1869
Krishnabhat Hiragange
v.
Kapabhat Mahalbhat
et al.

words used in the original for land, corrody, and chattels are "*bhu*," land, "*Nibandha*," corrody ; and "*Dravya*" *i.e.*, things, monies, &c. Colebrook calls it "chattels," but Strange considers it "slaves."

Now, these are the immoveable property contrasted with the moveable, in verses 22 and 23 (page 204) over which the father has power ; and I think that as over the former the father's right was limited, the distinction between these two lists is the proper distinction to be made among Hindus between what in English law would be termed property moveable and immoveable, of personal and real.

I consider, therefore, that this further examination into the Hindu law books shows that the view taken by Mr. Justice Tucker and myself in S. A. No. 425 of 1866 was correct, and I entirely concur with my Lord that it requires us to apply cl. 12 of Sec. 1 of the Limitation Act to this suit, and so hold the claim not barred, and reverse, and remand the case for trial on merits.

Decree reversed and suit remanded.

Referred Case.

July 6.

Shivrudrappa ... ... *Plaintiff.*

Kashinath Vishnu ... ... *Defendant.*

Practice-Order for attendance of party-Service-Civ. Pro. Code, Sec. 165.

An order under Sec. 165 of the Civil Procedure Code requiring a party to a suit to attend and give evidence may be served on such party's pleader, and need not be served personally.

Case stated for the opinion of the High Court by M. B. Baker, Acting Assistant Judge of Dharwar, under Sec. 28 of Act XXIII. of 1861:—

"The point to be considered is whether it was necessary that the summons issued by the Principal Sadr Amin, under Sec. 165 of the Civil Procedure Code, should have been

1869

Shivrudrappa v. Kashinath Vishnu

served on the plaintiff personally or whether service on his *vakil* was sufficient.

"The facts of the case all the these : The defendant petitioned the Court to have the plaintiff examined as a witness. A notice was served under Sec. 163 of the Civil Procedure Code, and the plaintiff put in a written statement under Sec. 164, showing cause why he should not be examined as a witness. His arguments were disallowed by the Principal Sadr Amin, who issued a summons under Sec. 165. This summons was served on the plaintiff's *vakil*, who refused to accept service, urging that the summons should be served on the plaintiff personally. The Principal Sadr Amin ruled that service on the plaintiff's *vakil* was sufficient under Sec. 18 of the Civil Procedure Code, and passed judgment against the plaintiff under Sec. 170 of the Civil Procedure Code.

"It has been argued on appeal that as in Sec. 163 it is laid down that the notice calling on the party to show cause may be served either on the party or his *vakil*, and that as there is no mention of the *vakil* in Sec. 165, therefore, the *vakil's* agency must be considered to end with the issue of the notice to show cause, and that consequently the service of the summons must be upon the party in person. Further, that the words in Sec. 18 'for the personal attendance of the party' refer only to the attendance mentioned in Secs. 125-127, and that consequently in all cases in which a personal attendance of a party is required, except those mentioned in Secs. 125-127, personal service is necessary under Sec. 155 of the Civil Procedure Code.

"I am of opinion that service on a *vakil* is sufficient. I think that Sec. 155 refers only to witnesses 'or other persons,' namely, persons summoned to produce documents as mentioned in Sec. 149, and would only apply to a party in a suit who was not represnted by a *vakil*. I think that under Sec. 18 service upon a *vakil* is valid under all circumstances, as a *vakil* represents his client at every stage of the suit. * * *

1869

Shivrudrappa v. Kashinath Vishnu

"The appellant's *vakil* has petitioned me to refer this case to the High Court. The question is a doubtful one, so I accede to his request."

PER CURIAM (COUCH, C.J., and GIBBS, J.):—The Court is of the same opinion as the Principal Sadr Amin and the Acting Assistant Judge.

Aug. 9.

Special Appeal No. 252 of 1869.

Kuvarji Premchand *et al.*... ... ...*Appellants.*
Bai Javer ... ...*Respondent.*

Invasion of Privacy—Custom of Gujrat—Opening of new windows overlooking a neighbour's premises.

When in Gujrat a householder's privacy is invaded by the opening of new doors and windows in his neighbour's house, his right of action is not altered by the fact that a public road runs between the dominians and the servient tenements.

Manishankar Hargovan v. *Trikam Narsi* followed.*

This was a Special Appeal from the decision of the District Judge of Ahmedabad in Appeal Suit No. 73 of 1866, reversing the decree of the Principal Sadr Amin.

Bai Javer instituted this action to cause the defendants to close four newly-opened windows,—two on the second and two on the third story, at the back of their house, which said windows overlooked the premises of the plaintiff, and the open court-yard at the entrance of her house where females bathed. The windows had been opened in 1865.

The defendants answered that there was a puplic road between their house and that of the plaintiff, and that no annoyance was caused to the plaintiff by the windows complained of.

The Principal Sadr Amin of Ahmedabad held that there was no reason shown for closing the windows. "The house of the plaintiff in this case is so low that it is not the house itself which is exposed to be overlooked from the defendants'

* 5 Bom. H. C. Rep. A. C. J. 42.