which, it is said, has not yet been disposed of, but we do not concur in that argument. Nor does the case of *Jamnadas* v. *Lalitaram* (1), which has been cited, appear to us to affect in anywise the present question. No doubt both of the applications have the same object, *viz.*, the enforcement of the decree, but they are quite independent of each other, and the second application, namely, that against the property, cannot be regarded as an amendment of or by way of supplement to the other. Section 230 is, in the case of decrees over twelve years old, restrictive of section 248, which resembles section 216 of Act VIII of 1859. The *darkhast* against the property is quite independent of the *darkhast* against the person of the defendant. We reverse the order of the Acting District Judge, with costs of this appeal to be paid by the respondent to the defendant (the appellant), and we restore the order of the Subordinate Judge. The District Judge, we may observe, ought not to have reversed an other in favour of the defendant, without giving notice to him of the appeal, and hearing him if he chose to appear.

Order reversed.

(1) I. L. R., 2 Bom., 294.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

KALIDAS KEVALDAS (ORIGINAL PLAINTIFF), APPELLANT, *v.* NATHU BHAGVAN (ORIGINAL DEFENDANT), RESPONDENT.*

1883 *February* 1.

Joint cause of action—Non-joinder of parties—Joinder when too late—Rejection of plaint—Limitation—Act XV of 1877, *Sec.* 22.

A., who with his three brothers composed a joint Hindu family, brought a suit in his own sole name to recover a joint debt. When the objection was taken to the form of the suit on the ground of the non-joinder of A.'s three brothers, it was too late to add them as co-plaintiffs, by reason of section 22 of the Limitation Act, XV of 1877,—a suit on the debt being by that time time-barred. The three brothers at the hearing expressed their willingness that A. should sue alone.

Held that such assent did not obviate the necessity of joining all the proper parties as co-plaintiffs, and that the suit, therefore, as framed, would not lie.

Held, further, that A. would have been in no better position had he joined his three brothers as co-plaintiffs after the suit was, as regards them, time-barred;

* Second Appeal, No. 584 of 1881.

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since such a suit would have been virtually a suit by himself alone, and therefore bad.

Boydonath Bag v. *Grish Chunder Roy* (1) disapproved of.

THIS was a second appeal from the decision of M. B. Baker, Judge of the District Court of Ahmedabad, affirming the decree of the First Class Subordinate Judge at the same place.

The plaintiff Kalidas sued to recover Rs. 999 from the defendant on a balance of account owing by their deceased father to the father of the plaintiff (also deceased). The defendant answered (*inter alia*) that the plaintiff could not sue alone, but must join his three brothers who, as members with him of an undivided Hindu family, were equally interested in the subject-matter of the suit.

The three brothers were examined at the hearing, and said that they had no objection to the plaintiff suing alone, as their father before his death had given the debt in question to the plaintiff, to whom consequently it solely belonged.

The Subordinate Judge disbelieved this evidence and dismissed the suit, holding that the plaintiff could not maintain it alone.

The plaintiff appealed. In appeal, the District Judge upheld the decree of the first Court. He observed : "It is now too late to join the other brothers as co-plaintiffs, for their claim is barred, and, according to the ruling above cited (I. L. R., 6 Calc., 815), the plaintiff's claim is barred also. A plaintiff cannot claim a specific share in undivided family property and, consequently, is not entitled to a decree for his share only. I am of opinion, therefore, that the suit was rightly dismissed by the Subordinate Judge."

The plaintiff appealed to the High Court.

Nanabhai Haridas (Government Pleader) for the appellant.—The lower Courts were wrong in holding that the plaintiff could not sue alone, especially when his brothers disclaimed all interest in the debt. The decision is opposed to the ruling of this Court in *Jagjivandas Dayaram* v. *Jagabhai Lalubhai* (2).

No one appeared for the respondents.

(1) I. L. R., 3 Calc., 26.

(2) Regular Appeal, No. 20 of 1880, decided by Melvill and Kemball, JJ., on the 4th August, 1880 (unreported).

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SARGENT, C.J.—The plaintiff sues upon a debt contracted with his deceased father when carrying on trade under the name of Kevaldas Hansi. The defendant pleaded that the shop at present belongs to the plaintiff and his three brothers—Mansuk, Amratlal and Harilal—as an undivided family, and that, therefore, plaintiff could not sue alone. Both the Courts below found that the fact was as stated by the defendants, and held that the plaintiff could not sue alone, and rejected the claim with costs. The three brothers, it appears, were examined at the hearing, and said that they had no objection to the plaintiff suing alone, as their father gave this debt to him before his death in consideration of his managing the business. The District Judge, however, disbelieved this story, holding that it had been invented for the purpose of avoiding the bar of limitation, and rejected the claim, holding on the authority of *Ramsebuk* v. *Rámlál Kundoo* (1) that the plaintiff could not sue alone. Although the District Judge disbelieved the story told by the brothers, still they must be taken to have assented to the plaintiff suing alone.

In Regular Appeal No. 20 of 1880, which was an action by the manager of a Hindu firm to which the defendants pleaded that there was a non-joinder owing to the other members of the family not being made plaintiffs, the latter appeared at the hearing as witnesses and expressed their consent to the plaintiff suing alone. The Court, consisting of Mr. Justice Melvill and Mr. Justice Kemball, held that the suit was properly constituted on the ground that, under the circumstances, the debt could be safely paid to the plaintiff alone. The rule of English law, which enables the defendant to insist on all the contractees being made co-plaintiffs when there is a joint cause of action, does not appear to have been considered. If that rule is to be applied in cases of this nature the defect could not, of course, be cured by an expression of willingness by the other members of the family that the plaintiff should sue alone. This was expressly decided in *Dularchand* v. *Balrámdás* (2). As to the propriety of applying the rule, the above case, as well as the two Calcutta decisions—*Boydónath Bag* v. *Grish Chunder Roy* (3) and *Ramsebuk* v. *Rámlál*

(1) I. L. R., 6 Calc., 815.

(2) I. L. R., 1 All., 453. (3) I. L. R., 3 Calc., 26.

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Kundoo (1)—are distinct authorities, and we entirely agree in the answer given by the Court in the latter case to the question referred to it, "that, as between the members of the joint family, any one or more may of course be authorized to act as their agent or agents in any business transaction; but when a joint family carries on trade in partnership, and contracts with the outside public in the course of that trade, they have no greater privileges than any other traders. If they are really partners, they must be bound by the same rules of law for enforcing their contracts in Courts of law as any other partnership."

It remains to consider the effect of applying this rule when the suit would be barred as regards the new plaintiffs by reason of section 22 of the Limitation Act, XV of 1877. In *Boydonath Bag* v. *Grish Chunder Roy* (2) Mr. Justice Markby says: "But it is said that for that reason the suit should be dismissed altogether. That really amounts to this, that because two of the parties who joined are barred, the whole are also barred. The law does not say that, and it is not a reasonable construction of the Statute hold that. I see no more difficulty in drawing up the decree in this case than there would be in the case in which some of the holders of the tenure, who had refused to join in the suit, might be made defendants." In *Rámsebuk* v. *Ramlal Kundoo* (3) the Chief Justice and Mr. Justice Pontifex say "they connot understand or agree with that decision," and we feel an equal difficulty. A suit by several persons, as to some of whom the right to sue is barred, is virtually a suit by the other plaintiff or plaintiffs alone, and if a suit so framed will not lie, as it will not in the case of a joint cause of action, unless the absence of the other contractees is satisfactorily accounted for, there can be no other course than to dismiss the claim. Whether section 22 of the Statute of Limitation should not be amended to meet the case of joint contractees is worthy of consideration. We must, therefore, confirm the decree, but, under the circumstances, and the debt having been found due by the District Judge, with costs on the parties respectively throughout.

Decree confirmed.

(1) I. L.R., 6 Calc., 815.

(2) I. L. R., 3 Calc., 26.

(3) I. L. R., 6 Calc., at p. 824.