PINAPATI MRUTYUMJAYA v. PINAPATI JANAKAMMA.

JUDGMENT.—This is a suit for the recovery of money received by the defendants and payable by them to the owner of a certain share. The first plaintiff is the widow of the last admitted owner and the second plaintiff is her adopted son. There is no contest as between them, and it is because of objection taken by the defendants to the title of the second plaintiff as adopted son that they join as plaintiffs to get the money, which is undoubtedly due to one of them, and they are agreed that either shall take it. We are unable to say that in such a case there is a different "cause of action" for each within the meaning of section 26 of the Civil Procedure Code, and there was, therefore no misjoinder, which is our answer to the question. We consider the present case is on all fours with that in *Fakirapa* v. *Rudrapa*(1), and our view agrees in principle with that in *Haramoni Dassi* v. *Harichurn Chowdhry*(2) and that view is not in conflict with the decision in *Lingammal* v. *Chinna Venkatammal*(3) when examined. There the alternative claim of the widow was really on a different cause of action from that of the adopted son. The claim of the adopted son was that of an exclusive owner, while the widow's claim was that of a co-owner, with one of the defendants.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Subrahmania Ayyar, Mr. Justice Davies and Mr. Justice Boddam.

1903. February 24. April 8.

KARATTOLE EDAMANA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

UNNI KANNAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

Malabar Law—Suit by one of two co-uralans for redemption of mortgage without allegation or proof that the other had been asked to join plaintiff in the suit—Maintainability of suit.

One of two co-uralans may bring a suit to redeem a mortgage without averring or proving that the other uralan had been asked to join as a plaintiff in the suit.

Savitri Antharjanam v. *Raman Nambudri*, (I.L.R., 24 Mad., 296), distinguished.

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(1) I.L.R., 16 Bom., 119. (2) I.L.R., 22 Calc., 833. (3) I.L.R., 6 Mad., 239.

* Second Appeals Nos. 1385 and 1386 of 1901 presented against the decree of K. Krishna Rao, Subordinate Judge of South Malabar at Calicut, in Appeal Suit No. 943 of 1900 presented against the decree of V. Ramasastri, District Munsif of Betutnad, in Original Suit No. 481 of 1899.

KARATTOLE EDAMANA *v.* UNNI KANNAN.

THE Subordinate Judge set out the facts of the case in the following judgment on appeal from the District Munsif's order dismissing the suit:—

"This is an appeal arising out of a suit brought by two members who belong to a Nambudri illom which is one of the two houses possessing the uraima-right of a certain devaswam. The other house is another Nambudri illom to which the defendants Nos. 21 to 24 belong. The twenty-fourth defendant is a woman, and the defendants Nos. 21 to 23 are her minor daughters. Plaintiffs' suit was for redemption of a land belonging to the said devaswam, and which had been demised to the tarwad of defendants Nos. 1 to 17. The District Munsif dismissed the suit on the ground that it was unsustainable, because the plaintiffs did not consult and did not bring it with the consent of the other uralan (now represented by the twenty-fourth defendant). Plaintiffs appeal on the ground that the twenty-fourth defendant is a woman and did not join in the management of the devaswam and was therefore not entitled to be consulted. The chief question for decision in this appeal is whether the District Munsif is wrong in dismissing the suit on the ground stated. I think he is not. It has been distinctly held by the High Court that when there are two uralans for a devaswam, one of them cannot sue on behalf of the devaswam without consulting the other uralan and without joining him as a plaintiff, if he or she consents to it. (See *Savitri Antarjanam* v. *Raman Nambudri*(1), and *Purumathan Somayajipad* v. *Sankara Menon*(2)). This principle has been applied to this very temple in an appeal which was decided in Appeal Suit No. 421 of 1900 by Rao Bahadur A. Venkataramana Pai, Subordinate Judge. The fact that the twenty-fourth defendant is a woman does not alter the case a bit. The uralan whose non-joinder as a plaintiff in the case happened in *Savitri Antarjanam* v. *Raman Nambudri*(1) was a woman also. If, as the plaintiffs say, the twenty-fourth defendant did not usually take part in the affairs of the devaswam, that will not deprive her of her right to be consulted in such an important step as filing a suit like this. She did not refuse to join as a plaintiff, and her omission in the list of the plaintiffs will not be cured by herself and her children being made defendants. The District Munsif's decree is therefore right, and this appeal must be dismissed with costs."

(1) I.L.R., 24 Mad., 296. (2) I.L.R., 23 Mad., 82.

The plaintiff preferred this second appeal. The case first came before Subrahmania Ayyar and Bhashyam Ayyangar, JJ., who made the following

ORDER OF REFERENCE TO A FULL BENCH.—For the reasons stated in the decision in Second Appeals Nos. 77 and 78 of 1901 (1) for doubting the correctness of the decision of this Court in *Savitri Antarjanam* v. *Raman Nambudri*(2), we refer for the decision of a Full Bench the following question which arises in these two second appeals :—

Whether one of two co-uralans without averring in the plaint that the other uralan was asked to join the former as co-plaintiff and that he refused to do so, may bring a suit to redeem a mortgage made by the predecessors in title of the two uralans, the other uralan being made party-defendant along with the mortgagees.

JUDGMENT IN SECOND APPEALS NOS. 77 AND 78 1901.—It is urged that the plaintiff's suit should havebeen dismissed on the ground that he had not consulted his co-uralan, the nineteenth defendant, or asked him to join him as co-plaintiff before filing his plaint and reference is made to *Savitri Antarjanam* v. *Raman Nambudri*(2). In the present case it is shown that the nineteenth defendant had granted a renewed kanom and the plaintiff sued to redeem the prior kanom ignoring this renewal, his plea being in fact that the renewal was invalid. Under these circumstances, the plaintiff could not have joined the nineteenth defendant with him as co-plaintiff. Such being the case, it is impossible to hold that he should have consulted him before filing the suit or asked him to join in bringing it. On this ground, we distinguish the present case from that dealt with in the decision of *Savitri Antarjanam* v. *Raman Nambudri*(2). If we were not able to do this we should be obliged to refer the question dealt with in this decision to a Full Bench as we are disposed to agree with the view taken in the judgments in *Pyari Mohun Bose* v. *Kedarnath Roy*(3) and in *Biri Singh* v. *Nawal Singh*(4). The renewal granted by the nineteenth defendant having been shown not to be *bonâ fide* and valid, it cannot be presumed that at the time of the execution of the renewed kanom there was an adjustment of rent up to that date

(1) I.L.R., 26 Mad., 461. (2) I.L.R., 24 Mad., 296.
(3) I.L.R., 26 Calc., 409. (4) I.L.R., 24 All., 226.

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binding on the devaswam. These second appeals are dismissed with costs.

The case came on in due course before the Full Bench constituted as above :—

P. R. Sundara Ayyar and *C. V. Anantakrishna Ayyar* for appellants (plaintiffs).

The decision of the lower Courts is wrong. Under the present law no suit ought to be dismissed for non-joinder of parties. Courts have the fullest power in the matter of adding parties. [They referred to sections 26 to 32 of the Code of Civil Procedure.]

The plaintiff and the twenty-fourth defendant are the co-contractees, and it is settled now that one of such persons may sue, making the other a defendant. The decision to the contrary in *Dwarka Nath Mitter* v. *Tara Prosunna Roy*(1) has been overruled by a Full Bench of that Court—*vide Pyari Mohun Bose* v. *Kedarnath Roy*(2). The Allahabad High Court has followed the Calcutta Full Bench case (*Biri Singh* v. *Nawal Singh*(3)). The Madras High Court also has followed the Calcutta Full Bench case (*vide* judgment of Bhashyam Ayyangar and Moore, JJ., in *Mariyil Raman Nair* v. *Narayanan Nambudiripad*(4), mentioned in the order of reference to a Full Bench in this case). If the plaintiff does not join the other party also as co-plaintiff, he will be punished by being ordered to pay his costs. In such cases, one of such persons has the right to institute suits, making the other a co-defendant. The decree, however, would be passed in favour of both these persons, whether both are plaintiffs, or one is plaintiff and the other a defendant. The present case is distinguishable from *Parameswaran* v. *Shangaran*(5) and *Puramathan Somayaji Pad* v. *Sankara Menon*(6) inasmuch as the present is a suit to redeem a mortgage, whereas the others were suits in ejectment. Under section 91 of the Transfer of Property Act, any person interested in the property is entitled to redeem, but he has to make all persons interested parties to the suit under section 85. Neither section 91 of the Transfer of Property Act nor the Full Bench decision in *Pyari Mohun Bose* v. *Kedarnath Roy*(2) was brought to the notice of the Court in the case of *Savitri Antarjanam* v. *Raman Nambudri*(7).

(1) I.L.R., 17 Calc., 160.
(2) I.L.R., 26 Calc., 409.
(3) I.L.R., 24 All., 226.
(4) I.L.R., 26 Mad., 461.
(5) I.L.R., 14 Mad., 489.
(6) I.L.R., 23 Mad., 82.
(7) I.L.R., 24 Mad., 296

V. Ryru Nambiar for the respondent (twenty-fourth defendant) and *B. Govindan Nambiar* for the other respondents (defendants) submitted that the appellants' contention was opposed to the current of decisions in this Presidency. If one of two uralans were allowed to bring suits as of right, without consulting the other uralan, he would be ignoring the very existence of the other uralan. The decision in *Savitri Antarjanam* v. *Raman Nambudri*(1) was sound. If the rule there laid down were not upheld, and if every uralan were allowed to bring suits of his own accord, litigation would be fostered. They also relied on *Teramath* v. *Lakshmi*(2). The case of *Pyari Mohun Bose* v. *Kedarnath Roy*(3) was referred to in *Puramathan Somayaji Pad* v. *Sankara Menon*(4). The case of *Savitri Antarjanam* v. *Raman Nambudri*(1) was a suit for redemption. They contended that suits for redemption did not stand on any exceptional footing, and that section 91 of the Transfer of Property Act did not apply as plaintiff could not be said to be a "person interested" within the meaning of that section. The whole devaswam would be the "person interested." Unless the matter were discussed among all the uralans and at least a majority consented no suit could be brought.

The appellant was not called upon to reply.

The Court delivered the following

OPINION.—We are of opinion that the answer to the question referred must be that one of two co-uralans may bring a suit to redeem a mortgage without averring or proving that the other uralan was asked to join as plaintiff in the suit.

It would be impossible to hold otherwise in the face of sections 91 and 85 of the Transfer of Property Act.

These sections were apparently not considered when *Savitri Antarjanam* v. *Raman Nambudri*(1) was decided.

The case came on for final disposal before Subrahmania Ayyar and Bhashyam Ayyangar, JJ., who delivered the following

JUDGMENT.—Following the opinion of the Full Bench we reverse the decree of the lower Appellate Court, which proceeds on a preliminary point, and remand the appeal for disposal according to law. The costs of this second appeal will be costs in the case.

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(1) I.L.R., 24 Mad., 296. (2) I.L.R., 6 Mad., 270.
(3) I.L.R., 26 Calc., 409. (4) I.L.R., 23 Mad., 82.