(1922) 08 CAL CK 0005

Calcutta High Court

Case No: None

Kalipada Das		APPELLANT
	Vs	
Raja Sati Prasad Garga Bahadur and Another Raja Sati Prasad Garga Bahadur and Another Vs Kalipada Das		RESPONDENT

Date of Decision: Aug. 7, 1922

Acts Referred:

- Bengal Tenancy Act, 1885 - Section 188
- Civil Procedure Code, 1908 (CPC) - Section 26
- Limitation Act, 1908 - Section 7

Citation: AIR 1922 Cal 468 : 72 Ind. Cas. 722

Hon'ble Judges: Chotzner, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. These two appeals are directed against the decree in a suit for arrears of rent. The defendant holds a tenure in the zemindari mahal Tamluk situated in the District of Midnapore. The plaintiffs, who are two brothers governed by the Mitakshara Law, own twelve-and-a-half annas share in the zemtndari and are patmdars under the proprietors of the remaining three-and-a-half annas share. The plaintiffs are consequently the immediate landlords of the defendant as a tenure-holder, and as such they instituted the present suit on the 12th December 1916, for recovery of arrears of rent due from him. On the 12th February 1917 the defendant filed a written statement setting forth various objections to the claim. On the 28th February 1917 he filed an additional written statement contending that the suit could not proceed, inasmuch as the minor son of the first plaintiff, born on the 16th November 1916, had not been joined as a co-plaintiff. On the 20th December 1917 he filed a supplementary written statement objecting that the suit could not proceed as the minor son of the second plaintiff, born on the 15th April 1917, had

not been joined as a co-plaintiff. The Trial Court held that the plaintiffs were competent to maintain the suit without joining their minor sons as co-plaintiffs, and, after dealing with the objections, on the merits, decreed the claim in part. Upon appeal, the District Judge held that the plaintiffs could not maintain the suit for the entire rent in the absence of their sons, but he decreed the claim in respect of twelve-and-a-half annas share, inasmuch is the plaintiffs had been registered under the Land Registration Act as proprietors in respect of that share. Both the parties were dissatisfied with this decree. The plaintiffs have appealed (No. 1747 of 1920) on the ground that they were competent to maintain the claim for the entire rent as managers of a joint Mitakshara family, even though their minor sons were not brought on the record., The defendant has appealed (No. 1655 of 1920) on the ground that Section 60 of the Bengal Tenancy Act had been misconstrued and misapplied by the District Judge and the claim should have been dismissed in its entirety. We shall consider, first, the appeal preferred by the plaintiffs.

2. It may be observed at the outset that the plaintiffs, who are members of a joint Mitakshara ramily, are joint landlords within the meaning of Section 188, of the Bengal Tenancy Act, which provides that where two or more persons are joint land lords, anything which the landlord is, under the Act, required or authorised to do, must be done, either by both or all those persons acting together, or by an agent authorised to act on behalf of both or al of them. This provision has no application to the institution of a suit for arrears of rent, which is not something that the landlord is required or authorised to do by the Bengal Tenancy Act: See Pramada Nath Roy v. Ramani Kanta Roy 35 I.A. 73 : 35 C. 311 : 7 C.L.J. 139 : 18 C.W.N. 249 : 10 Bom. L.R. 66 : 18 M.L.J. 43 : 3 M.L.T. 151 . This renders inapplicable the decisions in Sati Prasad v. Radha Nath 18 Ind. Cas. 197 : 16 C.L.J. 427 and Sati Prasad Gorga v. Sanatan Dhara 61 Ind. Cas. 549 : 25 C.W.N. 38 where, in cases instituted by the present plaintiffs, it was ruled that Section 188 governed a suit or alteration of rent on alteration of area u/s 52 and a proceeding for settlement of fair and equitable rent u/s 105. The case before us, which is not subject, to the operation of Section 188, must consequently be determined with reference to whit Sir Ahur Wilson caled "the general principles of legal procedure," in Pramada Nath Roy v. Ramini Kanta Roy 35 I.A. 73 : 35 C. 311 : 7 C.L.J. 139 : 18 C.W.N. 249 : 10 Bom. L.R. 66 : 18 M.L.J. 43 : 3 M.L.T. 151 .

3. The proposition that in suits relating to transactions affecting a joint Hindu family, all the members thereof need not always be joined, was foreshadowed by Sir James Col vile in Jogendro Deb Roy Kut v. Funindro Deb Roy Kut 14 M.I.A. 367 : 17 W.R. 104 : 11 B.L.R. 244 : 2 Stuh. P.C.J. 517 : 3 Sar. P.C.J. 32 : 20 E.R. 824 when he observed that case, sometimes occur "wherein the interest of a joint and undivided family being in issue, one member of that family has prosecuted a suit or has defended a suit, and a decree has been made in that suit which may afterwards be considered as binding upon all the members of the family, their interest being taken to have been sufficiently represented by the party in the original suit." This assumes that, in

respect of the subject-matter of the litigation, the members of the family had no conflicting interest inter se. This principle has been reiterated by the Judicial Committee in two recent decisions. In Kishen Parshad v. Har Narain 9 Ind Cas. 739 : 38 I.A. 45 : 33 A. 272 : C.L.J. 345 : 15 C.W.N. 321 : 8 A.L.J. 256 : 9 M.L.T. 343 : 21 M.L.J. 378 : 13 Bom. L.R. 359 : (1911) 2 M.W.N. 395 where the Judicial Committee reversed the decision of the Allahabad High Court in Shamrathi Singh v. Kishen Prasad 29 A. 311 : 4 A.L.J. 194 : (1907) A.W.N. 58 Lord Robson observed as follows:

The Indian decisions as to the powers of the managing members of an undivided Hindu joint family are somewhat conflicting. It is, however, clear that where a business y like money-lending has to be carried on in the interests of the family as a whole, the managing members may properly be entrusted with the power of making contracts, giving receipts and compromising or discharging claims ordinarily incidental to the business. Without a general power of that sort, it would be impossible for the business to be carried on at all.

4. Again, in Sheo Shartkar Ram v. Jaddo Kunwar 24 Ind. Cas. 504 : 41 I.A. 216 : 36 A. 383 : 20 C.L.J. 282 : 18 C.W.N. 968 : 16 M.L.T. 175 : (1914) M.W.N. 593 : 1 L.W. 645 : 12 A.L.J. 1173 : 16 Bom L.R. 810 where the Judicial Committee affirmed the decision of the Allahabad High Court in Jaddo Kuar v. Sheo Shanker Ram 7 Ind. Cas. 902 : 33 A. 71 : 7 A.L.J. 945 Lord Moulton observed as follows:

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 suits, 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. There is not the slightest ground for suggestion that the managers of the joint family did not act in every way in the interests of the family itself.

5. These pronouncements by the Judicial Committee weaken the effect of the decisions in Bal Kishan Lal v. Topeswar Singh 14 Ind. Cas. 845 : 15 C.L.J. 446 : 17 C.W.N. 219; Lala Suraj Prosad v. Golab Chand 28 C. 517 : 5 C.W.N. 640; Debi Prosad v. Dharamjit 22 Ind. Cas. 570 : 41 C. 727 : 19 C.L.J. 437 and Bissonath Prosad Malita v. Brindesri Prosad Singh 17 Ind. Cas. 577 : 40 C. 342 : 17 C.W.N. 1025 which had already been doubted by the Full Bench in Bidya Prosad Singh v. Bhupnarain Singh 29 Ind. Cas. 629 : 42 C. 1068 : 21 C.L.J. 543 : 19 C.W.N. 849 namely, that all the co-parceners are necessary parties to a suit oh a mortgage of a joint family property, so that if a decree is passed in such a suit without their being joined as parties, the decree is not binding on them and they are entitled to sue for declaration that their interests are not bound thereby. The opinion expressed by the judicial Committee, namely, that where a suit is brought on a mortgage by or against a manager of p. joint Hindu family in his representative capacity, the other members of the family are not necessary parties to the suit, which will consequently

not fail by reason of their non-joinder, harmonises with the rule enforced in Allahabad in Hori Lal v. Nimman Kunwar 15 Ind. Cas. 126 : 34 A. 519 : 9 A.L.J. 819; Madan Lal v. Kishen Singh 15 Ind. Cas. 138 : 34 A. 572 : 9 A.L.J. 844; in Madras in Sheikh Ibrahim v. Rama Aiyar 10 Ind. Cas. 874 : 35 M. 685 : 21 M.L.J. 508 : (1911) 1 M.W.N. 442 and in Patna in Sheikh Abdul Rahman Vs. Shib Lal Sahu and Others, ; Baijnath Goenka v. Daleep Narain Singh 58 Ind. Cas. 489 : (1920) Pat. 261 : P.L.T. 582; Muhammad Sadiq v. Khedan Lal 36 Ind. Cas. 197 : 1 P.L.J. 154 : 2 P.L.W. 365; Girwar Narain Mahton v. Makbulunnissa 36 Ind. Cas. 542 : 1 P.L.J. 468 and Raghunandan Singh v. Parmeshwar Dayal Singh 39 Ind. Cas. 779 : 2 P.L.J. 306 : 1 P.L.W. 636 : (1917) Pat. 137. In Bombay, a similar result has been reached by a circuitous process, for, although it has been held that all the co-parceners are necessary parties to a suit brought on a mortgage by or against the manager, the decree in a suit, not so constituted against all the members, but brought against the manager alone in his representative character, when, executed, passes the interest of the other co-parceners-also in the property, though the sale may be avoided by them on the ground that, they were not liable to the debt contracted by the manager; see Ramchandra Narayan v. Shripalrao Tukojirao 33 Ind. Cas. 771 : 40 B. 248 : 18 Bom. L.R. 33; Laxmam Nilkant v. Vinayak Keshav 33 Ind. Cas. 956 : 40 B. 329 : 18 Bom. L.R. 52; Chimana Sada Shiv v. Sada Barka 7 Ind. Cas. 990 : 12 Bom. L.R. 811; Ramakrishna Narayan v. Vinayak Narayan 5 Ind. Cas. 967 : 34 B. 354 : 12 Bom. L.R. 219; Madhusudan Shivaram Kanvinde v. Bhau Atmaram Lad 18 Ind. Cas. 385 : 15 Bom. L.R. 36. The true position is tersely put by Benson and Sundara Aiyar, JJ., in Sheikh Ibrahim v. Rama Aiyar 10 Ind. Cas. 874 : 35 M. 685 : 21 M.L.J. 508 : (1911) 1 M.W.N. 442.

The ordinary rule no doubt is that all persons in whom the right to any relief exists, should be joined as plaintiffs. But this rule is not of universal application. The language of Section 26 of the Civil Procedure Code, 1882, corresponding to Order 1, Rule 1, of the present Code, is "that all persons may be joined in one suit as plaintiffs, in whom the right to any relief...is alleged to exist, whether jointly, severally, or in the alternative.... " Section 30 of the Code of 1882, corresponding to Order 1, Rule 8, lays down the general rule of procedure Where one or more persons wish to sue on behalf of or for the benefit of themselves and other persons having the same interest m a suit. But it cannot, in our opinion, be laid down that in no case has a person a right to sue on behalf of himself and others, where the procedure laid down in Section 30 is either not applicable or has not been taken advantage of. There are several statutory exceptions to the rule, and there is no reason why there should not be other exceptions based not on any legislative provision but on the substantive law applicable to the parties. The judgment of the Judicial Committee, in Kishen Parshad v. Har Narain 9 Ind Cas. 739 : 38 I.A. 45 : 33 A. 272 : C.L.J. 345 : 15 C.W.N. 321 : 8 A.L.J. 256 : 9 M.L.T. 343 : 21 M.L.J. 378 : 13 Bom. L.R. 359 : (1911) 2 M.W.N. 395 already referred to, shows that the case of the manager of a Hindu family is such an exception.

6. This view does not militate against the decisions of the Judicial Committee in Balwant Singh v. Rockwell Clancy 14 Ind. Cas. 629 : 39 I.A. 109 : 34 A. 296 : 15 C.L.J. 475 : (1912) M.W.N. 462 : 11 M.L.T. 344 : 9 A.L.J. 509 : 16 C.W.N. 577 : 23 M.L.J. 18 : 14 Bom. L.R. 422 : (P.C.), and Ganesha Row v. Tulja Ram 19 Ind. Cas. 515 : 40 I.A. 132 : 36 M. 295 : 18 C.L.J. 1 : 17 C.W.N. 765 : 11 A.L.J. 589 : 15 Bom. L.R. 626 : 14 M.L.T. 1 : (1913) M.W.N. 575 : 25 M.L.J. 150 . In the first case, Sir John Edge held that a mortgage by the elder of two brothers was void as against the minor younger brother, even though the mortgage was for discharging the father''s debts, inasmuch as the elder brother did not profess to represent the younger brother in the transaction, and acted on his assumed position as absolute owner. In the second case, Mr. Ameer Ali held that where a minor co-parcener has in fact been joined as a party to a litigation, represented by the manager as his guardian ad litem, leave of the Court in accordance with the statutory procedure is essential to the validity of a compromise by the manager on behalf of the minor; see Upendra Nath Biswas v. Shib Kumari Debi 52 Ind. Cas. 616 : 23 C.W.N. 634. On the other hand, the Judicial Committee held in Gulab Singh v. Raja Seth Gokuldas 19 Ind. Cas. 521 : 40 I.A. 117 : 40 C. 784 : 17 C.L.J. 619 : 17 C.W.N. 918 : 15 Bom. L.R. 613 : (1913) M.W.N. 542 : 14 M.L.T. 55 : 9 N.L.R. 117 : 25 M.L.J. 179 that a manager would be acting within his powers and authority, if, in order to save the heavily encumbered joint family estate, he placed the Same under the charge of the Court of Wards. It is, we think, fairly obvious that even if we assume, contrary to the opinion expressed in Day a Shankar v. Hub Lal 27 Ind. Cas. 497 : 37 A. 105 : 13 A.L.J. 21 that the manager of a joint family cannot, as a universal rule, be deemed entitled to sue or liable to be sued on behalf of the family, Padmakar Vitiayak Joshi v. Mahadev Krishna Joshi 10 B. 21 : 10 Ind. Jur. 188 : 5 Ind. Dec. 396; Kashinath v. Chimnaji 30 B. 477 : 8 Bom. L.R. 268; the tendency of the modern decisions, specially those of the Judicial Committee, is in favour of recognition of the representative character of the manager, though, no doubt, the question must be decided in each individual case or special class of cases, subject to the operation of relevant statutory provisions, if any, such as the one embodied in Section 188 of the Bengal Tenancy Act. An instructive example is afforded by the decision in Bhola Roy v. Jung Bahadur 23 Ind. Cas. 798 : 19 C.L.J. 5 where it was ruled that the plaintiff, who alone had always collected rent as the head of the joint Mitakshara family, was himself competent to maintain the suit, even though he had an infant nephew. The addition of the infant as co-plaintiff raised in that case, a question of limitation; it was ruled, that this did not affect the right of the original plaintiff to continue the suit and to recover the amount due. A stricter view had been previously adopted in Mir Tapurah Hossein v. Gopi Narayan 7 C.L.J. 251 at p. 260, where it was ruled that when rent is due to the members of a joint Hindu family, it is not open to the manager alone to maintain a suit for rent without joining the other members, either as plaintiffs or as defendants, except when the tenant has dealt with such managing members as sole landlords In support of this view, reliance was placed, amongst other decisions, on Shamrathi Singh v. Kishan Prasad 29 A. 311 : 4 A.L.J. 194 : A.W.N. (1907) 58 which, as we have

seen, has been overruled by the Judicial Committee on appeal: Kishan Pershad v. Har Narain 9 Ind Cas. 739 : 38 I.A. 45 : 33 A. 272 : C.L.J. 345 : 15 C.W.N. 321 : 8 A.L.J. 256 : 9 M.L.T. 343 : 21 M.L.J. 378 : 13 Bom. L.R. 359 :(1911) 2 M.W.N. 395 ; see also Muhammad Sadiq v. Khedan Lal 36 Ind. Cas. 197 : 1 P.L.J. 154 : 2 P.L.W. 365; Romesh Chandra Mandal v. Bhuyan Bhaskar Mahapatra 39 Ind. Cas. 225 : 1 P.L.W. 346. The decision in Harihar Pershad Singh v. Mathura Lal 8 C.L.J. 256 : 35 C. 561 : 12 C.W.N. 598 also harmonises with the less stringent view, though in that case, as in Bhola Roy v. Jung Bahadur 23 Ind. Cas. 798 : 19 C.L.J. 5 the minor member had been placed on the record represented by the adult managing member as guardian ad litem. That, however, is, in most cases, really a matter of form, though it has the appearance of substance. As explained in Sham Kuar v. Mohanunda Sahoy 19 C. 301 : 9 Ind. Dec. 646 a guardian cannot be appointed under the Guardians and Wards Act, 1890, in respect of the property of a minor who is a member of a joint Hindu family governed "by the Mitakshara law and possessed of no separate estate. In such an event, if the minor is added as a party to the suit, the manager would represent himself arid his minor coparceners as his guardian ad litem. But precisely the same result is reached, if the manager be deemed to have instituted the suit or to have defended the claim in his representative character, and, as pointed out in Krishna Jiva Tewari v. Bishnath 16 Ind. Cas. 392 : 34 A. 615 : 10 A.L.J. 317 where all the adult members of a joint Hindu family appear on the record as plaintiffs or defendants, it is a legitimate presumption that they are acting as managers on behalf of themselves and of the minor members of the family who do not join in the suit: Hori Lal v. Nimman Kunwar 15 Ind. Cas. 126 : 34 A. 519 : 9 A.L.J. 819; Madan Lal v. Kishen Singh 15 Ind. Cas. 138 : 34 A. 572 : 9 A.L.J. 844; Sheo Dulare v. Brij Bhukhan 25 Ind. Cas. 849 : 1 C.L.J. 656.

7. It is well established that the manager of a joint Hindu family has power to acknowledge a debt and pay interest thereon so as to bind all the members including minors: Saroda Charan Chuckerbutty v. Durga Ram De Sinha 5 Ind. Cas. 484 : 37 C. 461 : 11 C.L.J. 484 : 14 C.W.N. 741; Chidambaram Chetti v. Ramaswami Chettiar 26 Ind. Cas. 911 : 27 M.L.J. 631; and he may give a discharge u/s 7 of the Indian Limitation Act : Banwari Lal v. Sheo Sankar Misser 1 Ind. Cas. 670 : 13 C.W.N. 815. It is competent to him to agree to a reference to arbitration on behalf of himself and his minor co-parceners: Harendra Lal Roy Chowdhury v. Nahwa Salimullah Bahadur 7 Ind. Cas. 21 : 12 C.L.J. 336; Uppara Chinngappa v. Gaddam Chinna Hanumanna 50 Ind. Cas. 471 : (1915) M.W.N. 425 : 9 L.W. 314. He is equally competent to enter into a compromise, beneficial to his minor co-parceners, with a view to put an end to a threatened litigation : Bai Rewa v. Jethabhai Vithaldas 4 Ind. Cas. 133 : 11. Bom. L.R. 1064. A decree obtained against him in a suit to which the otter members are not parties, may be operative against the latter under certain circumstances, provided the matter was one in which the manager sued was entitled to represent the whole family; Amrita Sundari v. Sherajuddin Ahamed 29 Ind. Cas. 156 : 19 C.W.N. 565; Balki v. Brojobashi 14 Ind. Cas. 333 : 16 C.W.N. 1019;

Jijamba Bai Sahib v. Sagniram Jathai Row Sahib 14 Ind. Cas. 374 : 22 M.L.J. 45. It is equally well settled that in a joint Hindu family all the members need not join in granting leases; the manager can grant leases and sue for rents on behalf of the family: Ayyappa v. Venkatakrishnamarazu 15 M. 484 : 2 M.L.J. 219 : 5 Ind. Dec. 689; Parthasarathi Aiyangar v. Rangasawmy Aiyangar 38 Ind. Cas. 645 : 4 L.W. 654 he can also recognise the transferee of a non-transferable holding; Golapdi Meah v. Puma Chandra Dutta 41 Ind. Cas. 37 : 21 C.W.N. 774 : 27 C.L.J. 129.

8. In these circumstances, we are not prepared to hold that a suit for rent instituted by the managing members of a joint Mitakshara family must of necessity fail, merely because the infant co-parceners have, not been placed on the record as joint plaintiffs or pro forma defendants. In the case before us, there is manifestly no substance in the objection taken piecemeal by the defendant. He held the tenure under the plaintiffs and had always paid rent to them, and cannot be maintained with any show of reason that he would have been secured immunity from a possible claim by the infants if they had been brought on the record and represented by their respective fathers as guardian ad litem.

9. The result is, that the appeal by the plaintiffs is allowed, the decree of the District Judge set aside, and the decree of the Subordinate Judge restored with costs here and in the lower Appellate Court. The appeal by the defendant must as a corollary stand dismissed with costs.