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the Legislature that a person claiming the benefit of that section *at the trial* should fill the character of an agriculturist as then defined by law.

We must, therefore, confirm the decree. The parties to pay their own costs of this appeal.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

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DA'MODHAR TIMA'JI GOSA'VI, (ORIGINAL DEFENDANT), APPELLANT, *v.* TRIMBAK SAKHA'RA'M, (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Mofussil Small Cause Court—Act XI of 1865, *Secs.* 5, 21—*Appeal from the decree of a Subordinate Judge invested with the jurisdiction of a Small Cause Court.*

A suit was filed in the Court of a First Class Subordinate Judge invested with the powers of a Small Cause Court up to Rs. 500. The claim was for Rs. 530-7-3, as money had and received by the defendant to the plaintiff's use. The Subordinate Judge did not deal with the case under his Small Cause Court jurisdiction, but tried it as an ordinary suit, and gave the plaintiff a decree for Rs. 441-0-7. On appeal, the District Judge was of opinion that the claim had been recklessly overvalued, and he held, therefore, that the suit was one cognizable by a Small Cause Court, and that the appeal was barred.

Held, reversing the decision of the lower Appellate Court, that as the claim or "*demand*" exceeded Rs. 500—the pecuniary limit of the jurisdiction of a Court of Small Causes under section 5 of Act XI of 1865—and as the case was not "tried under" the Act, section 21 gave no finality to the decree of the Subordinate Judge, which was, therefore, appealable.

Lakshman Bhátkar v. *Bábáji Bhátkar*(1) distinguished.

SECOND appeal from the decision of E. M. H. Fulton, Acting District Judge of Násik, in appeal No. 151 of 1883 of his file.

This suit was instituted by the plaintiff, who alleged that he was entitled to the income of a certain *jághír* at Savaegaon; that the defendant managed the *jághír* for him, and should have paid over to him the income as it was received, after deducting the expenses of management. He alleged that the defendant had not paid him the whole of the net income for the years

* Second Appeal, No. 710 of 1884.

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1878 to 1881. He, therefore, sued to recover Rs. 530-7-3 as money had and received by the defendant to his use. The suit was filed in the Court of the First Class Subordinate Judge of Násik, who was invested with the jurisdiction of a Court of Small Causes up to Rs. 500. He gave the plaintiff a decree for Rs. 441-0-7.

The District Judge was of opinion that the claim had been recklessly overvalued, as the plaintiff had made no proper inquiry to ascertain the amount received by the defendant to his use. He, therefore, held, on the authority of the ruling in *Lakshman Bhátkar* v. *Bábáji Bhátkar*[1], that the suit was cognizable by a Court of Small Causes, and that the appeal was barred.

Against this decision the defendant preferred a second appeal to the High Court.

Máhádev Chimnáji Apte for the appellant.

Mánekshá Jáhángirshá for the respondent.

BIRDWOOD, J. :—The question whether an appeal lay to the District Court from the decision of the First Class Subordinate Judge must be decided with reference to the provisions of section 21 of Act XI of 1865. The suit was one on an implied contract, and if it was tried under Act XI of 1865, section 21 of the Act made the decision of the First Class Subordinate Judge, who is invested with the jurisdiction of a Court of Small Causes up to Rs. 500, final. The claim in this case was for Rs. 530-7-3. The decree was for Rs. 441-0-7, and the District Judge was of opinion that the claim had been recklessly overvalued, as the plaintiff had made no proper inquiry to ascertain the amount which had been received by the defendant to his use. The District Judge, therefore, held that the suit was cognizable by a Court of Small Causes, and that the appeal was barred. In dealing with the case, he relied on the decision of this Court in *Lakshman Bhátkar* v. *Bábáji Bhátkar*[1]. But that was a decision under section 25 of Act XIV of 1869, the language of which differs from that of section 5 of Act XI of 1865. If the value of the subject-matter of a claim determined, in all cases, the jurisdiction of a Court of

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Small Causes, then it would have been competent to the lower Appellate Court to consider what sum the plaintiff was really entitled to claim, and whether an exaggerated claim had been made from recklessness. But, under section 5 of Act XI of 1865, a Court of Small Causes has jurisdiction, in the classes of suits therein described, "when the debt, damage, or demand does not exceed in amount or value the sum of five hundred rupees." In the present case, the "demand" exceeded Rs. 500, and if the plaint had been presented to a Court of Small Causes, it would have been returned for presentation to a Subordinate Court. And, indeed, the First Class Subordinate Judge did not deal with the case under his Small Cause Court jurisdiction. He tried it as an ordinary suit. As it was not "tried under" Act XI of 1865, section 21 of the Act gave no finality to the decree. We, therefore, reverse the decision of the District Judge, and direct that the appeal to his Court be heard on the merits. Costs to follow the final decision.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1885. *December* 7.

BA'I DEVKORE, (ORIGINAL PLAINTIFF), APPELLANT, *v.* AMRITRA'M JAMIATRA'M AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Inheritance—Samánodakas, who are; and as such preferable to bandhus or bhinnagotra sapindás—Vatan service, alienability of, beyond life-time by will—Effect of subsequent change in the tenure rendering it alienable.

The word *samánodakas*, meaning literally those participating in the same oblation of water, includes descendants from a common ancestor more remotely related than the thirteenth degree from the *propositus*.

One Parbhudás died childless, devising his entire property, including his right to receive annually a certain *desáigiri* cash allowance, to the plaintiff's husband after the death of his (testator's) widow, Bái Amrit. The testator and the plaintiff's husband were great grandsons of one Kesordás by his son and daughter respectively. The plaintiff's husband having predeceased Bái Amrit, she made another will in favour of the plaintiff. Subsequently Bái Amrit died. The plaintiff, therefore, brought a suit against the defendants, claiming the aforesaid cash allowance and arrears under these wills and as heir of Purbhudás. The defendants, who were distant cousins of Parbhudás, being related to him beyond the

* Second Appeal, No. 716 of 1883.