APPELLATE CIVIL

Before Mr. Justice Birdwood and Mr. Justice Jardine.

GANESH RA'MCHANDRA DA'TE, (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHANKAR RA'MCHANDRA AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

1886. *February* 3.

Vritti—Liability of a vritti to attachment and sale in execution of a decree—Civil Procedure Code (Act XIV of 1882), *Sec.* 266—*Voluntary conveyances.*

The nature of an *upádhikpaná vritti* on the river Godávari at Násik was stated to be as follows:—"The *vritti* is an hereditary priestly office by virtue of which certain religious ceremonies are performed on the river Godávari on behalf of pilgrims who pay fees to the holders of such priestly offices for the performance of such religious ceremonies at or about the time of their performance. By law and usage, a certain relationship grows up between certain pilgrims or worshippers and a particular priest, and when such relationship exists, such pilgrims or worshippers are called *yajmáns*, or clients of the priest whose right to offer and perform the religious ceremonies in question for such *yajmáns* becomes exclusive against rival priests, so far that, under the Hindu law as applied and followed in this Presidency, if any such *yajmáns* accept the religious services of another priest, they must compensate the priest, whose *yajmáns* they are, by giving to him a reasonable fee."

Held, that such a *vritti* is a "right of personal service" within the meaning of clause (*f*) of section 266 of the Code of Civil Procedure (XIV of 1882), and, therefore, protected from attachment.

THIS was a second appeal from the decision of H. F. Aston, Assistant Judge of Násik, reversing the decree of Ráo Sáheb K. P. Gadgil, Joint Subordinate Judge at Násik.

The plaintiff, Ganesh, having obtained a money-decree on the 5th October, 1881, against Rámchandra Chintáman, attached, in execution, the twelve-anna share of the judgment-debtor in a *yajmán kritya upádhikpaná vritti* on the Godávari river. At the instance of the defendants the wife and son of Rámchandra Chintáman, who produced a *fárkhat* dated 8th October, 1881, under which Rámchandra Chintáman had relinquished his interest in the said *vritti*, the attachment was raised. Thereupon the plaintiff brought this suit to obtain a declaration that the *fárkhat* of the 8th October, 1881, was fraudulent and dishonest, and that the property attached subsequently to the date of the

* Second Appeal, No. 118 of 1884.

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fárkhat was liable to be attached and sold in execution of his decree.

The nature of the *vritti* in question was stated to be as follows:—The *vritti* is an hereditary priestly office, by virtue of which certain religious ceremonies were performed on the river Godávari on behalf of pilgrims who paid fees to the holders of such offices for the performance of the ceremonies at or about the time of their performance. By law and usage, a certain relationship grows up between certain pilgrims or worshippers and a particular priest, and when such relationship exists, such pilgrims or worshippers are called *yajmáns*, or clients of the priest, whose right to perform the religious ceremonies in question for such *yajmáns* becomes exclusive against rival priests, so far that, under the Hindu law as applied and followed in the Presidency of Bombay, if any such *yajmáns* accept the religious services of another priest, they must compensate the priest, whose *yajmáns* they are, by paying to him a reasonable fee."

The defence raised was that Rámchandra Chintáman had, by the *fárkhat* of the 8th October, 1881, relinquished his right to the *vritti*, which was now the defendants' means of support; that the *vritti* was not liable to be taken in execution; and that Rámchandra's debt to plaintiff was not incurred for family necessity.

The Court of first instance having found the *fárkhat* to be a fraudulent and colorable transaction, made with the intention of protecting the *vritti* from being taken in execution by the creditors of Rámchandra, passed a decree in plaintiff's favour. That decree was reversed, on appeal. As to the *fárkhat*, the lower Appellate Court found that it was a real transaction, and held, on the authority of *Rájan Harji* v. *Ardeshir Hormasji*[1], that the *vritti* in question could not be attached and sold. That Court also held that the *vritti* was a right of personal service, and, therefore, exempted by section 266, clause (*f*), of the Civil Procedure Code (XIV of 1882) from liability to attachment and sale in execution of a decree. Against this decision the plaintiff preferred a second appeal to the High Court.

Shámráv Vithal for the appellant.

(1) I. L. R., 4 Bom., 70.

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N. G. Chandavárkar for the respondents.

BIRDWOOD, J.:—The Assistant Judge (F. P.) has wrongly held that his decision on the first issue tried by him must be governed by the ruling in *Rajan Hurji* v. *Ardeshir Hormasji* (1) and other similar cases; for the alienation, which the plaintiff sought to impugn in the present case, was not one purporting to be for a valuable consideration. It was a voluntary settlement in favour of a son and wife; and the question, to be considered with reference to it, was, whether it was shown from the actual circumstances that the alienation was fraudulent and necessarily tended to delay or defeat creditors: see Story's Equity Jurisprudence, Vol. I, sec. 365.

The law applicable to such conveyances is discussed in the following cases, to which the attention of the lower Appellate Court may well be directed:—*Nasir Husain* v. *Mátá Prasád*(2); *Gnánábhái* v. *C. Srinivasa Pillai*(3); and *Freeman* v. *Pope* (4).

The Assistant Judge has found that there was a real transfer to the son and wife, and on that ground he rejected the plaintiff's claim. The question, whether the transfer was intended to be in fraud of creditors, was not, in consequence of the view taken by the Assistant Judge of the law applicable to the case, decided definitely. We do not think it necessary, however, now to send down an issue on the point, as we are of opinion that the Assistant Judge has rightly decided the second issue in the case; and that decision is sufficient for the disposal of this appeal. He thus describes the *vritti* in suit:—"The dispute between the parties relates to an *upádhikpaná vritti* upon the river Godávari at Násik, and the pleaders of the parties are agreed that such a *vritti* is an hereditary priestly office, in virtue of which certain religious ceremonies are performed—in the present case, on the river Godávari—on behalf of pilgrims to Násik, who pay fees to the holders of such priestly offices for the performance of such religious ceremonies at or about the time of their performance.

"It was also stated by the pleaders of the parties that, by law and usage, a certain relationship grows up between certain

(1) I. L. R., 4 Bom., 70.
(2) I. L. R., 2 All., 891.
(3) 4 Mad. H. C. Rep., 84.
(4) L. R. 5 Ch. Ap., 538.

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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.