

Special Appeal No. 468 of 1870.

1871.
Feb. 27.

YELLÁPA valad BHIMÁPÁ, and KÁSKÍÁ
valad MUDKÍÁ *Appellants.*
MÁNKÍÁ, a minor, by his guardian Sále
kom Shetiá *Respondent.*
*Cause of Action—Mahar—Right to share in the carcasses of Dead
Animals.*

A suit by one of the Máhárs of a village against his fellow-Máhárs to establish his right to share in the Máhárs' perquisites, such as the carcasses of dead animals, &c., will lie, though such a claim be not tenable against the ryots who may have owned such animals when alive.

THIS was a special appeal from the decision of J. R. Naylor Acting Senior Assistant Judge at Kalladgi in Appeal Suit No. 11 of 1870, confirming the decree of the Subordinate Judge of Bijápur.

The plaintiff, Mánkiá, alleged that he was entitled to a two-annas share in the Máhárs' *watan* in Mouje Bedzurgi, Táluká Bijápur, and as such was entitled to share in all the customary perquisites (the carcasses of dead cattle, &c.), and that the defendants had obstructed him in the enjoyment of his share of such proceeds on the 1st of June 1869. He claimed to recover these proceeds or the value, estimated at 25 rupees.

The defendants answered that the plaintiff had not a two-annas share in the *watan*, but that he acted as a substitute for the true sharer during the absence of the latter from the village, and, as the true sharer had returned to the village, the plaintiff had no longer any claim.

The Subordinate Judge of Bijápur found in favour of the plaintiff.

The defendant thereupon appealed to the Acting Senior Assistant Judge at Kalladgi, who recorded the following judgment in confirming the decision of the lower court:—

“The evidence on either side is entirely oral, and, as usual in cases of this kind, open to several objections. An appellate court, in trying a case like this, must necessarily attach great weight to the judgment of the Judge who heard all the evidence; and I cannot say that I see any reason:

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upon the whole, to lead me to think that the decision is contrary to evidence.

"It seems that both parties are agreed that the *watan* is divided into two principles shares of eight annas each, and that the dispute in this case is as to a fourth-share of one of these principal shares. There seems to be no difference of opinion as to who are the owners of the other three-fourths of this share, but the defendants say that the plaintiff has been holding the remaining fourth-share for the true owner, while the plaintiff asserts that he is the actual owner of the share.

"There is certainly a good deal of improbability about the defendants' story, and, although faults may be detected in the evidence put in by the plaintiff, I cannot say that the Subordinate Judge has erred in attaching more weight to the plaintiff's witnesses than to the defendants'."

The defendants appealed from this decision, and the appeal was argued before GIBBS and MELVILL, JJ.

Dhirajlal Mithuraldas, for the appellants, submitted that as the Mahárs of a village, as against the owners of cattle, had no right to the carcasses of such cattle, no action would lie to establish such a supposed right.

Ganesh Hari Patwardhan for the respondent.

GIBBS, J.:—It has been objected, on the part of the special appellants, that the plaintiff's claim cannot lie, as it has been repeatedly decided in this court, in suits for the proceeds of the carcasses of dead cattle between the Mahárs and the ryot-owners of the cattle, that the person who owned the cattle while alive has also a right to the property in the dead carcass of such cattle, and may dispose of it to anybody he pleases. The present suit, however, is not of that description. Though the owner of cattle is not bound by the Mahár's rights, yet, as between themselves, a Mahár has a right of action against his brother-Mahárs for a share in the proceeds of the perquisites of the *watan*, which is their common inheritance. No ground in law has been shown for reversing the decree appealed against. We, therefore, confirm the decision of the lower courts, with costs on the appellants.