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 18 B. 136.

to accept their views, unless it can be said with reasonable certainty that they are erroneous. In the present case, however, this cannot be said; for though there may be some difficulty in distinguishing between many of the objects included in the word "*dharm*" and those comprised in the term "charity," and it may be unsafe to hold that the latter covers a narrower range than the former, we think that the ground on which the decision in the *Advocate General v. Damodhar* was based, namely, that the reasons which led the Court of Chancery to uphold the validity of gifts to charity, were inapplicable to gifts to *dharm*, can hardly be disputed. Other reasons might possibly be assigned for holding that the expression "*dharm*" or "*dharmada*" is not vague or indefinite; but apart from English precedents, we think that this question is of so uncertain a character that we ought to be guided by the decisions of the Judges who have already considered it. In a purely discretionary matter of this kind the earlier decisions must prevail in settling the law.

We, therefore, hold that the bequest in favour of *dharmada* was void by reason of uncertainty, and confirm the decree. All costs throughout to be paid out of the testator's estate.

*Decree confirmed.*

18 B. 141.

[141] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.*

DAYABHAI LALLUBHAI AND ANOTHER (*Original Defendants Nos. 1 and 4*), Appellants *v.* GOPALJI DAYABHAI (*Original Plaintiff*), Respondent.\* [2nd February, 1893.]

*Landlord and tenant—Joint family—Manager—Lease granted by manager—Right to sue for rent under such lease—Co-sharers—Parties—Practice.*

A manager of a joint Hindu family who, as such, has granted a lease, is during his lifetime the only person to sue for rent due under the lease, but after his death his son, who has not succeeded his father in the management, cannot sue without joining the other members of the joint family as parties.

*Dada v. Bahu* (1) and *Sayad Fatula v. Bala* (2) followed.

[Rel., 22 M. 325 (327).]

SECOND appeal from the decision of J. B. Alcock, District Judge of Surat.

Suit for rent. The plaintiff sued the defendants for Rs. 139-8, the balance of rent for the year 1946 due on a rent-note alleged to have been passed by the defendants to the plaintiff's father Dayabhai Morarji.

Defendants Nos. 1 and 4 pleaded (*inter alia*) that they had passed the rent-note to the plaintiff's father Dayabhai as the manager of the united family to which the plaintiff belonged, and that the plaintiff could not sue alone, as the other members of the family had a share in the sum sued for.

Defendants Nos. 2 and 3, Bhula Sura and Bhimbhai Bhulabhai, admitted the claim.

\* Second Appeal No. 884 of 1891.

(1) P.J. 1876, p. 11.

(2) P.J. 1884, p. 33.

The Subordinate Judge held that the plaintiff could not sue alone, as the land in question was admittedly joint family property, and that the plaintiff was not shown to be manager of the family. He held that the other co-sharers were necessary parties, and he, therefore, dismissed the suit as against defendants Nos. 1 and 4.

On appeal by the plaintiff, the District Judge held that, as the defendants had paid rent to the plaintiff, they were estopped from disputing his title to receive rent from them, and that the other members of the family were not necessary parties. He reversed the lower Court's decree and awarded the plaintiff's claim.

[142] Defendants Nos. 1 and 4 preferred a second appeal.

*Manekshah J. Taleyarkhan*, for the appellants (defendants):—The plaintiff succeeded his father as one of the heirs, but not as manager of the family. Therefore, the suit brought by him alone without joining the other co-sharers, who are equally interested in the estate, cannot lie.

*Mahadeo Chimnaji Apte*, for the respondent (plaintiff). He cited *Dada v. Bhanu* (1); *Sayad Fatulla v. Bola* (2); *Jethu Jadhavji v. Ganpat-rav*(3).

#### JUDGMENT.

SARGENT, C. J.—The decisions in *Dada v. Bhanu* (1) and *Sayad Fatulla v. Bola* (2) show doubtless that the plaintiff's father, who was manager and has such granted the lease, was the only person to sue for the rent whilst he was alive. But when he died, the plaintiff did not succeed to the management, and had, therefore, no exclusive right to sue for the rent.

We must, therefore, reverse the decree with costs here and in the lower appellate Court, and restore that of the Subordinate Judge.

*Decree reversed.*

18 B. 142.

#### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Bayley.*

MANAKU KOM PEDRU (*Petitioner*) v. SITARAM ATMARAM VAGH  
(*Opponent*).<sup>\*</sup> [6th February, 1893.]

*Practice—Procedure—Ex parte decree—Co-defendants—Small Cause suit—Ex parte decree against one of several defendants—Application by co-defendant to set aside decree—Case re-opened with respect to the applicant only—Civil Procedure Code (Act XIV of 1882), ss. 106, 108.*

Where a decree is set aside on the application of a defendant against whom it was passed *ex parte*, the case is not re-opened as against a co-defendant who had appeared and defended the suit.

[N. F., 24 A. 383 (390) = 22 A. W. N. 76 (F. B.); F., 31 M. 454 (457) = 18 M. L. J. 453 = 4 M. L. T. 230; 6 C. L. J. 226 (231); 15 C. P. L. R. 179 (181).]

REFERENCE made by Rao Bahadur Raghavendra Ramchandra Gangolli, First Class Subordinate Judge of Karwar, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

<sup>\*</sup> Civil Reference No. 1 of 1893.

(1) P. J. (1876), p. 11. (2) P. J. (1884), p. 83. (3) P. J. (1884), p. 286.