

[APPELLATE CIVIL JURISDICTION.]

1875.
March 18.*Regular Appeal No. 3 of 1874.*

KRISHNARA' V. JAHA' GIRDA' R... *Plaintiff and Appellant.*
GOVIND TRIMBAK..... *Defendant and Respondent.*

Suit by one of two co-sharers to oust a tenant.

Where a suit was brought by one of two co-sharers to recover land from a tenant, not only in the absence of, but against the express desire of, the other co-sharer :

Held that the suit was not maintainable, and that the plaintiff could only sue jointly with his co-sharer, though the plaintiff was sole manager of the joint estate.

Umanna v. Purshotam (S. A. No. 379 of 1873) followed.

THIS was a regular appeal from the decision of A. Bosanquet, District Judge of Ahmednagar, in original suit No. 4 of 1872.

The plaintiff, Krishnaráv, brought this suit to recover from Govind Trimbak possession of two fields (Survey Nos. 136 and 137), together with a well and trees standing in No. 136. He alleged in the plaint that as he was willing to cultivate the fields himself, he gave the defendant notice to surrender them. The defence of Govind Trimbak, among other things, was that the plaintiff alone was not competent to maintain the suit, as there was another co-sharer, who did not join in the action. The defendant filed copy of a decree (Exhibit No. 30) passed between the plaintiff Krishnaráv and the other co-sharer (Dámodharráv), in which the latter was held entitled to an equal share in the management of the joint property, including the two fields in question. The Judge, thereon, joined Dámodharráv, the other co-sharer, as co-plaintiff, under the provisions of Section 73 of the Civil Procedure Code. Dámodharráv filed a written statement, and objected that the action had been instituted without his consent, and stated that he was not willing to eject the defendant, Govind Trimbak, so long as he paid the rent. One of the issues raised by the Judge

1875. was, whether the plaintiff alone was competent to maintain the suit. The Judge at first found that issue in the negative, and dismissed the plaintiff's claim. On the application of the plaintiff, however, the Judge, on review, reversed this decision, and awarded the plaintiff's claim on the ground that as the plaintiff was actually managing the property, he could maintain the suit alone.

KRISHNARA'V
JAHAR'GIRDA'R
v.
GOVIND
TRIMBAK.

The appeal was argued before KEMBALL and NA'NA'BHA'I HARIDA'S, JJ., on the 15th and 18th March 1875.

Pándurang Balibhadra for the appellant:—Dámodharráv is admitted to be a co-sharer with the plaintiff in the fields occupied by the appellant as a tenant. The plaintiff alone, therefore, cannot sue to oust the appellant, in the absence of, and against the express wishes of, the co-sharer. He cited *Umanná v. Purshotam* (S. A. No. 379 of 1873), in support of his contention.

Ráv Sáheb V. N. Mandlik, contra, relied upon *Sangáppá v. Sáhebáná (a)*.

18th March 1875. KEMBALL, J. :—This is a suit brought by one of two co-sharers in certain *inám* villages to recover possession of two fields, some trees, and a well from an admitted tenant. In the course of the suit, the other co-sharer was made a co-plaintiff, and he filed a statement denying the right of his co-sharer to sue alone, and declaring that the suit was brought without his consent, he being desirous of allowing the defendant to remain in possession so long as he paid the rent. The relationship of landlord and tenant is admitted, so that the only issue for disposal before us in this Regular Appeal is whether the plaintiff is entitled to sue in his own name and person to oust the tenant. It appears that, although the Judge has found that the plaintiff alone manages the village, lets out lands, and takes them back at his pleasure, still that right has never been acquiesced in by the co-sharer Dámodharráv, and that only three years ago the plaintiff in this case brought his suit

against Dámódhar to establish his right to manage when a decree was taken by consent, Exhibit 30, in which it was held that the plaintiff had failed to prove that he was the sole manager, and it was directed that in future he should transact the business with the consent of Dámódharráy, providing at the same time for any losses that might accrue in the event of the one acting without the assent of the other. Assuming that the Judge is right, in the face of the award above quoted, in holding that the plaintiff did manage the village in question so as to bind his co-sharer by his acts, we think it impossible to hold that he (plaintiff) is empowered by his position to bring a suit, not only in the absence, but against the express wish, of his co-sharer. In support of the Judge's decree, we have had quoted to us the judgment of this Court to be found at page 141 of the seventh volume of the reports. We do not think, however, that that judgment has any application to the present case, it having been held there, that, where a tenant chose to pay a co-sharer other than *the recognized* representative, he was bound at the suit of such representative to pay over again. We need not express any opinion on that ruling, for the question does not arise here. On the other hand, the judgment in S. A. No. 379 of 1873, decided on the 1st April 1874, has been brought to our notice, which exactly meets the present case. In that suit, one of three co-sharers sought to obtain rent and oust a tenant, and the District Court, in reversing the decree of the Court of first instance, held that the plaintiff, as eldest representative manager, could alone maintain his action, but in Special Appeal, it was ruled that the plaintiff could only sue jointly with his co-sharers, and in that decision we concur. We must, therefore, reverse the decree of the District Judge without prejudice, however, to any right which either of these two co-parceners may hereafter, either by voluntary partition or by a partition made in a suit between themselves only, acquire to proceed severally against the defendant to recover the lands in dispute, and we order that the plaintiff do pay the costs throughout.

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