

1878  
April 25.

## APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

KALESHAR PRASAD (PLAINTIFF) *v.* JAGAN NATH AND ANOTHER  
(DEFENDANTS).\*

*Act VIII of 1859 (Civil Procedure Code), s. 7—Relinquishment or Omission of  
Portion of Claim.*

*Held*, where two suits were instituted simultaneously, and one of such suits had been determined, that, assuming that the claims in such suits arose out of the same cause of action and should have been included in one suit, the provisions of s. 7 of Act VIII of 1859 were no bar to the entertainment of the second suit.

THIS was a suit under Act XVIII of 1873 for an account of the profits of the sîr-land appertaining to a certain mahal for the years 1281, 1282, and 1283 fasli. This sîr-land was held by the plaintiff in the suit and the defendants, Jagan Nath and Bala Nand, as coparceners in equal shares. The suit was instituted on the 9th July, 1877. On the same date, at the same time as it was instituted, the plaintiff also instituted a suit against Jagan Nath as lambardar of the mahal for his share of its profits for the years 1281 and 1282 fasli. Having regard to this suit, which had been determined, the Court of first instance held that the present suit was barred by s. 7 of Act VIII of 1859. On appeal by the plaintiff the lower appellate Court also held that the suit was barred by s. 7 of Act VIII of 1859.

The plaintiff appealed to the High Court, contending that, as both suits were instituted simultaneously, s. 7 of Act VIII of 1859 was not applicable.

Munshi *Sukh Ram*, for the appellant.

Pandits *Bishambhar Nath* and *Ajudhia Nath*, for the respondents.

The Court delivered the following

JUDGMENT.—The plaintiff instituted two suits at the same time, one against Jagan Nath, lambardar, for profits of the mauza for 1281 and 1282 fasli, the other against Jagan Nath and another shareholder, Bala Nand, for a settlement of the account of sîr-land held jointly by the parties for 1281, 1282, and 1283 fasli. This last suit is the subject of appeal, and was dismissed with reference to the provisions of s. 7 of Act VIII of 1859. The provisions of this section do not appear to us to apply. The suit which is the subject of appeal is

\* Second Appeal, No. 85 of 1878, from a decree of R. F. Saunders, Esq., Judge of Farakhabad, dated the 9th November, 1877, affirming a decree of J. L. Deniston, Esq., Assistant Collector of Farakhabad, dated the 20th August, 1877.

for an adjustment of the account of profits of sir-land between not only the plaintiff and Jagan Nath, but between them and a third shareholder who is also a defendant, and it is not clear that the accounts of this sir-land are included in the general account of the profits of the village for which the lambardar is responsible to account to the plaintiff, so as to give in both suits the same cause of action to the plaintiff against Jagan Nath. But were it so, the suit would not be necessarily unmaintainable against Bala Nand, and besides we should hesitate to rule that the provisions of s. 7 of Act VIII of 1859 are applicable to such a case as this. Here the plaints in the two suits were filed at the same time. We cannot say that one suit has a priority over the other in point of time. The claims were divided for the convenience of trial, but there was no relinquishment of a claim, and there will be no question of entertaining a suit after such relinquishment or omission within the meaning of s. 7. There was no institution and entertainment of a suit after one had been already instituted and determined. The suits were not successive, but simultaneous, and to allow the objection, which can only be one of form and not of substance, would be to strain the obvious object of s. 7, which is not to allow persons to be harassed by successive claims. If the Court in which the plaints were filed considered they should have been tried together, the proper course was to allow one of the plaints to be amended, so as to combine both claims. As this suit has not been tried, and is one for a Revenue Court to determine, we reverse the decisions of the Courts and remand the case for trial on the merits to the Court of first instance. Costs to abide the result.

*Cause remanded.*

## APPELLATE CIVIL.

1878  
April 30.

*Before Mr. Justice Pearson and Mr. Justice Turner.*

PITAM SINGH AND OTHERS (DEFENDANTS) v. UJAGAR SINGH (PLAINTIFF).

*Hindu Law—Joint and Undivided Ancestral Property—Separate Property—  
Compromise.*

Certain ancestral estate was recorded as held in equal shares by four brothers, A, B, C, and D. On A's death his son E was recorded as the holder of his share.

First Appeal, No 122 of 1877, from a decree of Maulvi Hamid Hasan Khan, Subordinate Judge of Mainpuri, dated the 29th September, 1877.