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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.

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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 *desdigiri* 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.

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thirteenth degree, *inter alia* contended that the wills were invalid, as Purbhudás, when he made the will, had only a life-interest in the *vatan*, which was a service *vatan*, and that they were nearer heirs to Purbhudás than the plaintiff, who was a *bhinnagotra sapinḍá* or *bandhu* of Purbhudás. Both the lower Courts rejected plaintiff's claim. The plaintiff appealed to the High Court.

Held, confirming the decree of the lower Court, that plaintiff's claim should be disallowed. The alienation by will, by Purbhudás, of what was then a *vatan* held for service being in its inception invalid as against his heirs, did not become valid because of a change in the tenure of the estate after his life-interest had terminated. Bái Amrit, the widow of Parbhudás, had nothing more than a widow's estate incapable of alienation beyond her life-time, and, therefore, the wills executed by her were invalid. The case was one to be determined by the Hindu law of inheritance. The defendants, though more than thirteen degrees removed from Parbhudás, were included in the term *samánodakas*, and, as such, had a claim to the estate of Purbhudás superior to that of the plaintiff or her deceased husband as his *bandhus*.

THIS was a second appeal from the decision of C. E. G. Crawford, Acting Senior Assistant Judge (F. P.) at Broach.

On 30th April, 1862, one Purbhudás Ghelábhái died childless, devising his property, after the death of his widow Bái Amrit, to plaintiff's husband, Uttamrám. Purbhudás and Uttamrám were great grandsons of one Kesordás by his son and daughter respectively. On her succession to her deceased husband's property, Bái Amrit made a will in favour of Uttamrám, who having subsequently died during her life-time she made another will in favour of the plaintiff, devising all the property of Purbhudás to the plaintiff. Bái Amrit having died on 30th May, 1875, the plaintiff and the defendants' father applied for a certificate of heirship to the estate of Purbhudás, but the plaintiff's application was rejected, and a certificate granted to the defendants' father.

The plaintiff now sued the defendants, their father having died, for a declaration that she was the heir of the deceased Purbhudás, and, as such, entitled to a certain annual *desáigiri vatan* cash allowance, and for arrears of the same for three years. The plaintiff claimed under the above-mentioned wills and under the custom of her caste and the Hindu law.

The defendants, who were very distant cousins of Purbhudás, being related to him beyond thirteen degrees, contended *(inter alia)* that the wills of Parbhudás and his widow were invalid, Parbhudás

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having only a life-interest in the *vatan*, and that they were nearer heirs to Parbhudás than the plaintiff, who was a *bhinnagotra sapindá* or *bandhu*.

Both the lower Courts rejected the plaintiff's claim.

The plaintiff preferred a second appeal to the High Court.

Shántárám Náráyan for the appellant:—The plaintiff's claim is founded, first, on the will of Purbhudás in her husband's favour; secondly, on the will of Bái Amrit; and, thirdly, on her right to succeed to Parbhudás's estate as his nearest heir. It is admitted that Parbhudás was the sole surviving member of his family, and was the absolute owner of his property at the time of his death. He was, therefore, competent to will away his property as he thought proper. No doubt the property devised was property attached to a *service vatan*; but the service being dispensed with at the time of the summary settlement, the *vatan* ceased to be inalienable. The Full Bench case of *Rádhábái* v. *Anantráv Bhagvant Deshpánde*[1] clearly lays down that "where service lands have been aliened and at a later period the service has been abolished, this subsequent abolition renders the title of the alienee undisputable by the alienor's heirs." It follows from this that whatever defect there was originally in the title of the devisee, was cured by the cessation of the *vatan* service. Besides, the only person who could impeach the will was the widow of Parbhudás. But she acquiesced in it, and when the plaintiff's husband died, she made a fresh will in plaintiff's favour, in which she substantially ratified and gave effect to her husband's will. The two wills go together and support the plaintiff's title.

Lastly, I contend that the defendants have not shown what relationship they bear to the *propositus*. Assuming that they are his remote cousins, still, as they are more than fourteen degrees removed, they cannot come in as *samánodakas*. The Mitákshara (Ch. 2, sec. 5, cl. 6,) lays down that the relationship of *samánodakas* ends with the fourteenth degree. So, too, the Vir Mitrodaya and other text-books. The language of the Vyavahár Mayukha is indistinct; but as it comments upon the same verse of Manu as the Mitákshara, which is clear upon the point,

(1) I. L. R., 9 Bom., 198.

we should adopt the interpretation of the latter. It follows, therefore, that the defendants are not *samánodakas*. The plaintiff, on the other hand, claims through her husband, who was a *bandhu* of the *propositus*. It is well established that the list of *bandhus* found in the Hindu law books is not exhaustive. Under that term may be included all *sapindás*, who are of a different *gotra*. The plaintiff's husband was a *bhinnagotra sapindá*, that is, a *bandhu*, and, therefore, the plaintiff, too, is a *bandhu* —*Lallubhái Bápubhái* v. *Mánkuverbái*[1].

Telang (with *Gokuldás Káhándás*) for the respondents:—The will of Parbhudás was in its inception invalid, as he had no power to alienate the service lands. If so, the subsequent alteration in the tenure of the estate did not render it valid—*Rávlojiráv bin Tamajiráv* v. *Balvantráv Venkatesh*[2]. As to the will of Bái Amrit, though it was made after the services were dispensed with, still she, as a Hindu widow, could not alienate it beyond her life-time. The plaintiff's title under both wills, therefore, fails. As to the plaintiff's right to call herself a *bandhu*, I do not even admit that her husband was a *bandhu*. The plaintiff's husband traces his descent through two females from Kesordás. I contend that where two females intervene in the line of descent the *bandhu* relationship ceases—West and Bühler, pp. 492, 498, 3rd ed.; *Lallubhái Bápubhái* v. *Mánkuverbái*[3]. The plaintiff's husband, therefore, is not a *bandhu*. Supposing he is, there is not a single text or decided case in which the widows of *bandhus* are classed as *bandhus*. In *Lallubhái Bápubhái* v. *Cássibái*[4] the widows of gentiles are classed as gentiles; that rule does not extend to widows of *bandhus*. Then, again, the word *bandhu* is masculine. All the enumerated heirs are males. The plaintiff, therefore, is not a *bandhu*.

Then as to the *samánodakas*, the rule laid down by the Mitákshara, that the *samánodak* relationship ceases at the fourteenth degree, is highly artificial, and does not apply—West and Bühler, pp. 132, 133, 3rd ed. I contend that all the gentiles or members of the same *gotra* are included in the term *samánodakas*—Vyavhár Mayuk, Ch. IV, sec. 8, and Manu's Institutes, Ch. 5, v. 60.

(1) I. L. R., 2 Bom., 388.
(2) I. L. R., 5 Bom., 437.
(3) I. L. R., 2 Bom., 388.
(4) I. L. R., 5 Bom., 110.

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JARDINE, J. :—The plaintiff, Bái Devkore, widow of Uttamrám Vajerám, sued for a declaration that, as heir of one Parbhudás Ghelábhái, who died childless in *Samvat* 1918 (A.D. 1861-62) she was entitled to receive an annual *dasáigiri vatan* cash allowance of Rs. 216-1-8 and to recover Rs. 645-5-6, being three years' allowances wrongfully withheld. The grounds of the claim, as stated in the plaint, are that Parbhudás, on the 30th April, 1862, made a will recognizing plaintiff's husband, Uttamrám Vajerám, as his heir after the death of Parbhudás's widow, Bái Amrit, and appointing him manager of the entire property; that Bái Amrit died on the 30th May, 1875, the date of the cause of action; and that Bái Amrit, during her life-time, and under the provisions of Parbhudás's will, made two wills, the last being in favour of plaintiff, and dated the 5th January, 1875. Plaintiff claimed under these wills and under the custom of her caste and the Hindu law.

The defendants, who were sued as heirs of Uttamrám Mádhavrám, answered, among other pleas, that the will of Parbhudás was invalid and had become inoperative, because of Bái Amrit having survived plaintiff's husband; that the wills made by Bái Amrit were also invalid; and that Uttamrám Mádhavrám and defendants, his heirs, had, at Hindu law, the better right to inherit from Parbhudás.

The lower Courts have found that the plaintiff is not entitled to the *vatan* under the will of Parbhudás or that of Bái Amrit, Parbhudás having had only a life-interest in the *vatan*; and that defendants, although not proved to be related within thirteen degrees of Parbhudás, were nearer heirs to him than plaintiff, who did not claim to be more than a *bhinnagotra sapindá* or *bandhu*. The claim was rejected with costs, by the Subordinate Judge, and this decree was confirmed by the Senior Assistant Judge in appeal.

In her appeal to this Court, plaintiff has contested these findings.

The defendants have not denied the allegation of plaintiff that, whatever liability to perform service may have formerly been attached as an incident to the *vatan* in dispute, such liability has been abolished, and that the *vatan* has become, to use the language of the

Senior Assistant Judge, a non-service *vatan*. Since he decided the present case in first appeal, a Full Bench of this Court has considered the question whether the lands of a *vatan* become alienable when the services are abolished. In the absence of any suggestion to the contrary, we assume with the learned pleader, who has argued the present appeal, that the principles of the decision in that case—*Rádhábái* v. *Anantráv Bhagvant Deshpánde*[1], apply to the question of the alienable character of the estate in the present case. It has, however, been admitted by the pleader for the plaintiff, appellant, that the abolition of services occurred after the death of Parbhudás. But for this admission, we might have deemed it proper to frame an issue to determine the date when the services were dispensed with, as was done in *Apáji Lingo* v. *Svamiráv Náráyan*[2]. Applying the law to these facts, we are of opinion that the Senior Assistant Judge, F. P., was right in relying on *Rávlojiráv bin Tamajiráv* v. *Balvantráv Venkatesh*[3] as authority for holding that the alienation by Parbhudás of what was then a *vatan* held for service, being in its inception invalid as against his heirs, did not become valid because of a change in the tenure of the estate, after his life-interest had terminated.

We have been shown no authority for holding that Bái Amrit, the widow of Parbhudás, had anything more than a widow's estate in the *vatan*, or that she could alienate beyond her life-time. In accordance with the recognized Hindu law regarding ancestral property, we must, therefore, hold that the wills executed by her were invalid. The lower Courts were, in our opinion, right in treating the case as one to be determined by the ordinary Hindu law of inheritance, and the only remaining point for us to decide is, whether their finding on the relative propinquity of the parties to the deceased Parbhudás is in accordance with that law.

The relationship of the *propositus* Parbhudás to Uttamrám Vajerám, the husband of plaintiff, is admittedly through one Kesordás, the great-grandfather of Parbhudás by male descent, and of Uttamrám Vajerám through two females, as shown below :—

(1) I. L. R., 9 Bom., 198.

(2) Sp. Ap. 192 of 1877. (Part of the judgment appears at page 251 of Printed Judgments of 1878).

(3) I. L. R., 5 Bom., 437.

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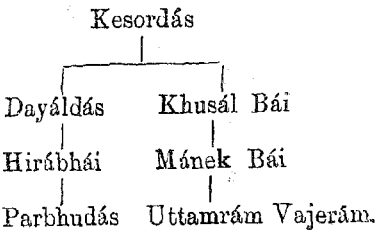

The relationship of the defendants to Parbhudás is found by both the Courts below to be beyond the thirteenth degree of male ascendants, descendants, and collaterals. The Senior Assistant Judge did not think the genealogies produced of much value as evidence. Mr. Crawford records his reasons as follows for holding as an inference from other evidence that the defendants are more remote descendants from a common ancestor than those of the thirteenth degree, and that they are entitled to succeed:—"I cannot, therefore, hold it proved in what precise degree of relationship defendants stand to Parbhudás. But, looking to the various facts proved, as it seems to me, upon a consideration of the evidence in this case, that defendants are reputed to be cousins of Parbhudás, that they bear the same surname, that they shaved their moustaches and held themselves defiled after his death, and his widow's, that they have the same family priest or had until the priests effected a partition of their *yajmáns* among themselves, and that, as would appear from the drafts (exhibits 118, 119), the genuineness of which there does not seem good ground for questioning, they were recognized as cousins by the widows of two of Parbhudás's nearer kinsmen; looking to all these facts, I cannot withhold my assent from the conclusion come to by the lower Court that they are remote cousins of Parbhudás. I do not say that any one of these facts would be sufficient to prove defendants' case, but taken altogether they make it as very strong as could be expected. It appears certain that they are not within thirteen degrees of Parbhudás, but even so there is authority (see West and Bühler, 2nd ed., pp. 55, 182, 199) for holding them to be *samánodakas*, and, as such, they succeed in Western India before plaintiff, who at best does not claim to be more than a *bhinnagotra sapindá* or *bandhu*."

We are of opinion that there was legal evidence on the record, from which the Senior Assistant Judge was at liberty to draw the inference as to relationship actually drawn by him, and that no reason has been shown us for setting aside that finding.

Mr. Telang has disputed the right of plaintiff and of her husband to call themselves *bandhus*. As against the husband Uttamrám Vajerám, who is descended from Kesordás through two females, he has cited West and Bühler, pp. 492, 498, 3rd ed., and the *obiter dictum* of West, J., in *Lallubhái Bápubhái* v. *Mánkuverbái* (1). As against the plaintiff, while admitting that the lists of *bandhus* found in Hindu law texts are not exhaustive, he has pointed out that no decided case nor reported answer of a *shástri* has allowed her admission. Mr. Shántárám Náráyan for the plaintiff has remarked on the absence of authorities either way. We refrain, however, from determining this point, as, under the view which we take of the case, its determination is not necessary for the decision.

If we hold that descendants from a common ancestor more remotely related than the thirteenth degree from the *propositus* are included within the term *samánodaka*, it would follow that the claim of defendants would be superior to that of the plaintiff or her husband as *bandhus*—see West and Bühler, 3rd. ed., p. 133. On this question as to the meaning of *samánodaka* no judicial authority has been cited, nor have we found any.

The word *samánodaka* means literally participating in the same oblation of water(2).

The Mitákshara, Ch. 2, sec. 5, pl. 6, attempts to define the term as follows; the translation is that of Colebrooke:—

"If there be none such, the succession devolves on kindred connected by libations of water; and they must be understood to reach to seven degrees beyond the kindred connected by funeral oblations of food: or else as far as the limits of knowledge as to birth and name extend. Accordingly Vrihat-Manu says:

(1) I. L. R., 2 Bom., 388.

(2) West and Bühler, p. 133, 3rd ed. See also Mayne's Hindu Law and Usage, paras. 424, 433 and 436, 3rd ed, Stokes' Hindu Law Books, pp. 347, 349, 448, 484, 499.

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'The relation of the *sapindás*, or kindred connected by the funeral oblation, ceases with the seventh person: and that of *samánodakas*, or those connected by a common libation of water, extends to the fourteenth degree; or, as some affirm, it reaches as far as the memory of birth and name extends. This is signified by *gotra* or the relation of family name.'"

The Vyavahára Mayukha, Ch. IV, sec. 8, quoting the same passage from Manu's Institutes, Ch. V, v. 60, is thus translated by Ráv Sáheb Vishvanáth Mandlik in his work on Hindu Law, p. 82:—

"All the *sapindás* and the *samánodakas* [follow] in the order of propinquity. Manu thus mentions them [Ch. V, v. 60]:—'The *sapindá* relationship ceases with the seventh person [in the line], and that of *samánodokas* (*i. e.* those connected by an oblation of water) ends when births and names are no longer known.' *Saptame* means the seventh [in the line] being included."

To this Mr. Mandlik appends the following note:—

"Mitkáshara, Ch. II, 1, 60, p. 1; Vir. I, 209, p. 2; Kam. and Vya. M. All these works quote this verse with the fourth quarter as *nivartate-chaturdashat* (ends with the fourteenth [ancestor or descendant]) so as to make the extent of *samánodakaship* definite. It must be noted, however, that the Vyavahár Mádhav and Kamalákara refer it to Brahat-Manu and Vradha-Manu respectively. The reading which has been adopted by the three editions of Manu consulted by me as well as by Kulluka, and accepted by Nilkantha, is *janmanamnoravedane* (when births and names are no longer known)."

On the above authorities, we think we are justified in giving to the word *samánodaka* the more extended meaning contended for by the defendants.

The more general remarks of Mr. Mayne in para. 438 of his Hindu Law and Usage appear conformable with this view.

As we concur with the lower Courts in the finding that the defendants are *samánodakas*, we confirm the decree appealed against with costs.

Decree confirmed.