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Subodhini. He extends the succession to "the paternal great-grandfather's mother, great-grandfather's father, great-grandfather's brothers, and their sons; the paternal great-grandfather's grandmother, great-grandfather's grandfather, great-grandfather's uncles, and their sons. The same analogy holds in the succession of kindred connected by a common libation of water." From the mention of the great-grandfather's grandmother (*i.e.*, the wife or widow of the most remote of the male *sapindas* in direct ascent), and of the kindred connected by a common libation of water (*i. e.*, the *samanodakas*, or collaterals, within thirteen degrees) it is clear that the commentator meant to convey that by a logical interpretation of the Mitakshara, the wives of all *sapindas* and *samanodakas* must be held to have rights of inheritance coextensive with those of their husbands. This is the doctrine laid down by West and Buhler at pp. lii. and liii. of their Introduction, and discussed by them at considerable length in the introductory remarks to Digest, chap. II., sec. 14. We consider that it is the doctrine which we are bound to follow, as being drawn from the work which is the principal source of law on this side of India, and we, therefore, reverse the Judge's decision, and allow the claim with all costs on respondents throughout.

Decrees reversed and claim allowed.

Aug. 27.

Special Appeal No. 256 of 1869.

Nanabhai Narotamdas. ... ... *Appellant.*
Ramshet Govindshet. ... ... *Respondent.*

Special Appeal—Remand by Lower Appellate Court—Civ. Proc. Code, Sec. 351.

It is an error in law for a Lower Appellate Court to remand a case except in accordance with Sec. 351 of the Civil Procedure Code.

A Special Appeal will lie against a decree remanding a suit.

This was a Special Appeal from the decision of F. Lloyd, Judge of the District of Puna, in Appeal Suit No. 177 of 1866, reversing the decree of the Principal Sadr Amin of Puna.

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The plaintiff, under Sec. 246 of the Code of Civil Procedure, sued to establish his right to a house which had been attached by the defendant as the property of his judgment debtor.

The defendant stated that the house originally belonged to one Narayan, who mortagaged it to one Vithu, who assigned his interest in it to himself (the defendant) ; that after the date of this assignment one Baugi got the house sold as the property of his judgment debtor, subject, however, to the defendant's lien ; that one Mulchand bought it ; and that lastly the plaintiff became the purchaser thereof.

The principal Sadr Amin found that the decree obtained by the defendant against his judgment debtor had been reversed on appeal, and that the parties must be relegated to their original position. He, therefore, ordered the attachment to be raised.

In Appeal the Judge was of opinion that he could not satisfactorily decide the case, without going into the question of the plaintiff's title, and he reversed the Principal Sadr Amin's decree, and remanded the case, in order that that title might be investigated, and a fresh decree passed.

The Special Appeal was heard before GIBBS and MELVILL, JJ.

Dhirajlal Mathuradas for the Appellant.

Shantaram Narayan for the respondent was called upon by the Court to support the judgment of the Lower Appellate Court. He contended that as the Judge below had given no opinion, and had made no finding on the issues he had framed, his order of remand was not final, and a special appeal would not lie. It was held by his Court (COUCH, TUCKER, and WARDEN, JJ.) on the 12th April 1865, in *Subhana* v. *Bakhta* (S. A. 85 of 1865), that a special appeal against a remand order would only lie if the order was final. [GIBBS, J. :—I am not sure that there was any such reservation in that case as you say ; but, supposing that there was that reservation, was not a final decision

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was arrived at by the Judge below.] The true test of that would be to see whether his successor could arrive at a different conclusion from that indicated in the remand order. [MELVILL, J. :—The appeal might never come again before him, and the order might therefore be final.]

Dhirajlal (contra) :—There is a minute in the case and a decree. These would be sufficient to satisfy the law. [MELVILL, J. :—But there is no judgment, inasmuch as there is no finding. The Judge has formed no opinion on the merits] [GIBBS, J. :—We are sitting in special appeal. The Judge having given no decision on the merits, can there possibly be any error of law in it for us to remedy.]

Cur. adv. vult.

PER CURIAM :—We consider the District Judge was in error in reversing the decree and remanding the case to the Principal Sadr Amin, when he merely required the issue regarding the proprietary right of Nanabhai to be investigated. The Court of original jurisdiction not having disposed of the case on any "preliminary point" within the meaning of Section 351 of the Code of Civil Procedure, the district Judge should, under Section 354 of that code, have sent an issue down to the Lower Court for trial, retaining the appeal on his own file. As it stands, the District Judge has passed no decision on the merits of the case in any way, and we therefore have only his final order, into the legality of which we can inquire. In this there is an error of law, as above shown with which we can deal. We may remark that we have consulted the learned Chief Justice as to the decree in Special Appeal No.85 of 1865, and we find that no opinion, as suggested by Mr. Shantaram, was expressed which imposed any limitation to the admission of special appeals in such cases. We therefore reverse the judge's decree, and direct him to restore Appeal No. 177 of 1866 to his file, and proceed to the disposal thereof according to law. Costs to be settled in the new decree.

Decree reversed.