

of the moiety of Worlee property and the result of the suit if she files one will have a bearing on the question of a portion of the costs incurred at the hearing before me.

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I reserve further directions and the question of all costs.

Note.—Mr. Bahadurji on behalf of the plaintiff undertakes not to charge, alienate or transfer her admitted share in the Worlee property so as to safeguard the defendants in case costs are ordered to be paid out of the estate.

Attorneys for the plaintiff:—*Messrs. Mehta & Dadachanji.*

Attorneys for the defendants:—*Messrs. Payne & Co. and Messrs. Captain & Vaidya.*

B. N. L.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Knight.

VITHU DHONDI AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS,
v. BABAJI BIN BAHIRU BHISE AND OTHERS (ORIGINAL PLAINTIFFS),
RESPONDENTS.* 1908
February 12.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 46, 47—
Conciliator's certificate obtained in the name of one co-parcener—Suit on
behalf of the family—The remaining co-parceners joining as plaintiffs to
the suit—Hindu Law—Manager—Powers to represent the family.*

In a suit brought on behalf of a joint Hindu family the Conciliator's certificate required by section 46 of the Dekkhan Agriculturists' Relief Act

* Second Appeal No. 281 of 1907.

† The sections run as follows:—

46. If the person against whom any application is made before a Conciliator cannot after reasonable search be found, or if he refuse or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to arbitration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant a certificate under his hand to that effect.

47. No suit and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court, unless the plaintiff produces such certificate as aforesaid in reference thereto.

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(XVII of 1879) was obtained in the name of one of the co-parceners alone: but all the co-parceners joined as plaintiffs and admitted in the plaint that the certificate had been obtained on behalf of the joint family. It was objected to this suit that as the certificate was in the name of one of the plaintiffs the suit could not lie.

Held, overruling the objection, that the certificate obtained by one of the co-parceners, who was either the managing member of the family at the time the certificate was obtained or who though not manager obtained it with the consent and on behalf of the joint family, acting as its agent, was sufficient to support the suit.

The rule of Hindu law is that a joint family is represented in all transactions or concerns with the outside world by its *karta* (manager), provided these are for the benefit or necessity of the family; and that any co-parcener who does not occupy that position of manager can represent and bind the family in such transactions or concerns, provided he was either previously authorized to represent it or, in the absence of such authority, the other co-parceners subsequently by words or conduct ratified his acts.

SECOND APPEAL from the decision of C. A. Kincaid, District Judge of Poona, confirming the decree passed by N. K. Bapat, Subordinate Judge of Sáswad.

This was one of the two suits brought against Vithu Dhondi and others for possession of certain lands. It was brought on behalf of the joint family of which Aba Bahiru was one of the co-parceners. The Conciliator's certificate required by section 46 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) was taken out in the name of Aba Bahiru alone: but all the co-parceners of the family joined the suit as plaintiffs and admitted that the certificate was taken out by Aba on behalf of the family. The same was the case in the other suit. The two suits were heard together, the evidence having been recorded in one of them. The Subordinate Judge decreed the claims with costs.

On appeal before the District Judge the defendants' Pleader raised a preliminary objection that the suits were bad inasmuch as the Conciliator's certificate was in the name of the plaintiffs alone. This objection was overruled for the following reasons:—

“The first was an objection to the Conciliator's certificate which in both suits are in the name of one plaintiff only, *viz.*, Aba Bahiru, in Suit No. 14 of 1904 As the other plaintiffs had not produced Conciliator's certificate Mr. Vaidya contended that the Court had no jurisdiction so far as they were concerned. In both plaints, however, the

plaintiffs have stated that the certificates were taken out on behalf of the joint family. No evidence has been given to rebut this, and as the objection was not taken in the lower Court I overrule it."

The defendants appealed to the High Court.

Branson (with *R. W. Desai*) for the appellants :—The certificate in this case is obtained by only one of the plaintiffs. It does not purport to be on behalf of himself and others or for himself as manager of the family. It cannot, therefore, support a suit brought by the plaintiffs.

V. G. Ajinkya for the respondents :—The want of a certificate cannot vitiate the whole suit: the defect, if any, can be cured at any time by the remaining plaintiffs producing the certificate. Cites *Sayat Nyamtula v. Nana*⁽¹⁾ and *Krishnarav v. Hari*⁽²⁾.

Further, the plaintiff in whose name the certificate is obtained is the manager of the joint family of the plaintiffs: this fact is mentioned in the plaint. The manager represents the joint Hindu family for all purposes: *Punamchand v. Chumilal*⁽³⁾.

CHANDAVARKAR, J. :—The only point of law arising on this second appeal is whether the co-parceners of a joint Hindu family are entitled to maintain a suit, to which the provisions of section 47 of the Dekkhan Agriculturists' Relief Act apply, on the strength of a Conciliator's certificate obtained under section 46 of the Act by only one of those co-parceners, who was either the managing member of the family at the time the certificate was obtained, or, who, though not manager, obtained it with the consent and on behalf of the joint family, acting as its agent.

The rule of Hindu law is that a joint family is represented in all transactions or concerns with the outside world by its *karta* (manager), provided they are for the benefit or necessity of the family; and that any co-parcener, who does not occupy that position of manager, can represent and bind the family in such transactions or concerns, provided he was either previously authorized to represent it, or, in the absence of such authority, the other co-parceners subsequently by words or conduct ratified his acts.

(1) (1888) 13 Bom. 424.

(2) (1898) P. J. p. 397.

(3) (1907) 9 Bom. L. R. 336 (Journal).

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In the present case, though the Conciliator's certificate stands in the name of one of the plaintiffs only, all the plaintiffs joined in the suit and admitted in the plaint that the certificate had been obtained on behalf of the joint family. That averment was not traversed in the written statement, or made the subject of an issue in the Court of first instance. The certificate must be treated as having been obtained by the co-parcener in whose name it is not only for himself but also as agent of the other co-parceners. Whether such a certificate entitles all the co-parceners, who are not named in it, to join in a suit brought by the co-parcener who is named, is a question which must be determined upon the proper construction of the provisions in Chapter VI of the Dekkhan Agriculturists' Relief Act. A Conciliator exercises under the Act certain functions for the purpose of bringing about an amicable settlement of the dispute between two or more of the parties falling within the scope and object of the Act, and he has to exercise those functions subject to its provisions. One of them, *viz.*, section 41, provides that "whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case." That means that a party to a dispute is entitled to appear before the Conciliator; and if he should appear it is the duty of the Conciliator to call upon him to explain his case. But what if a party wishes to appear before the Conciliator by an agent to explain his case and to act for him otherwise in the matter of the conciliation? Is such agent entitled to appear and obtain a certificate for his principal or principals? The Dekkhan Agriculturists' Relief Act being silent upon that point, the case falls within the rule of construction stated as follows by Stirling, J., in *Jackson & Co. v. Napper*. *In re. Schmidt's Trade-Mark*⁽¹⁾ :—

"I understand the law to be that, in order to make out that a right conferred by statute is to be exercised personally, and not by an agent, you must find something in the Act, either by way of express enactment or necessary implication, which limits the common law right of any person who is *sui juris* to appoint an agent to act on his behalf. Of course, the legislature may do

(1) (1886) 35 Ch. D. 162 at p. 172.

so, but, *prima facie*, when there is nothing said about it, a person has the same right of appointing an agent for the purpose of exercising a statutory right as for any other purpose."

The legislature, which must be taken to have been aware of the rule of Hindu law above stated when it passed the Dekkhan Agriculturists' Relief Act, has not by any of the provisions expressly or impliedly dispensed with that rule. The certificate, obtained by one of the plaintiffs on behalf of the rest, enures, therefore, for the benefit of all.

For these reasons we must overrule the point urged in support of this second appeal and confirm the decree with costs.

R. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K. O. I. E., Chief Justice, and Mr. Justice Batchelor.

HAZARIMAL FAKIRCHAND, APPLICANT, v. NAMDEV RAKHMAJI
AND ANOTHER, OPPONENTS.*

1908
February 20.

Civil Procedure Code (Act XIV of 1882), section 294—Execution of decree—Decree holder bidding for property with permission—Right to set off amount due to decree holder against purchase money.

The first paragraph of section 294 of the Civil Procedure Code (Act XIV of 1882) requires the permission of the Court to enable the holder of a decree to bid for property. If he gets that permission and gets it without qualification, then the amount due on the mortgage may, if he so desires, be set off. But it may be one of the terms on which the permission to bid is granted that there should not be this right of set off. In such a case no set off can be directed.

CIVIL REFERENCE by E. Reuben, Subordinate Judge of Haveli in the Poona District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

One Hazarimal Fakirohand was the assignee of a decree passed by the Court of the Subordinate Judge at Haveli against Nam-

* Civil Reference No. 6 of 1907.