ORIGINAL CIVIL.

Before Mr. Justice Fawcett.

1921. July 15.

RAMNATH DWARKANATH WAIWOODE (PLAINTIFF) *v.* RAMRAO BALKRISHNA DHOTRE (DEFENDANT).*

Joinder of Parties—Suit on a promissory note for money due to an undivided Hindu family—Whether promisee must join adult co-parceners as parties—Hindu law—Practice.

In a suit by the plaintiff on a promissory note passed in his name by the defendant for a debt due to an undivided Hindu family of which the plaintiff was the manager, the defendant contended that the plaintiff could not sue without making his adult co-parceners parties to the suit.

Held, following the Privy Council decisions in *Kishan Prasad* v. *Har Narain Singh* (1) and *Sheo Shankar Ram* v. *Jaldo Kunwar* (2), that the plaintiff being the manager of the undivided family was entitled to sue on the promissory note passed in his name by the defendant, and that the adult co-parceners were not necessary parties to the suit.

The abovementioned decisions of the Privy Council affect the various rulings of this Court which go to the extent of saying that, in every case where a contract is entered into on behalf of a joint family by a co-parcener, he cannot sue alone, but must join the other co-parceners as parties.

SUIT on a promissory note.

In April 1917, the defendant borrowed from Dwarkanath, father of the plaintiff, a sum of Rs. 3,500 and passed in his name a promissory note for that amount with an agreement to pay interest at 9 per cent. per annum. Various payments were made by the defendant to Dwarkanath by way of interest and part payment of principal until January 1920, when Dwarkanath died leaving him surviving six sons of whom the plaintiff was the eldest and the last three were minors.

On 16th April 1920, the defendant passed a promissory note for Rs. 2,600 in the name of the plaintiff for

* O. C. J. Suit No. 1308 of 1921.

(1) (1911) 33 All. 272 at pp. 277, 278. (2) (1914) 36 All. 383.

the amount then due, the interest agreed upon being 9 per cent. per annum.

The defendant thereafter made some payments to the plaintiff and the principal amount was thus reduced to Rs. 2,390. Payment of the said amount having been demanded, the defendant failed to pay and the plaintiff brought this suit.

The defendant contended, *inter alia*, that the plaintiff could not sue alone under Hindu law without making his adult co-parceners parties to the suit.

M. V. Desai, for the plaintiff.

S. S. Rangnekar, for the defendant.

FAWCETT, J. :—The plaintiff sues to recover the amount due on a promissory note for Rs. 2,600 passed in his favour by the defendant on the 16th of April 1920. He claims the sum of Rs. 2,390 together with interest thereon at nine per cent.

The defendant in his written statement sets up various objections to the suit, and the substantial ones are embodied in the following issues :—

(1) Whether the plaintiff can sue on the promissory note without making his brothers parties to the suit ?

(2) Whether in any event he can sue without obtaining Letters of Administration to the estate of his father ?

(3) Whether at the date of the promissory note the plaintiff was the manager of the joint Hindu family ?

(4) Whether there was a subsequent oral agreement as alleged in para. 4 of the written statement ?

(5) If so, whether the suit is not premature except as to Rs. 100 ?

[After considering the evidence the learned Judge answered issues nos. (2) and (3) in the affirmative and (4) and (5) in the negative and proceeded as follows] :—

There only remains the first issue which is the really substantial one raised, viz., whether the plaintiff can

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sue on the note without making his brothers parties to the suit? In support of his contention Mr. Rangnekar relied on the case of *Naranji Vasanji* v. *Moti Govanji* [1] and various other similar rulings of this Court. That case follows the one of *Kalidas Kevaldas* v. *Nathu Bhagvan* [2] which in turn is based on the rule of English law that enables the defendant to insist on all the contractees being made co-plaintiffs when there is a joint cause of action. In this it follows *Ramsebuk* v. *Ramlall Koondoo* [3] which lays down that, when a joint family carries on a trade in partnership and contracts with the outside public, they have no greater privileges than other traders: if they are really partners, they must be bound by the same rules of law for enforcing their contracts in Courts of law as any other partnership. This case was remarked upon by their Lordships of the Privy Council in *Kishan Prasad* v. *Har Narain Singh* [4]. They point out that in that case there were other members of the family who had an equal family interest in the profits of the business, but it was nowhere contended that those members were necessary parties, and they also lay emphasis on the remarks of Garth C. J., which referred to the necessity of defendants being sued by all the partners or persons with whom they had made their contract. The ruling should, therefore, be confined to cases where the facts show that the actual contract is with particular partners or members of the family. The case of *Kishan Prasad* v. *Har Narain Singh* [4] certainly affects the various rulings of this Court which went to the extent of saying that, in every case where a contract is entered into on behalf of a joint family by a co-parcener, he cannot sue alone, but must join the other co-parceners as parties; for the Privy Council

(1) (1907) 9 Bom. L. R. 1126.
(2) (1883) 7 Bom. 217.
(3) (1881) 6 Cal. 815.
(4) (1901) 33 All. 272 at pp. 277, 278.

held that at any rate the manager of a joint family business may enter into contracts in his own name and may sue on such contracts without joining the other members of the family as plaintiffs. No doubt the Bombay decisions except a case like that in *Jagabhai Lallubhai* v. *Rustamji Nasarwanji* [1] where the contract had been entered into by a co-parcener in his own name and he did not disclose to the defendant at the time of the contract that he was acting on behalf of the family. But that seems to have been the only exception which they permit from the general rule laid down; and this exception does not cover the present case because the plaintiff himself admits that, when the promissory note in suit was passed, defendant understood he was taking the promissory note as manager of the joint family. The defendant also corroborates this. Coming back to the effect of the Privy Council decision in *Kishan Prasad's case* [2], it is to be remarked that two different views have been taken about it. In *Ramchandra Narayan* v. *Shripatrao* [3], the judgment limits the decision to the case of managing members of the joint family entrusted with the management of a family business. On the other hand, the Madras High Court in *Sheik Ibrahim Tharagan* v. *Rama Aiyar* [4] have taken a different view. There it is pointed out that :—

" In fact, the Privy Council had, even previously to their decision in the above case, practically upheld the right of the managing member to represent the family in litigation. A long line of cases beginning with *Girdharee Lall* v. *Kantoo Lall* [5] established the right of a creditor of a Hindu family to proceed against the father or other managing member of the family alone and to effectively bind the whole family property, including the shares of those not actually parties to the litigation."

[1] (1885) 9 Bom. 311
[2] (1911) 33 All. 272.
[3] (1915) 40 Bom. 248.
[4] (1911) 35 Mad. 685 at pp. 690, 691.
[5] (1874) 22 W.R. (Civ. Rul.) 56.

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The latter ruling is followed in this Presidency: cf. *Ramkrishna* v. *Vinayak Narayan*[1]. In *Hori Lal* v. *Munman Kunwar* [2] at pp. 564 and 565 Tudball J. points out:—

"Now the general rule of Hindu law is that a joint family is represented by its manager in all its transactions or concerns with the outer world, provided they are for family necessity...[and that] he can give a valid discharge without the concurrence of the minor members of the family."

He goes on:—

"It is difficult to see, therefore, why a manager, if he can represent the family in its transactions and concerns with the outer world, should not be also able to represent the family in its litigations in the Courts."

And similarly, if in the case of a creditor suing on a mortgage the manager may sufficiently represent the other adult members of the joint Hindu family, it is difficult to see why a manager should not be permitted to sue alone if he sufficiently represents the rest of the family. In fact it seems to me that the Privy Council in *Sheo Shankar Ram* v. *Jaddo Kunwar* [3] has practically given effect to this view. Their Lordships at p. 386 say:—

"There seems to be no doubt upon the Indian decisions (from which their Lordships see no reason to dissent) that there are occasions, including foreclosure actions, when the managers of a joint Hindu family so effectively represent all other members of the family that the family as a whole is bound. It is quite clear from the facts of this case and the findings of the Courts upon them that this is a case where this principle ought to be applied."

And this was done in spite of the provisions of section 85 of the Transfer of Property Act, now reproduced in Order XXXIV, Rule 1, Civil Procedure Code, under which all persons who have an interest in the property in suit should be joined as parties. If a foreclosure action is one where this principle can be applied, I cannot see why the present suit should not also be a case where it can be equally applied. Supposing

[1] (1910) 34 Bom. 354. [2] (1912) 34 All. 549, F. B.
[3] (1914) 36 All. 383.

the defendant had executed a mortgage of his immoveable property as security for the loan and owing to defendant's default the plaintiff could bring a foreclosure action, then if the circumstances were such as to make the plaintiff, as manager of the joint family, an effective representative of all the other members of the family so that the whole of the family would be bound, then clearly, in the view taken by their Lordships, he could sue alone. Why, therefore, should he not sue alone in this case, where the only difference is that such a mortgage has not been executed? I think *Sheo Shankar's case*[1] affords clear authority for saying that the facts of the particular case must be looked at in order to see whether it is proper for the manager to be allowed to sue alone as sufficiently representing all the other members of the family; and that in view of this decision of the Privy Council, even accepting the restricted view of the effect of the decision in *Kishan Prasad's case*[2] which is taken in *Ramchandra Narayan* v. *Shripatrao*[3], the previous Bombay decisions, which support Mr. Rangnekar's contention, require reconsideration and are not now really binding. Thus in *Lalji Nensey* v. *Keshowji Punja* [4] it has been held that at any rate minors are unnecessary parties, though the decision in *Naranji Vasanji* v. *Moti Govanji*[5] went to the extent of requiring their being joined. Now, in this particular case, the facts are that the defendant has consistently been satisfied with the signature of plaintiff's father for his numerous payments, and since Dwarkanath's death, has been satisfied with the signature of the plaintiff, although he was quite aware that the moneys were joint family moneys and that this was a joint Hindu family.

(1) (1914) 36 All. 383.
(2) (1911) 33 All. 272.
(3) (1915) 40 Bom. 248.
(4) (1912) 37 Bom. 340.
(5) (1907) 9 Bom. L. R. 1126.

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He also executed the two promissory notes in favour of Dwarkanath personally and plaintiff personally. He has himself frankly admitted that he has no objection to pay the plaintiff alone as the manager of the family, but pleads that he cannot pay the whole sum at once. The contention that the other co-parceners should be joined in this suit is purely one raised by his legal advisers, a technical objection which can at most stave off the evil day for a short time, without there being any real grievance on the part of the defendant. It is no doubt the case that, as ruled in *Kalidas Kevaldas* v. *Nathu Bhagwan*[1], the mere fact that the other adult brothers say they have no objection to plaintiff recovering the amount due on the promissory note in this suit, does not afford valid ground for saying that the suit is not bad, if it is really necessary that the other adult co-parceners should be joined in the suit. But this evidence, though not conclusive, does go to show that this is one of those occasions referred to by the Privy Council in *Sheo Shankar's case*[2] where the principle that they mention can be properly applied. After all it is not the case that Hindu law in itself requires that all adult co-parceners should be joined. I think I am correct in saying that no text or commentary can be cited to that effect. It is a rule which is simply based on the principle that all persons interested should be joined in the suit. That is a rule of procedure and that rule is subject to various exceptions, among which should be the case where a person sufficiently represents other members of his family; nor, in my opinion, does such a case fall under the provisions of Order VII, Rule 4, Civil Procedure Code. No doubt the plaintiff is a representative of the family, but it does not follow that he sues in a representative character. He really sues as the holder of

(1) (1883) 7 Bom. 217.

(2) (1914) 36 All. 383.

the promissory note which is passed in his name. When an objection is raised by the defendant that he cannot sue without joining certain other persons, then and then only it becomes necessary for him to meet that plea by saying that " though I sue simply as the holder of the note, yet I am entitled to do so without my brothers being joined, because I am the manager of the Hindu family of which they are members." That is an entirely different case to one where the basis of the plaintiff's claim is of a representative character, such as where he sues as an executor or administrator ; and accordingly I do not consider that the plaint is in any way defective. No doubt in *Ramchandra Narayan* v. *Shripatrao*[1], there are remarks that, where a manager does sue, there should be an indication that he has sued in a representative capacity. But it does not follow that such indication should appear necessarily in the plaint. The plaint is only one part of the pleadings and proceedings in a suit. Here we have had a direct issue on the question, and the judgment will record a finding regarding the plaintiff's representation of the family. Therefore there would be, to anybody who is searching the case hereafter, a clear indication that the plaintiff was suing in a representative capacity, so far as that affects the question whether the other members of the joint family were bound. Here there can be no doubt that they are bound and they have themselves said that they accept that position. Therefore, I do not consider that the adult members of the plaintiff's family are necessary parties to the suit, and consequently I answer the first issue in the affirmative.

[The remainder of the judgment related to matters not material to the purposes of this report.]

[1] (1915) 40 Bom. 24

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Solicitors for the plaintiff: Messrs. *Smetham, Byrne & Co.*

Solicitors for the defendant: Messrs. *Dabholkar & Co.*

Suit decreed.

G. G. N.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921. *April 5.*

PADAMSI NARAYAN AND OTHERS (ORIGINAL CLAIMANTS), APPELLANTS *v.* THE COLLECTOR OF THANA (ORIGINAL OPPONENT), RESPONDENT*.

Land Acquisition Act (I of 1894), sections 11 and 12—Compensation for compulsory acquisition—Provisional award—Submission of award to the Consulting Surveyor to Government—Award found excessive—Remission for re-consideration—Re-consideration of the award—Award filed in Collector's Office—Finality thereof.

A Deputy Collector, who was appointed an Acquiring Officer under the Land Acquisition Act, valued certain lands compulsorily acquired by Government and submitted a proposed award for approval to the Consulting Surveyor to Government through the Collector. It was however returned by him with the objection that the valuation was excessive. The Deputy Collector, who had meanwhile been transferred to another post and succeeded in his office by an Assistant Collector, adhered to his original valuation but remarked that, as his proposed award had not been filed in the Collector's Office and had not been declared to the parties interested, it could, if necessary, be reconsidered by the Assistant Collector who had succeeded him. The Assistant Collector re-considered the award, agreed to the lower valuation suggested by the Consulting Surveyor, had it approved by the Collector, and made it final and declared it to the parties. The claimants contended that the award made by the Deputy Collector in the first instance was the only

* First Appeal No. 255 of 1918.