

was not shifted on to the plaintiff by proof of immoral habits
—*Chintámanráv v. Kásináth*⁽¹⁾.

1895.

VA'SUDEY
v.
KRISHNA.

For the above reasons the Court reverses the decree of the District Judge and restores that of the Subordinate Judge. In the District Court the respondents to bear their own costs, and the respondents with the exception of Dhákta bin Soma Shinda to bear those of the appellant. The respondents in this Court to bear the whole cost of this appeal.

(1) I. L. R., 14 Bom., 320.

APPELLATE CIVIL.

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

BHA'NU TUKA'RA'M SHET AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* KA'SHINATH PA'NDSHET AND OTHERS (ORIGINAL DEFENDANTS Nos. 1, 2 AND 3), RESPONDENTS.*

1895.

June 12.

Civil Procedure Code (Act XIV of 1882), Sec. 32—Practice—Procedure—Right of action—Suit by plaintiff having no interest in subject-matter—Joinder of a party co-plaintiff having interest.

If a plaintiff at the time he brings his suit has no interest in the subject-matter thereof, the joinder of a person as co-plaintiff who has an interest cannot alter the plaintiff's position or confer on him any right of suit.

SECOND appeal from the decision of T. Walker, Assistant Judge of Ratnágiri, reversing the decree of Ráo Bahádur Náro Mahádeo Thosar, First Class Subordinate Judge of Ratnágiri.

This action was originally instituted by plaintiff No. 1 praying for an account. He alleged that a certain shop at Ratnágiri belonged to him and his undivided cousin Dnyánoba, father of defendant No. 8 (Bhiku), till Dnyánoba's death on the 4th March, 1886; that defendant No. 1 was the gumásta of the shop and had managed it till Dnyánoba's death; that defendant No. 2 was joined because he had obtained a certificate of administration of the estate of defendant No. 8 (Bhiku), who was a minor, and that defendant No. 3 had colluded to injure the interest of defendant No. 8 and the plaintiff.

*Second Appeal, No. 561 of 1893.

1895.

BHA'NU
v.
KA'SHINA'TH.

At an early stage of the proceedings, on the application of plaintiff's pleader the names of defendants Nos. 4, 5 and 6 were struck off.

Subsequently defendant No. 8 (Dnyánoba's son) consented to be joined as co-plaintiff on condition that any sum which might be awarded by the Court should be paid to him and not to the plaintiff who he alleged had no right to the shop.

The other defendants denied that plaintiff No. 1 had any right to sue.

The Subordinate Judge found that defendant No. 8 had been rightly made a co-plaintiff and that he and plaintiff No. 1 were undivided, and on taking accounts he held the plaintiffs entitled to Rs. 4,410-4-4 with costs and interest at 9 per cent. per annum, and gave a decree against defendants Nos. 1, 2 and 3.

Defendants Nos. 1 and 3 appealed and plaintiff No. 2 preferred cross objections under section 561 of the Civil Procedure Code (Act XIV of 1882).

The Judge found (1) that the plaintiff No. 1 had not shown that he had a right to sue, (2) that the suit could not be brought in its present form, and (3) that it must be dismissed for multifariousness. He accordingly reversed the decree and dismissed the suit. His reasons are given in the following extracts from his judgment:—

“The present suit was instituted by plaintiff No. 1 alone on the 2nd March, 1889. Plaintiff No. 2 was sued as defendant No. 8, and when he expressly denied that plaintiff No. 1 was a member of the family or had any interest in the shop, it became evident that the suit could not in the first instance go on against the manager of the shop. Defendant No. 8 then agreed to be joined as co-plaintiff, and on the 22nd February, 1890, he was added as such, doubtless under section 32 of the Civil Procedure Code. He still adhered to his plea against plaintiff No. 1 and only consented to join if any decree that might be passed were passed in his favour and no money paid to plaintiff No. 1. I think it unfortunate that this addition was made. If plaintiff had no right to sue in March, 1889, he could not acquire one by adding a co-plaintiff (I. L. R., 6 Cal., 370). If he had a right to sue, that right had to be proved against defendant No. 8, and even now, when a decree has been obtained, it is manifest that satisfaction cannot be had till plaintiffs have settled their differences. The Subordinate Judge has raised an issue between plaintiffs, not at their own request, but at the instance of defendant No. 1, who is interested in denying plaintiff's title to sue.

“There are other objections which I may notice before disposing of the appeal. The plaint shows no distinct cause of action against defendants Nos. 1, 2 and 3, merely

alleging general collusion. It appears to have been treated at first as a suit for accounts in the Court below, but afterwards evidence was given to show that defendant No. 3 had committed what amounts to theft or misappropriation or criminal breach of trust with the other defendants in respect of about Rs. 4,000 worth of cloth. It is alleged that defendant No. 3 obtained this cloth from the shop to pay certain creditors with, and the rights and wrongs of this are to be discussed."

The plaintiffs preferred a second appeal.

Mánesháh J. Taleýárkhán for the appellants (plaintiffs).

Inverarity (with *Ghanashám N. Nádkarni*) for the respondents (defendants Nos. 1, 2 and 3).

PARSONS, J.:—We deal at present only with the first point raised, namely, the right of the plaintiff No. 1 to bring this suit. There can, we think, be no doubt that the plaintiff's suit would be good only if at the time he brought it he had some proprietary interest in the shop, the accounts of which he wishes to have taken. If he had any such interest, then the joinder of Bhiku, first as defendant No. 8 and then as co-plaintiff, would correct the initial non-joinder and make the case complete as to parties. If, however, the plaintiff had no such interest, the joinder of a person who had an interest in the shop could have no effect upon the plaintiff and would confer on him no right of suit. See *Subbayar v. Kristnaiyar*⁽¹⁾; *Chunder Coomar Roy v. Gocool Chunder*⁽²⁾.

The Court of first instance found that the shop belonged not only to the second plaintiff, but also to the first plaintiff as a joint member of an undivided Hindu family. The Assistant Judge raised the point directly in his 3rd issue, and indirectly in his 1st issue, and found on those issues; but he has nowhere discussed the question, and has given no reasons at all for his findings. He seems to think that the mere denial of the second plaintiff was sufficient to show that plaintiff No. 1 had no right to sue. We are unable to accept his findings, and we remand this issue to the lower Appellate Court for it to find upon on the evidence on the record—

Had plaintiff, when he brought this suit, any interest in the shop in question?

Two months' time allowed.

Issue sent down.

(1) I. L. R., 1 Mad., 383.

(2) I. L. R., 6 Cal., 370.