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The *Senior Government Pleader* (Lala Juala Prasad) and Pandit *Ajudhia Nath*, for the appellant.

PHULMAN RAY
v.
DANI KHARI.

Munshi *Hanuman Prasad*, for the respondent.

The following judgment was delivered by the High Court:—

TURNER, J.—(After finding on the evidence that the property was the separate property of the plaintiff's husband to which she succeeded by inheritance)—We must admit the objection taken to the finding on the issue remitted, and it remains for us to determine whether a widow, holding her husband's share by inheritance, is entitled to pre-emption. In our judgment so long as she enjoys the estate she fully represents the estate and can claim to exercise all rights which would attach to it in the hands of a male owner. The circumstance that the widow lived with the vendors would not deprive her of her right, it being found that the claim is not collusive.

Appeal dismissed.

APPELLATE CIVIL.

1877
July 16.

Before Mr. Justice Pearson and Mr. Justice Turner.

DULAR CHAND (PLAINTIFF) v. BALRAM DAS AND OTHERS (DEFENDANTS).*

Non-joinder of Parties—Rejection of Plaintiff.

A suit was instituted by one only of the partners of a firm in respect of a cause of action which had accrued to all jointly. Notwithstanding that objection to the non-joinder of the other partners was duly taken, the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff, instead of applying to the Court to add the other partners as plaintiffs. In appeal the High Court admitted the objection, and refused, under the circumstances, to add the other partners as plaintiffs.

As to the nature of this suit it is sufficient, for the purposes of this report, to state that the suit was brought on the 30th March, 1876, by one of the five partners composing a firm in his own name, on a cause of action which he had in common with the other partners of the firm. In the written statement filed by one of the defendants on the 15th May, 1876, objection was taken to the non-joinder of the other partners. On the 7th June, 1876, on

* Regular Appeal, No. 110 of 1876, from a decree of J. W. Sherer, Esq., C.S.I., Judge of Mirzapur, dated the 7th November, 1876.

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behalf of the other partners, the plaintiff presented a petition to the Court of first instance in which was stated as follows :—“ As Dular Chand (the plaintiff) has always been the head of the family, suits have always been instituted in the name of Dular Chand, and he manages the firm. We obey him as our superior, and have no objection to the suit which has been instituted on his part against the defendants; it may be decided solely with reference to him.” The Court directed the petition to be filed with the record. An issue was fixed as to whether the plaintiff could sue alone. This issue the Court, observing that “ it is clear that the partners are entirely at one in their interests and proceedings, that the suit has been laid with the knowledge of all, and that Dular Chand takes a leading part in business,” decided in favour of the plaintiff. On the other issues in the suit it decided against him and dismissed the suit.

In appeal to the High Court by the plaintiff, application was made on his behalf for leave to amend the plaint by adding the other partners of the firm as plaintiffs.

Munshi *Hanuman Prasad* and Pandit *Ajudhia Nath*, for the appellant.

Messrs. *Colvin and Howard*, for the respondents.

The judgment of the Court, so far as it related to this application, was as follows :—

The appellant was badly advised by his pleaders in the Court below to file his plaint in his sole name and not also in the name of the other partners in the firm, for he had no sole cause of action against the respondents. When the objection was taken by the respondents in the Court below, the Court should either have made the other partners parties, or, on this ground, have dismissed the suit. Even when the defect was pointed out, the appellant, instead of praying the Court to amend the plaint, put in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the appellant. The Judge was in error in holding that a defect of which the respondents complained and which, if it affected any party to the suit, affected them could be thus cured.

The appellant's pleaders in this Court at once recognised the position in which their client was placed, and have preferred a petition praying that the other partners may now be made parties. Although in some instances parties have been added by this Court in the stage of appeal, yet, seeing that the appellant elected to go to trial and the case was decided in the Court below without amendment of the proceedings, we are of opinion that in this instance we ought to refuse the application and allow the objection.

We shall therefore dismiss the appeal, affirming the decree of the Court below, not on the grounds on which that decree was passed, but on the preliminary ground that all the necessary parties were not joined as plaintiffs, and that the appellant has shown no sole cause of action. The appellant and his partners may of course bring a fresh suit.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Turner and Mr. Justice Spankie.

HIRA CHAND (DEFENDANT) v. ABDAL (PLAINTIFF).^{*}

Redemption of Mortgage—Suit for Contribution—Misjoinder.

The purchaser of a share in a mortgaged estate, who has paid off the whole mortgage-debt, in order to save the estate from foreclosure, can claim from each of the other mortgagors a contribution proportionate to his interest in the property, but he cannot claim from the other mortgagors collectively the whole amount paid by him (1).

THE plaintiff in this suit purchased at auction-sale the rights and interests in a certain village of one Rameshar Chand. He subsequently discovered that those rights and interests had been mortgaged jointly with those of Hira Chand and another person. To save a foreclosure of the mortgage the plaintiff was compelled to discharge the mortgage-debt. He sued to recover the amount

* Special Appeal, No. 618 of 1877, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 6th March, 1877, affirming a decree of Maulvi Habib Rahim, Munsif of Bansaon, dated the 22nd December, 1876.

(1) In *Rujapat Rai v. Ali Khan*, H. C. R., N.-W. P., 1873, p. 215, where a person, who had been compelled to satisfy a decree obtained against him and other persons jointly, sued such other persons for contribution, seeking a joint decree against them for the money he had paid

after deducting his own share, the High Court, instead of dismissing his suit, remanded the case that the Court below might determine and separately decree the respective shares of the other persons.

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