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with that reasoning as would justify our reconsidering that decision in a properly constituted bench.

The result, therefore, is that we allow the appeal, set aside the order of the learned Judge below, and order that the Bombay suit should be stayed under s. 10 until the hearing and final disposal of the Calcutta suit. Appeal allowed with costs. Appellants also to get the costs of the notice of motion in the Court below.

Attorneys for appellants: *Payne & Co.*

Attorneys for respondents: *Ramanlal & Himatlal.*

Appeal allowed.

P. M. P.

APPELLATE CIVIL

Before the Hon'ble Mr. M. C. Chagla, Chief Justice.

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BAYAJABAI GANPAT PATIL (ORIGINAL PLAINTIFF), PETITIONER *v.* KEVAL RAMBHAU PATIL AND ANOTHER (ORIGINAL APPLICANT AND DEFENDANT), OPPONENT.*

Civil Procedure Code (Act V of 1908), O. I, r. 10—Application to be joined in suit as co-plaintiff—Plaintiff disputing applicant's right to suit property—Procedure—Applicant should be added as defendant and not as co-plaintiff.

A party may be added as a co-plaintiff, when the plaintiff does not dispute the right of the co-plaintiff to the decree which might be passed; but where his right to the property in suit is disputed by the plaintiff, the proper procedure is to join him as a defendant and not as a co-plaintiff.

Googlee v. *Premlall*,[1] followed.

Krishnaji v. *Motilal*,[2] and *Emden* v. *Carte*,[3] distinguished.

Wadia v. *Matchett*,[4] not followed.

CIVIL REVISION APPLICATION from order passed by A. S. Koranne, Esquire, Civil Judge, Junior Division, at Malegaon, district Nasik.

On February 14, 1951, Bayajabai (plaintiff) filed a suit against one Manik (defendant) for return of the furniture let

* Civil Revision Application No. 1252 of 1951.

(1) (1881) 7 Cal. 148.
(2) (1928) 31 Bom. L. R. 476.
(3) (1881) 17 Ch. D. 169.
(4) (1870) 7 Bom. H. C. R. (A. C. J.) 10.

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to him on hire or in the alternative for its price and the rent due under a hire-purchase agreement dated January 22, 1950.

On August 1, 1951, plaintiff's nephew Keval (applicant) applied to be added as a co-plaintiff on the ground that the furniture originally belonged to the joint family consisting of himself and Ganpat, the deceased husband of the plaintiff, and that he had an interest in it. The plaintiff, denying the claim, contended that the applicant could not be joined as the dispute between her and the applicant as to title to the suit property could not be made the subject-matter of the suit which was based on the hire-purchase agreement.

On August 18, 1951, the trial Judge granted the application and ordered the applicant to be added as plaintiff No. 2.

The plaintiff applied in revision to the High Court.

T. N. Walawalkar, for the petitioner.

B. N. Gokhale, for the opponents.

CHAGLA C. J. There were two brothers Ganpat and Rambhau. The petitioner is the widow of Ganpat and she filed a suit against opponent No. 2 for the return of furniture let out to him on hire. The first opponent, who is the son of Rambhau, made an application to the trial Court to be added as a party plaintiff alleging that the furniture did not belong to the widow of Ganpat but was joint family property and therefore he was entitled to it. The learned Judge granted the application and added the first opponent as the second plaintiff to the suit. It is from that order that this revision application is preferred.

Now, the petitioner contested the right of the first opponent to the furniture in question and therefore there was a conflict and a direct conflict between the petitioner and the first opponent. Notwithstanding this conflict the learned Judge agreed to the first opponent appearing on the record of the suit as the second plaintiff. I should have thought, apart from authorities, that in a case like this the proper order to make is to make the first opponent a party-defendant to the suit. The learned Judge says that he is making this order in order to avoid multiplicity of litigation. That is a very laudable object, but the same object could have been served by making the first opponent a party-defendant to the suit. In that case a direct issue would have arisen between the petitioner and the first opponent as to the right of the parties to the furniture in

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question. Assuming that the first opponent had succeeded, the suit need not have been dismissed totally, but the suit would have been dismissed as against the petitioner, the first opponent could have been transposed as a plaintiff and a decree could have been passed in favour of the transposed plaintiff. This seems to me to have been the correct procedure for the learned Judge to have followed. A party is added as a co-plaintiff when the plaintiff does not dispute the right of the co-plaintiff to the decree which might be passed.

The learned Judge has relied on a decision of this Court in *Krishnaji* v. *Motilal*,[1] but when one looks at the facts of that case they do not bear out the view taken by the learned Judge as to the true position in law. In that case the plaintiff filed a suit for redemption. He was an assignee of the equity of redemption and he had taken the assignment from defendant No. 9. Defendant No. 9 then sued the plaintiff to have the deed of assignment set aside and the suit ended in a compromise by which defendant No. 9 was to receive certain consideration for one of the houses from the plaintiff and the plaintiff was to retain the other house, the subject-matter of the mortgage being two houses. Then defendant No. 9 applied to be a co-plaintiff in the redemption suit and his application was granted. Therefore it will be noticed that by reason of the compromise decree between the plaintiff and defendant No. 9, the plaintiff admitted the right of defendant No. 9 to redeem one of the two houses. Therefore there was no conflict between the plaintiff and defendant No. 9 as to the title with regard to one of the two houses, and if a decree had been passed for redemption, it would have been passed both in favour of the plaintiff and the newly added co-plaintiff.

Mr. Gokhale has drawn my attention to an English case in *Emden* v. *Carte*,[2] which seems to suggest that a co-plaintiff was added although the original plaintiff opposed that application. But when we look at the facts of that case, the facts are clearly distinguishable. There the plaintiff filed a suit for a money decree and pending the suit he became insolvent. The trustee in insolvency applied to be made a co-plaintiff and the application was granted. As Mr. Justice Fry points out at p. 173 that "if a decree for damages and remuneration was to be passed in favour of the original plaintiff, the amount would pass to the trustee, and therefore the trustee had the substantial right of action and therefore it was just and fit

[1] (1928) 31 Bom. L. R. 476. [2] (1881) 17 Ch. D. 169.

that he should be a co-plaintiff with the original plaintiff." Therefore in that case there was no dispute between the two plaintiffs. The official trustee was added because in the event of the original plaintiff succeeding the decretal amount would go to the trustee and not to the original plaintiff.

Then there is an old judgment of this Court in *Wadia* v. *Matchett*.[1] There one Matchett executed in favour of one Pestonji a letter of authority authorising Pestonji to recover a certain sum of money from Messrs. Windle & Nowell. Matchett ignoring the letter of authority sued Nowell for a certain sum of money. Pestonji then applied to be made a party to the suit. His application was granted and he was joined as a co-plaintiff, and this Court held that Pestonji was properly made a party, but as the validity of the letter of authority was disputed by Matchett, Pestonji should rather have been joined as a defendant than as a plaintiff. There is also a Calcutta case in *Googlee* v. *Premlal*,[2] holding that where the plaintiff disputed the right of a party to have an interest in the property which the plaintiff was claiming, that party should be properly joined as a defendant and not as a co-plaintiff, because if he was joined as a defendant an issue could be raised between the plaintiff and the party newly joined. This seems to be really the principle underlying a party being joined to the suit in a case like the present. It is only if he is joined as a defendant that an issue can be legitimately raised between him and the plaintiff, when the plaintiff disputes the title of the party applying to be made a party to the suit. Therefore in this case as the widow disputes the right of the first opponent to the furniture in suit, he should be made a party-defendant and not a party-plaintiff.

I will therefore make the rule absolute with costs and permit the first opponent, if so advised, to apply to the Court below to be made a party-defendant to the suit. If the application is made, the learned Judge below will dispose of that application according to law. The learned Judge will consider any objections raised to that application by the petitioner.

Rule absolute.

M. W. P.

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[1] (1870) 7 Bom. H. C. R. (A. C. J.) 10.

[2] (1881) 7 Cal. 148.