided on the 10th December 1867, which is stronger even than this. The Chief Justice and Mr. Justice NEWTON there held that, an adoption having taken place, the adoptive mother could not sue. The present case is stronger still. Here the plaintiff has a grown up son.

The objection to the plaintiff's right to bring the suit, although it was not taken in the Court of first instance, was taken both in Regular and Special Appeal. The Lower Appellate Court has recorded a finding for the plaintiff; but we do not consider that it was justified in doing so. The son was the owner of the property, and not the mother, who had no authority given to her of any kind, and we are of opinion that no authority can be given to her now. We must therefore reverse the decrees of both the Lower Courts and throw out the plaintiff's claim with costs.

This decree will not interfere with the son's right of suit.

*Decree reversed.*