1895.

RAHIMKHÁN v. FATU BIBI.

in *Bái Hariganga* v. *Tulsidás*[1]. On the death of Sáheb Khán in 1851 the vatan under the old law devolved on Aisha and the plaintiff, his heirs according to Mahomedan law, and each became the owner of her share of the property in so far as a vatan can be held in ownership. When the Act came into force it found Aisha the owner of her share of the vatan, and section 2 did not operate to cut down her ownership.

On her death her heirs were entitled to succeed, males probably in preference to females, but we need not consider that. The defendants are not the qualified heirs of Aisha, and, therefore, cannot succeed. It is argued that they are qualified heirs in the original vatan family, but that does not constitute them qualified heirs to succeed to Aisha. We confirm the decree, with costs.

Decree confirmed.

(1) P. J. for 1887, p. 69.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

PARSHOTAM LAKHMIRA'M, PLAINTIFF, *v.* PEMA HARJI AND OTHERS,* DEFENDANTS.*

1895. *October* 10.

Small Cause Court—Suit not cognizable against some of the defendants—Jurisdiction.

A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants.

REFERENCE by Khán Sáheb J. E. Modi, Subordinate Judge of Anklesvar, under section 646 A of the Civil Procedure Code (Act XIV of 1882).

The plaintiff, who was a Bráhmin and who belonged to a class of hereditary priests of the Bárbhuja caste at Anklesvar, brought a suit against the defendants to recover from them Rs. 23-9-6 on account of his fees, &c., as hereditary priest, alleging that the defendants Nos. 1 and 2, uncle and nephews, were members of the Bárbhuja caste; that defendants Nos. 4 and 5 were rival priests; that defendant No. 3 was an agent of defendants Nos. 4 and 5; and that on the death of the mother of defendant No. 1 in 1891, the

* Civil Reference, No. 18 of 1895.

1895.

PARSHOTAM v. PEMA HARJI.

death-bed offerings, fees and presents of subsequent days, amounting to the above-mentioned sum, were given to defendant No. 3.

A question having arisen as to whether the Subordinate Judge could take cognizance of the suit against defendants Nos. 1 and 2 in his Small Cause jurisdiction, though there was no doubt that he could do so against defendants Nos. 3, 4 and 5, the suit as against them being one for money had and received by them for plaintiff's use, he submitted the following questions:—

"1. Whether a suit by a Hindu hereditary office-holder against an intruder for disturbance of office, or else for money had and received, can lie in the Small Cause Court?"

"2. If yes, what should be done about the defendants in this suit who are sued for not giving those fees?"

The Subordinate Judge was of opinion that if he could not try the suit against defendants Nos. 1 and 2 in his Small Cause jurisdiction, he could entertain it as against all the defendants in his ordinary jurisdiction.

N. M. Samarth (*amicus curiæ*) for the plaintiff.

Vásudeo R. Joglekar (*amicus curiæ*) for the defendants.

FARRAN, C. J.:—As the suit against defendants Nos. 1 and 2 is not cognizable by a Small Cause Court, the whole suit is not cognizable by a Small Cause Court, and the Subordinate Judge must try it in his original jurisdiction. It is unnecessary to answer the first question.

Order accordingly.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

1895. *October* 11.

TUKA'RA'M (ORIGINAL PLAINTIFF), APPELLANT, *v.* BA'BA'JI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act XIV of 1882), *Sec.* 258, *as amended by Act VII of* 1888—*Payment out of Court—Payment not certified to Court—Proof of such payment for the purpose of determining the question of limitation.*

Under section 258 of the Code of Civil Procedure (as amended by Act VII of 1888) as there is no time fixed within which the decree-holder is bound to certify a pay-

* Second Appeal, No. 362 of 1895.