

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*).^{*} [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).

^{*} Civil Reference No. 1 of 1893.

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

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[143] The opponent Sitaram Atmaram Vagh brought a suit against Francis Pedru and his mother Manaku in the Court of the First Class Subordinate Judge of Karwar, in its Small Cause jurisdiction, to recover Rs. 476-9-0 due upon a promissory note jointly passed by them. At the hearing only the first defendant appeared and resisted the claim. The second defendant, Manaku, was absent. The Subordinate Judge passed a decree against both the defendants. Subsequently Manaku (defendant No. 2) applied to set aside the decree, and the question arose as to whether, if the application were granted, the case would be re-opened with respect to defendant No. 1. The Subordinate Judge referred the question as follows:—

“Whether an application by a co-defendant praying for setting aside an *ex-parte* decree in a Small Cause suit, if granted, re-opens the case against the defendant or defendants who were present and who conducted the defence in the original trials in cases where there is a common cause of action against all the defendants.”

The opinion of the Subordinate Judge was in the negative. He referred to the following cases:—*Brojonath Surmah v. Anund Moyea Debia* (1); *Huro Krishno Doss v. Motee Chand Baboo* (2); *Dookhee Khan v. Rajessuree Rane* (3); *Nistarinee Dasse* v. *Debnath Bose* (4).

Purushotam Parashuram Khare (*amicus curiæ*), for the petitioner.
Vasudeo Gopal Bhandarkar (*amicus curiæ*), for the opponent.

OPINION.

SARGENT, C. J.—Having regard to the language of ss. 106 and 108 of the Civil Procedure Code (Act XIV of 1882) the question must be answered in the negative.

Order accordingly.

18 B. 144.

[144] APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

KRISHNAJI (*Original Plaintiff*), *Appellant v. WAMNAJI* (*Original Defendant*), *Respondent*.* [9th February, 1893.]

Fraud—Plaint—Form of plaint—Charges of fraud—Amendment of plaint—Practice—Procedure.

Where a plaintiff seeks relief on the ground of fraud, and the plaint contains general allegations, but no specific instances, of the alleged fraud, it ought to be immediately, on presentation, rejected or returned for amendment, as it does not disclose a cause of action.

The plaintiff sued to recover damages caused by the defendant's fraud during his management of the plaintiff's estate from 1870 to 1884. The plaint disclosed no specific instances of the fraud imputed to the defendant. The Court of first instance, without going into evidence, rejected the plaintiff's claim, on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother. In second appeal, the respondent objected that the plaint was defective. The plaintiff's pleader asked for leave to amend it by specifying certain instances of the alleged fraud.

* Second Appeal No. 656 of 1891.

(1) 7 W. R. C. R. 237. (2) 8 W. R. C. R. 260.
(3) 15 W. R. C. R. 371. (4) 20 W. R. C. R. 286.