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miscellaneous applications, but section 24 prescribes the conditions of the jurisdiction of the District Court. These are restrictive conditions and those of them which apply here require that the Court exercising jurisdiction must be one which is competent, according to law, to try or dispose of the suit withdrawn from a lower Court. Here the Assistant Judge's Court, it is conceded, was not so competent.

The rule must be made absolute by setting aside the order of the Assistant Judge and directing the District Court to retake the application on its file and dispose of it according to law. Rule absolute with costs.

Rule made absolute.

G. B. R.

ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1909. *March 4.*

HARGOVAN RAMJI, APPELLANT AND PLAINTIFF, *v.* MULJI HARJIVAN, RESPONDENT AND DEFENDANT.*

Res judicata—Capacity of parties—Matter substantially in issue—Civil Procedure Code (Act XIV of 1882), section 13.

The plaintiff in conjunction with another had in 1902 filed a suit against the defendant for possession of certain property, basing his claim on the allegation that he was owner. He succeeded in the first Court, but the Court of Appeal held that the property had been dedicated to charity, and refused to uphold his claim as owner. The plaintiff declined to adopt the Court's suggestion to modify his claim and be content to ask for a decree for possession as manager, and his suit was therefore dismissed. Five years later he filed the present suit, claiming possession as manager.

Held, that his title as manager was one which might and ought to have been put forward in the previous suit, and that his present claim was therefore *res judicata*.

If a plaintiff is suing in a capacity in which he is a stranger to the capacity in which he sued in a former suit, his claim has no proper connection with that former suit, and the Civil Procedure Code (Act XIV of 1882) section 13 does not apply.

* Original Suit No. 764 of 1907.
Appeal No. 50 of 1908.

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THIS was a suit filed by the plaintiff for possession of certain premises, and for ejectment of the defendant therefrom. The facts previous to the filing of the present suit were as follows:—

In the year 1879 Champa, the paternal aunt of the plaintiff's mother, and the admitted owner of the premises in question, died leaving a will dated the 22nd September 1865. In a clause of this will she announced her intention of making a dedication to charity. A few years before her death, namely in 1873, she had affixed an inscription upon a shrine forming part of the premises, purporting to dedicate it to religious uses, and appointing the plaintiff and his brother to be managers thereof after her own death. After Champa's death, various mortgages were made on the property by the plaintiff, and finally these charges were all acquired by one Merwanji Cama. About the year 1900 the present defendant managed to obtain possession, and in 1902 the plaintiff as owner and Merwanji Cama as mortgagee, filed suit No. 254 against him to recover possession. The first Court decided in the plaintiff's favour. On appeal by the defendant, the Appeal Court went into the question of the dedication to charity, and held that Champa had intended to dedicate this property and had given valid effect to that intention. Under these circumstances they refused to uphold the plaintiff's title as owner, but suggested that he should modify his claim and ask for a decree as manager. On the plaintiff declining to do this, the decree was reversed and the suit dismissed with costs.

After a lapse of five years the plaintiff filed the present suit, claiming possession as manager. The defendant in his written statement set up (*inter alia*) the plea of *res judicata*, and Mr. Justice Russell, before whom the case was heard, decided this preliminary point in his favour and dismissed the suit.

The plaintiff appealed.

Chitre (with *Desai*) for the appellant:—Section 13 of the old Code of Civil Procedure, under which this point was decided, must be considered in conjunction with sections 42 and 43 which lay down that a plaintiff must include the whole of the claim which he is entitled to make in respect of the cause of action. But he need not join distinct causes of action, and in the present

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case the two claims as owner and as manager are not such as ought to be joined: see *Ramaswami Ayyar* v. *Vythinatha Ayyar*[1] and *Babajirao* v. *Laxmandas*[2].

Explanation II to section 13 only applies where the relief claimed in the former suit was identical with that claimed in the subsequent suit: see *Sarkum Abu Torab Abdul Waheb* v. *Rahaman Buksh*[3].

Inverarity (with *Raikes*) for the respondent:—The claim made by the plaintiff in this suit ought to have been put forward in the former suit: see *Guddappa* v. *Tirkappa*[4].

SCOTT, C. J.:—The question in this case is whether the plaintiff is entitled to maintain this suit, having regard to the proceedings in a previous suit instituted by him in the year 1902. In that year he filed suit No. 254 against certain persons whom he alleged to be in possession of a room used as a temple in a house which was his property. In the plaint he did not set out his title to the property and, as appeared in the course of the trial, he had avoided stating circumstances which raised a question as to whether the whole property was not the subject of a religious trust. He succeeded in the first Court in getting a decree for ejectment against the defendants with respect to the room used as a temple. In the Court of Appeal it was held that the house was impressed with a religious trust and his only possible claim must be based upon his right as manager. He was then offered an opportunity of altering his case so as to base it upon his right as manager under the will of the person who established the trust. That offer was however refused and the suit was dismissed. He has now filed this suit alleging what he ought to have alleged in the first suit, the will of Champa who established the trust, and relying upon a passage in that will to show that he is entitled as manager to eject the defendant as manager from the room used as a temple and to get an account from the defendant of the profits and emoluments which he has received as manager.

(1) (1903) 26 Mad. 760.
(2) (1903) 28 Bom. 215.
(3) (1896) 24 Cal. 832.
(4) (1900) 25 Bom. 189.

Now whether he can maintain this suit in the face of the provisions of section 13 of the Civil Procedure Code of 1882 depends upon the question whether he is now suing in a capacity in which he is a stranger to the capacity in which he sued in the former suit. If he is not so suing, then the claim which he is now putting forward is a claim which might and ought to have been put forward in the previous suit. If he is so suing, then it is a claim which has no proper connection with the previous suit. That is the conclusion to be drawn from the two most recent Bombay cases which have been relied upon in argument, namely, *Guddappa* v. *Tirkappa*[1] and *Babajirao* v. *Laxmandas*[2]. It has been argued by Mr. Chitre, in his excellent argument, that in this case the plaintiff really sues on behalf of the temple and therefore, on the authority of the case last referred to, he must be taken as suing as a stranger to the interest in which he sued in the first suit. It is, however, pointed out by Sir Lawrence Jenkins in that case that in connection with the property of a Math there are two distinct classes of suits: those in which the manager seeks to enforce his private and personal rights, and those in which he seeks to vindicate the rights of the Math.

Now this is clearly a case in which the manager seeks to assert his right to be a manager against another person who claims the right to manage. He is not seeking to vindicate the rights of the Math against a stranger to the temple who is improperly using the property of the endowment. He is therefore asserting a purely personal right in his own personal interest and it is a right which, in my opinion, might and ought to have been put forward in the previous suit. As remarked by Mr. Justice West in *Girdhar Manordas* v. *Dayabhai Kalabhai*[3] the cases show that all the grounds relied on by the plaintiff and so connected together as to be properly the subject of a single investigation ought to be brought forward together. Both in this case and in the previous case, the investigation would be concerned with the terms of Champa's will and the inscription on the

(1) (1900) 25 Bom. 189. (2) (1903) 28 Bom. 215.
(3) (1882) 8 Bom. 174 at p. 180.

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property which she dedicated to religious purposes. The whole matter might have been decided in one single investigation and therefore we are of opinion that Mr. Justice Russell was right in holding that this suit is not maintainable.

We, therefore, dismiss the appeal with costs.

Appeal dismissed.

Attorneys for the appellant: Messrs. *Captain and Vaidya.*

Attorneys for the respondent: Messrs. *Bhaishankar, Kanga & Girdharlal.*

K. McI. K.

ORIGINAL CIVIL.

Before Mr. Justice Davar.

1909. *July* 17.

VASSONJI TRICUMJI AND CO., PLAINTIFFS, *v.* ESMAILBHAI SHIVJI AND OTHERS, DEFENDANTS.

IN RE MAHOMEDBHAI ALLARAKHIA NANJI.*

Practice—Civil Procedure Code (Act V of 1908) O. 1, r. 8—Suit filed by plaintiff representing body of creditors—Application to be made party—Administration suit.

Where a suit has been filed on behalf of a body of persons and an individual member of that body applies to be made a party, he must show that his interests will be seriously prejudiced if he is not allowed to come in. He must show that the conduct of the suit is not in proper hands, or that action prejudicial to his interest is being taken by those who purport to represent him.

In an administration suit it is extremely undesirable that individual creditors should be added as parties unless they show some very strong reason. The willingness of the applicants to bear their own costs does not counterbalance the delay caused by the addition of a party and the consequent increase in the costs of other parties.

THIS matter came before Mr. Justice Davar in Chambers, on a summons taken out by the applicant, Mahomedbhai Allarakhia Nanji, to show cause why he should not be made a party. The facts appear sufficiently from the judgment.

Padshah for the plaintiffs, *Jinnah* for the 1st and 2nd defendants, *Jardine* for the 3rd and 4th defendants appeared to show cause.

* Suit No. 437 of 1909.