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jurisdiction. He must now perform that duty, and it is much to be regretted that the illegal procedure adopted by the Judge has entailed heavy costs on the parties. We allow this appeal. We set aside as without jurisdiction all proceedings in the Jhansi Courts in this case subsequent to the remand order of this court, and we direct the District Judge now to re-admit the suit under its original number and to proceed to determine it on the merits.

Costs will follow the event.

Appeal decreed and cause remanded.

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February 11.

Before Mr. Justice Banerji and Mr. Justice Aikman.

MAHESH PARTAB SINGH (DEFENDANT) *v.* DIRGPAL SINGH (PLAINTIFF).*

Hindu law—Impartible Raj—Allowance to younger sons—Matters which be considered in assessing such allowance.

Held that in calculating what allowance might properly be made to the younger brother of the holder of an impartible raj regard might properly be had, not merely to the extent of the property constituting the raj, but to the other sources of income, whencesoever derived, possessed by the incumbent of the raj.

THE facts of this case sufficiently appear from the judgment of the Court

Munshi *Ram Prasad*, Pandit *Sundar Lal* and Munshi *Gobind Prasad*, for the appellant.

Pandit *Moti Lal* and Babu *Jiwan Chandar Mukerji*, for the respondent.

BANERJI and AIKMAN, JJ.—The appellant, who was the defendant in the Court below, is the Raja of the Anowla raj, in the Gorakhpur district, admitted to be an impartible raj. The plaintiff is one of his younger brothers. The suit, out of which this appeal has arisen, was brought by the plaintiff, and he prayed that property yielding an annual income of twelve hundred rupees be determined to be property out of which he should obtain his

*First Appeal No. 102 of 1897, from a decree of Maulvi Syed Jafar Husain, Subordinate Judge of Gorakhpur, dated the 26th March 1897.

maintenance as a junior member of the family, and he be put in possession of such property, or in the alternative a maintenance allowance of twelve hundred rupees a year should be fixed and charged on the property mentioned in the plaint. The plaint contained other prayers also, with which we are not concerned in this appeal. The defendant denied the plaintiff's right to maintenance and disputed the propriety of the amount claimed as the proper amount of plaintiff's maintenance. The Court below has made a decree in the plaintiff's favour, declaring him entitled to an annual allowance of six hundred rupees, to be paid out of the raj.

Both parties have appealed, but the only question to which the appeals were confined in the argument before us is that of the amount of the allowance fixed, the defendant contending that it is too high and the plaintiff urging that it is too low. We have to be satisfied that the amount fixed by the Court below is unreasonable with reference to the circumstances of the case. As we have said above, it is no longer disputed that the plaintiff is entitled to an allowance for maintenance. In our opinion the amount of maintenance in a case like this should be determined upon the same principles upon which the amount which ought to be awarded as maintenance has ordinarily to be determined, and every case must be decided with reference to its own peculiar facts. In this case it appears that the raj has an income of over nine thousand rupees from villages. There is also an income from malikana, which is appurtenant to the raj, so that the profits from the raj itself amount to over twelve thousand rupees per annum. Besides, there in an income of over nine thousand rupees derived from money-lending carried on in the names of the Raja and his wife. It was within the power of the defendant to show that this income was derived from sources unconnected with the raj, but he made no effort to prove that the capital invested in money-lending was not a part of the property which came to him from his father. Having regard to the amount of profits yielded by the immovable property belonging to the raj and the number of years the defendant has been in possession it is

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very probable, as alleged by the plaintiff, that the said capital was inherited by the defendant from his father. It appears no doubt that the plaintiff has some income of his own derived from shares in some villages and other property standing in his name. The defendant urges that the villages in which shares are recorded in the name of the plaintiff were acquired by the father of the parties and form a part of the raj. This has not been proved. The villages were acquired in the name of the plaintiff and stood recorded for several years in his name. It is, however, immaterial to decide whether the property in the possession of the plaintiff is a part of the raj or not, because we are of opinion that in fixing an allowance for the plaintiff we should take into account the sources of income, however derived, which the plaintiff now enjoys. We think that the principle upon which maintenance is allowed to a Hindu widow should be applied in determining the amount of maintenance to be awarded to the plaintiff. Having regard to the income of the raj and also to the fact that the plaintiff has some other sources of income, the amount fixed by the Court below, namely, fifty rupees per mensem, does not appear to us to be unreasonable. In coming to this decision we have to bear in mind the claims of other members of the family and the expenditure which the defendant has to incur in maintaining his position as a Raja. While therefore, on the one hand, the allowance to be fixed for the junior members is not to be such as to cripple the raj, it must, on the other hand, be proportionate to the fair wants of a person in the position and rank in life of the plaintiff. We think the allowance fixed by the lower Court is reasonable and answers all requirements. We dismiss the appeal with costs.

Appeal dismissed.