

as regards the *wanta* lands, and that, as provided by s. 65 of the Contract Act, they were entitled to a refund of the quit-rent paid in respect of such lands. It is plain, however, that the amount of the refund must depend on the extent of the *wanta* lands, which cannot be ascertained, so as to bind the Government, in the absence of the *girassias*. The third and fifth issues could not, therefore, be determined in this suit without making the *girassias* parties.

We must, therefore, reverse the decree and send back the case for a fresh decision with due regard to the above remarks, after making the *girassias* parties and recording fresh findings on issues third and fifth. The parties to pay their own costs of this appeal.

Decree reversed and case sent back.

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APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Candy.

KASTURCHAND BAHIRAVDAS AND OTHERS (*Original Defendants*),
Appellants v. SAGARMAL SHRIRAM AND ANOTHER (Original
*Plaintiffs), Respondents.** [4th July, 1892.]

Parties—Partnership—Non-joinder—Suit in name of a firm by its manager—Addition of name of other partner as co-plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of 1882), s. 27—Amendment of plaint—Limitation—Limitation Act (XV of 1877), s. 22—Practice—Procedure.

In this suit, which was brought to recover a debt due to the firm of Kondanmal Sagarmal, the plaintiff was described as "the firm of K.S. by its manager S.S." The defendants objected that one Malamchand was a partner in the firm and should [414] be a party to the suit. He was accordingly joined as a co-plaintiff on the 27th January 1888. The defendants then contended that the suit was time-barred under s. 22 of the Limitation Act, XV of 1877.

Held, that the case was one of misdescription and not of non-joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that Sagarmal, the manager, did not sue in his own name. The defendants were entitled to have the name of the other partner disclosed, but it being found as a fact that Sagarmal was entitled to sue for the firm, the addition of Malamchand's name on the record came within the provisions of s. 27 of the Civil Procedure Code, Act XIV of 1882.

[F., 27 B. 157 (161); R., 20 B. 767 (775); 18 M. 33 (37); 7 C.W.N. 817 (821); 3 O.O. 347 (349); 127 P.R. 1906=58 P.L.R. 1907=10 P.W.R. 1907; 149 P.R. 1907; 1 S.L.R. 191 (193, 195); D., 21 B. 580 (584).]

SECOND appeal from the decision of M. H. Scott, District Judge of Satara.

This was an action brought to recover a debt due to the firm of Kondanmal Sagarmal. The suit was filed on the 21st November 1884, upon a document dated 1st December 1881. In the plaint the plaintiff was described as "the firm of Kandanmal Sagarmal by its manager Sagarmal Shriram."

The defendants objected (*inter alia*) that the plaint did not disclose the names of all the partners in the firm of Kondanmal Sagarmal.

The Subordinate Judge found that one Malamchand was a partner with Sagarmal in the firm of Kondanmal Sagarmal, and that he should

* Second Appeal No. 759 of 1890.

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have been a party to the suit. On this ground he dismissed the suit under s. 32 of the Civil Procedure Code (Act XIV of 1882) without going into the merits of the case.

On appeal the District Judge (C. G. W. Macpherson) reversed the decree, and remanded the case for decision on the merits, being of opinion—(a) "That the question whether Sagarmal was entitled to sue for the firm must be determined on the evidence. (b) "That, if Sagarmal was not entitled to sue for the firm, Malamchand should be brought on the record, so that the suit be disposed of on the merits."

The order of the District Judge was confirmed by the High Court in appeal No. 58 of 1887.

In accordance with the above order, Malamchand was joined as a co-plaintiff on the 27th January 1888. The defendants contended that the suit was then time-barred.

[415] The Subordinate Judge found that the plaintiff Sagarmal could sue in his own name for the partners of the firm, and that the suit was not time-barred, and allowed the claim.

In appeal, the District Judge confirmed the decree.

From that decision defendants preferred this second appeal.

Phirozshah M. Mehta (with *Mahadeo Chimnaji Apte*), for the appellants (defendants).—The suit was instituted by Sagarmal alone on the 21st November, 1884, on a document dated 1st December, 1881. Malamchand, who was a necessary party, was not joined till the 27th January, 1888. The suit was then barred by limitation—*Kalidas Kevaldas v. Nathu Bhagvan* (1); *Balkrishna Moreshwar Kunte v. The Municipality of Mahad* (2); *Hari Gopal v. Gokaldas Kushabâshet* (3). A defendant may insist that every person interested in the subject-matter of the suit should be joined, and, if such person be not joined in time, the suit ought to be dismissed—*Ramdoyal v. Junmejoy* (4).

The plaint as it was originally drawn did not comply with the provisions of s. 50 of the Civil Procedure Code (Act XIV of 1882). We took the objection as to want of parties in our written statement before the first hearing. The respondent then took no steps to join Malamchand, and when he did so he was too late. Section 35 of the Civil Procedure Code provides for special cases. In all other cases the names of all persons interested as plaintiffs must be on the record. A firm cannot sue in its own name without specifically mentioning the names of all the partners.

Gajdar (with *Mahadeo Bhaskar Chavbal*), for the respondents.—The only question involved in the case is whether the joinder of Malamchand was too late under the Limitation Act (XV of 1877). The suit was not brought by Sagarmal on his own behalf, or in his individual capacity, as manager; it was instituted in the name of the firm, and, therefore, there was no necessity to disclose the names of all the partners. It is nowhere laid down that a suit shall not be brought in the name of a firm. There is nothing in the Civil Procedure Code to prevent such a suit being filed. The suit being in the name of the firm, Malamchand was [416] impliedly a party to it, and it was not necessary to mention his name—*Lindley on Partnership* (5th Ed.), p. 265. The firm itself being the plaintiff, a partner in the firm cannot be called a co-plaintiff. He was joined in the suit as a co-manager. The cases cited were suits filed by managers in their individual capacity and not by the firm itself, as in the

(1) 7 B. 217.

(2) 10 B. 32.

(3) 12. B. 158.

(4) 14 C. 791.

present case. *Manni Kasaundhan v. Crooke* (1); *Pragilal v. Maxwell* (2). The addition of Malamchand to the suit does not come within the provisions of s. 22 of the Limitation Act—*Subodini Debi v. Cumar Ganoda Kant* (3). Assuming that the frame of the suit was not in accordance with the provisions of s. 50 the Civil Procedure Code (Act XIV of 1882), the Court can amend the plaint. This is a case merely of misdescription. One partner may bring a suit in the name of a firm—*Whitehead v. Hughes* (4).

Phirozshah M. Mehta in reply:—Malamchand was not joined as a co-manager. The plaint shows that he was joined as co-plaintiff. *Subodini Debi v. Cumar Ganoda Kant Roy* (3) does not apply, because the real principals in that case were disclosed and the suit was brought by the authorized agent of those principals. The above ruling is at direct variance with the provisions of s. 22 of the Limitation Act—*Starling on Limitation*, p. 84; *Hari Gopal v. Gokuldas Kushabasket* (5). A suit may be brought by the partners in the name of a firm, but a firm alone cannot bring a suit without disclosing the partners.

JUDGMENT.

CANDY, J.—The only argument urged in the present appeal is that the suit was barred by s. 22 of the Limitation Act (XV of 1877). We think, however, that this case must be distinguished from the numerous cases quoted at the Bar which establish the principle as to non-joinder of plaintiffs in actions of contract. The present was a case of misdescription, not of non-joinder. For the action was brought in the name of the firm by its manager: the manager did not sue in his own name; the order of the words in the vernacular plaint shows this. When then the defendants objected, as they were entitled to do, that [417] the name of the other partner in the firm should be disclosed, the Subordinate Judge was not justified in rejecting the suit under s. 32. This was the view taken by the District Judge (Mr. Macpherson), which was confirmed on appeal. The case having been remanded, and the name of Malamchand having been brought on the record, the Subordinate Judge found as a fact that Sagarmal was entitled to sue for the firm, and that the addition of Malamchand's name came under the provisions of s. 27, not of s. 32. The District Judge (Mr. Scott) came to the same conclusion, and we think that he was right, and confirm the decree with costs.

Decree confirmed.

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(1) 2 A. 296.

(4) 2 Cr. & M. 318.

(2) 7 A. 284.

(5) 12 B. 158.

(3) 14 C. 400.