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pilgrims or worshippers and a particular priest, and when such relationship exists, such pilgrims or worshippers are called the *yajmáns*, or clients of the priest, whose right to offer and perform the religious ceremonies in question for such *yajmán* becomes exclusive against rival priests, so far that, under the Hindu law as applied and followed in this Presidency, if any such *yajmán* accept the religious services of another priest, they must compensate the priest, whose *yajmáns* they are, by paying to him a reasonable fee."

Such a *vritti* we hold to be a "right of personal service" within the meaning of clause (*f*) of section 266 of the Code of Civil Procedure (Act XIV of 1882)—*Kalee Churn Gir Gossain* v. *Bungshee Mohun Doss*[1] and *Jhummun Pandey* v. *Binoonáth Panday*[2]. *The vritti* in question is, therefore, protected from attachment. The decree of the lower Appellate Court is confirmed, with costs.

Decree confirmed.

(1) 15 Calc. W. R. Civ. Rul., 339. (2) 16 Calc. W. R. Civ. Rul., 171.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1886. *February* 10.

GANESH BHIKA'JI JUVEKAR, (ORIGINAL PLAINTIFF), APPELLANT, *v.* BHIKA'JI KRISHNA JUVEKAR, (ORIGINAL DEFENDANT), RESPONDENT.*

Practice—Order of remand—Civil Procedure Code (XIV of 1882), Secs. 562, 564 and 566—Addition of necessary parties not a ground for remand on a first appeal.

Where a Court of first appeal remanded a case to the Court of first instance for the addition of all necessary parties, and at the same time decided an issue as to the merits, and it appeared that the Court of first instance had not disposed of the case "on a preliminary point, so as to exclude any evidence of fact which appeared to the Appellate Court essential to the determination of the rights of the parties,"

Held, first, that, on an appeal from the order of remand, the decision on the merits, on which the order of remand was not based, was not before the High Court on appeal; and, further, that the order of remand was unsustainable under sections 562 and 564 of the Civil Procedure Code (Act XIV of 1882), which are strictly binding on all Courts of first appeal.

* Appeal No. 3 of 1885.

The proper course for the lower Appellate Court would have been to join the parties whom it found to be necessary, and then to raise the proper issues as between the plaintiff and those parties, and, if necessary, to refer the issues to the Court of first instance for trial under section 566.

THIS was an appeal from an order of remand made by G. Jacob, Acting Assistant Judge of Ratnágiri, in appeal No. 165 of 1884.

The plaintiff, Ganesh Bhikáji, sued his father for the partition of his one-fifth share in the joint ancestral property, moveable and immoveable, of his father, his three brothers, and himself. After the institution of the suit his father had a son born by his second wife. The plaintiff did not make any of his brothers parties to the suit. The Court of first instance passed a decree in the plaintiff's favour, awarding him a one-fifth share of the joint property. The Appellate Court, finding that all the necessary parties were not on the record, reversed the decree, and remanded the case to the Court of first instance for the addition of the necessary parties. Against this order of remand the plaintiff appealed to the High Court.

Yashvant Vásudev Athalye for appellant.

Goverdhanrám Mádhavrám Tripati for respondent.

BIRDWOOD, J. :—We do not consider the first objection stated, in the memorandum of appeal, to the lower Appellate Court's order of remand, as that order was not based on the Court's decision on the question whether the plaintiff was entitled to a partition of the moveable property. That decision is not, therefore, really before us on appeal—*Sohanlál* v. *Aziz-un-nissa Begam*[1]. The Assistant Judge remanded the case, because all the necessary parties had not been joined. In the Subordinate Judge's Court, the objection as to the want of parties does not seem to have been formally taken till the case was finally argued, and was then only taken as regards the son of the defendant, who was born after the institution of the suit. The Subordinate Judge did not dispose of the suit "upon a preliminary point, so as to exclude any evidence of fact" which appeared to the lower Appellate Court "essential to the determination of the rights of

(1) I. L. R., 7 All., 136.

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the parties." The order of remand was, therefore, opposed to sections 562 and 564 of the Code of Civil Procedure (XIV of 1882), and cannot be sustained—*Vithábái* v. *Hashya bin Bendia*(1) and *Mudun Mohan Poddar* v. *Bhoggomanto Poddar*(2). The decision of this Court in *Rágho Sálvi* v. *Bálkrishna Sakhárám*(3) was cited to us as justifying such an order as the lower Appellate Court has made in this case; but the order of remand in that case was made by the High Court on a second appeal, in which the Court could not deal with the merits under section 565, which is to be read with sections 562 and 564. Under section 587 of the Code, the provisions of these sections apply only to second appeals "as far as may be." And cases have frequently occurred in which this Court has, in second appeal, remanded cases for reasons not contemplated in section 562. There can be no question, however, that sections 562 and 564 are strictly binding on all Courts of first appeal. In the present case, we think that the proper course for the Assistant Judge would have been to join the parties whom he found to be necessary, and then to raise the proper issues as between the plaintiff and those parties, and, if necessary, to refer the issues to the Court of first instance for trial under section 566—*J. P. Wise* v. *Ishun Chander Banerjee*(4).

We, therefore, reverse the Assistant Judge's order, and direct him to proceed with the appeal with reference to the foregoing remarks. Costs to be costs in the cause.

Order reversed and case remanded.

(1) Printed Judgments for 1883, p. 190.
(2) I. L. R., 8 Calc., 923.
(3) I. L. R., 9 Bom., 128.
(4) 14 Calc. W. R. Civ. Rul., 380.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1886. *February* 26.

LALU MULJI THA'KAR, (ORIGINAL DEFENDANT), APPELLANT, *v.* KA'SHIBA'I AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Lis pendens—Applicability of the doctrine to a Court sale in execution of a decree—The Code of Civil Procedure (Act VIII of 1859), Secs. 240, 270, 271—Effect of a decree obtained by an attaching creditor in a suit against successful interveners or claimants.

*Second Appeal, No. 167 of 1884.