

Then, as to the second point, the mortgagor has himself, by abandoning his possession of the second plot of land, destroyed the indivisibility of the original contract and entitled the purchaser of the 5'80 acres to redeem on payment of a proportionate portion of the mortgage debt. The decree of the Lower Appellate Court proceeds on these grounds. We see no reason to disturb it and dismiss the appeal with costs.

NOTES.

[As regards redemption at any time; See the notes to (1880) 2 Mad. 314. As regards redemption in part, this case was followed in (1886) 9 Mad. 453, (1896) 21 Bom. 619. But see (1894) 17 All. 63 to the contrary.]

[234] APPELLATE CIVIL.

The 8th July, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
KINDERSLEY.

Kattuseri Pishareth Kanna Pisharody.....(1st Defendant) Appellant

versus

Vallotil Manakel Narayanan Somayajipad and others.....(Plaintiffs)
Respondents.*

Co-owners, suit by some of several—Objecting parties should be made defendants.

All co-owners must join in a suit to recover property unless the law otherwise provides: they may agree that property shall be managed and suits conducted by some or one of them, but they cannot invest such person or persons with a right to sue in his own name on their behalf, although, perhaps, a tenant might be estopped from denying the title of his lessor in such case.

If some co-owners refuse to sue, the proper course for the rest to adopt is to make them defendants in the case.

THIS suit was brought by the plaintiffs on behalf of an association called the *Perumanom Sabha Yogam* to recover certain lands demised by the Sabha to the first defendant's Karnavan.

The defendants admitted the demise, but alleged that the plaintiffs had no right to recover as the demisors were alive, the plaintiffs formed only a minority of the Sabha, and other members thereof had promised to grant a renewal of their lease.

The *Perumanom Sabha Yogam* is a committee of Namburi Brahmans of a certain religious rank who represent one of sixty-four Gramoms, into which, it is said, *Parasurama* divided *Keralam* (*Malabar*).

The committee members are styled Karmies, and are said to be twenty-four in number. The Karmies of three Amcams—*Ullanur*, *Karakat* and *Kannanur*—are the Kalkarans or managers of the Sabha. The number of

* Second Appeal No. 736 of 1880 against the decree of H. Wigram, Officiating District Judge of South Malabar, confirming the decree of the District Munsif of Temelprom, dated 9th August 1880.

Kaikarans varies according to the number of Karmies in the three Amcams. At the date of suit they were twelve in number.

The plaintiffs alleged that the Amcams are represented by three Kaikarans, one selected from each, but the defendants con-[235]tended that the whole twelve Kaikarans have equal authority and must join to give validity to any act on behalf of the Sabha.

In *Ullanur* there were three Karmies, in *Karakat* one, and in *Kannanur* eight. Of these five in the last and one in the first Amcam promised to renew the defendants' lease. Four of the *Kannanur* Karmies objected to the third plaintiff representing them and four supported him, one of the latter having repudiated his promise to renew defendants' lease.

In 1048 (1873) five of the then Kaikarans entered into an agreement that the Sabha should be represented by three Kaikarans, one from each of the three Amcams. The affairs of the Sabha were conducted accordingly by three Kaikarans, and their right to represent the Sabha was acknowledged by the Courts on various occasions.

The Munsif found that the plaintiffs rightly represented the Sabha, and the District Judge confirmed his decree on appeal, holding also that the promise to renew was invalid, as the Karmi of *Karakat* had not signed it and the *Kannanur* Karmies were equally divided on the point.

The first defendant appealed to the High Court.

Mr. *Shepherd* for the Appellant.

Mr. *Spring Branson*, A. *Ramachandrayyar* and C. *Sankara Nair* for the Respondents.

The Court (TURNER, C.J.) and KINDERSLEY, J., delivered the following

Judgment :—Unless where, by a special provision of law, co-owners are permitted to sue through some or one of their members, all co-owners must join in a suit to recover their property. Co-owners may agree that their property shall be managed and legal proceedings conducted by some or one of their number, but they cannot invest such person or persons with a competency to sue in his own name on their behalf, or, if sued to represent them. It may, indeed, happen that a suit by one of several co-owners can be successfully maintained against a tenant. This is the case when the tenant has dealt with such co-owner as sole landlord and, by so dealing, is estopped from denying the title of the person who has let him into possession. In the present case the plaintiffs cannot be regarded as competent to represent the Sabha in this suit. They should have applied to the other members to [236] join them, and, if any of the other members had refused, they would, in *England*, have had to take proceedings for leave to use their names. In *India* it is the practice to allow the co-owners desirous of instituting proceedings to include co-owners who refuse to join in the array of defendants; so that all the co-owners are brought before the Court.

That course should have been adopted in this case, and if the Court had found that the tenancy had determined and had not been properly renewed, the Court could have given the plaintiffs relief, all the co-owners of the Sabha being bound by the terms of their agreement as to the management of Sabha property until they have rescinded it. We must set aside the decree and return the suit to the Court of First Instance that the plaint may be amended by adding the proper parties. We allow this somewhat large indulgence because the Lower Appellate Court notes that, until the institution of the suit, the right of the committee to sue has been unchallenged. The costs incurred hitherto will abide and follow the result.

NOTES.

[Co-owners suing for rent must all join, unless *some* only have been treated as landlords by the tenant:—*per* MOOKERJEE J. in (1907) 7 C.L.J. 251 citing this and (1891) 15 Mad. 111; (1885) 10 Bom. 32; (1883) 7 Bom. 17; (1896) 21 Bom. 154; (1907) 29 All. 311; (1903) 28 Bom. 11. See also 4 S.L.R., 2.

Where the objection had not been taken, during the suit, it was held that all were represented by those litigating and were bound:—(1887) 11 Mad. 191. As to the position of the managing member in a suit when other minor members are also sued, see now (1913) 14 M. L. J. 7 which overrules the view in (1908) 35 Cal. 561.]

[3 Mad. 236.]

APPELLATE CIVIL.

The 12th July, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Ramanada Sastri, a Minor, under the Guardianship of the Executors
Muttusami Ayyar and another.....(Plaintiffs) Appellants

versus

Minatchi Ammal and another.....(Defendants) Respondents.*

Appeal by representative of a plaintiff dying after decree—Civil Procedure Code, Sections 363-365—Limitation Act, Schedule II, Article 171.

If a plaintiff dies after decree, his representatives are not bound to apply within 60 days to be made parties to the suit, but have the same time to file an appeal as the plaintiff would have had. The Civil Procedure Code, Sections 363-365†, and the Limitation Act, Schedule II, Article 171‡, do not apply to the case of a plaintiff dying after decree.

*Second Appeal No. 745 of 1880 against the decree of A. L. Lister, Acting District Judge of Chingleput, dismissing the appeal presented against the decree of the District Munsif of Tiruvallur, dated 11th August 1880.

Proceeding in case of death of one of several plaintiffs where cause of action survives to survivors and representative of deceased. ¶ [S. 363 :—If there be more plaintiffs than one, and any of them dies, and if the cause of action does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.]

S. 365 :—In the case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the cause of action survives, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.]

‡ [Art. 171 :—

Description of Application.	Period.	Time from which period begins to run.
Under section 363 or 365 of the Code of Civil Procedure by a person claiming to be the legal representative of a deceased plaintiff.	Sixty days.	The date of the plaintiff's death.]