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has been pointed out "that where a person has got a right and it is contended that that right is taken away by statute, the right cannot be held to have been taken away except by express words in the statute, or by inference so clear from the terms of the enactment that there can be no doubt about it." The principle of that case is on all fours with the case before us. Our view is supported by the case of *Shridhar Narayan v. Atmaram Govind* (1). We dismiss the appeal with costs.

Appeal dismissed.

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February 9.

Before Mr. Justice Blair and Mr. Justice Burkitt.

SITA RAM (PLAINTIFF) v. NAUNI DULAIYA (DEFENDANT).*

Civil Procedure Code, sections 25, 562—Transfer—Procedure—Suit transferred to his own file by District Judge—Appeal to High Court—Remand to District Judge—Judge not competent to transfer.

By order of a District Judge under section 25 of the Code of Civil Procedure a suit was transferred from the Court of the Subordinate Judge to his own Court. The District Judge decided the suit, and from his decree there was an appeal to the High Court. The High Court remanded the suit under section 562 of the Code to the Court of the District Judge. The latter transferred the suit so remanded for trial to the Subordinate Judge. *Held* that the District Judge had then no power to transfer the suit, but was bound to try it himself.

Seemle that section 25 of the Code of Civil Procedure has no application to a case remanded under section 562 of the Code.

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

Babu *Jogindro Nath Charudhri* and Babu *Ratan Chund*, for the appellant.

Munshi *Gulzari Lal* (for whom Babu *Satish Chandar Banerji*), for the respondent.

BLAIR and BURKITT, JJ.—The suit in which this second appeal has been instituted was transferred under the provisions

* Second Appeal No. 830 of 1896, from a decree of F. W. Fox, Esq., District Judge of Jhansi, dated the 3rd June 1896, reversing a decree of A. Rahman, Esq., Subordinate Judge of Jhansi, dated the 26th February 1896.

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of section 25 of the Code of Civil Procedure by the District Judge of Jhansi from the Court of the Subordinate Judge for trial before himself. After trial the District Judge came to the conclusion that the plaint disclosed no cause of action, and he therefore dismissed the suit. On appeal to the High Court the decision of the Judge was reversed. It was held that the plaint did disclose a cause of action, and the case was remanded to the District Judge under section 562 of the Code of Civil Procedure to be heard on the merits.

The District Judge, however, instead of trying the case himself on the remand, thought fit, for some reason unknown to us, to disregard the orders of this Court, and sent the case for trial to the Subordinate Judge. Subsequently the District Judge heard the case on appeal from the decree of the Subordinate Judge and dismissed the suit.

On second appeal to this Court the first plea urged is that the District Judge had no power to refer the case for trial to the Subordinate Judge, and that all the proceedings in the Jhansi Courts after the remand order of this Court were without jurisdiction.

We think this plea is sound and must prevail. When a case is remanded under section 562 of the Code, that section provides that the remand shall be to the Court against whose order the appeal was made—in this case the Court of the District Judge of Jhansi. It then is the duty of that Court to re-admit the suit under its original number in the register and to proceed to hear it on the merits. There is no power given to the Judge to transfer the case to another Court. His power of transfer under section 25 had been exhausted when the suit was originally withdrawn from the Court of the Subordinate Judge, so, even if section 25 were applicable to a case remanded under section 562, (we think it is not applicable) that section does not empower the District Judge to re-transfer the case to the subordinate Court from which it had been withdrawn.

The plain and unmistakeable duty of the Judge was to have obeyed the law by hearing the case himself as a court of original

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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 SINGHI (DEFENDANT) v. DIRGAPAL SINGHI

(PLAINTIFF).*

Hindu law—Impartible Raj—Allowance to younger sons—Matters may 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 appellants.

Pandit *Moti Lal* and Babu *Jiwan Chandar Mankerji*, 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.