

The lower appellate Court held that, as the plaintiff was not the managing member of the family firm, "the ordinary rule which requires a suit relating to the business of a partnership to run in the names of all the partners, ought to be enforced." It therefore dismissed the appeal.

The plaintiff appealed to the High Court upon the ground, amongst others, that the plaintiff, as head of the family, was entitled to sue on its behalf.

Mr. W. M. Calvin, for the appellant.

Pandit *Ajudhia Nath* and Munshi *Kashi Prasad*, for the respondents.

BRODURST and TYRRELL, JJ.—We cannot interfere. The appellant stands in this position, that he has declared the firm to which the debt is due to be ancestral, and he has asserted that the control of its business is in the hands of his sons jointly. He calls them "maliks (1)." From either point of view, then, he cannot sustain this suit in his own individual capacity. His sons are his partners in the ancestral business, and he is not the managing member or proprietor.

We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Tyrrell.

KALIAN BIBI AND ANOTHER (PLAINTIFFS) v. SAFDAR HUSAIN KHAN
AND OTHERS (DEFENDANTS). *

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Pardah-nashin—Civil Procedure Code, ss. 129, 130—Discovery of documents.

In a suit brought by two Muhammadan *pardah-nashin* ladies for recovery of immoveable property by right of inheritance, an order was passed under s. 129 of the Civil Procedure Code, requiring the plaintiffs to declare by affidavit "all the papers connected with the points at issue in the case which were or had been in their possession or control." After some ineffectual proceedings, the plaintiffs were peremptorily ordered to file their affidavit on a certain date. On that date an affidavit was filed on their behalf by their brother and mukhtar, with a list of their documentary evidence, but the affidavit and list was considered defective upon several grounds, one of which was that it ought to have been made by the plaintiffs personally. Further time was then given to the plaintiffs to amend these defects, and ultimately they filed an affidavit purporting to be made by them

* First Appeal No. 154 of 1885, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 27th April, 1885.

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personally, praying that the Court would have it verified in any manner thought proper, provided that their *pardah-nashini* were not interfered with. The Court, under s. 136 of the Code, dismissed the suit for want of prosecution, in consequence of the orders under s. 129 not having been complied with, though ample opportunity had been given to the plaintiff, and no sufficient ground for non-compliance had been shown.

Held, without going into the question of the sufficiency or non-sufficiency of the action of the plaintiffs, with regard to the orders made under s. 129 of the Code, that looking at the disabilities of the plaintiffs and the circumstances of their suit, the case was not one in which it was expedient to enforce the liability to which they might have exposed themselves under the peculiar provisions of s. 136.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Mr. *Abdul Majid*, Mr. *J. Simeon*, and Maulvi *Mehdi Hasan*, for the appellants.

Mr. *G. E. A. Ross* and Pandit *Nand Lal*, for the respondents.

STRAIGHT, Offg. C. J., and TYRRELL, J.—The appellants, two Muhammadan *pardah* ladies, brought a suit in the District Judge's Court at Gorakhpur, on the 10th June, 1881, for recovery of landed property by their right of inheritance to part of the estate of one Muhammad Wazid. The suit was dismissed as barred by limitation. But in first appeal it was remanded for re-trial under s. 562, Civil Procedure Code. When the case was restored in the Court below, and came on for trial, the Judge made an order under s. 129, Civil Procedure Code, requiring the plaintiffs-appellants to "produce with an affidavit all the papers connected with the points at issue in the case which were or had been in their possession or under their control." After some ineffectual proceedings, the plaintiffs were ordered to file their affidavit peremptorily on the 1st April, 1885. On that date an affidavit was filed on behalf of the plaintiffs by their mukhtar and brother Kazi Muhammad Ikram Ali, with a list of their documentary evidence. This mukhtar appeared under a special power of attorney, executed and registered in this behalf under the hands of the two ladies on the 27th and 28th March, 1885. The Judge found the affidavit and list of the 1st April defective, because (i) it was not made personally by the plaintiffs, (ii), because it disclosed only documents connected with the issues on the record, and (iii) because it disclosed only documents in possession of the ladies, and failed to disclose

or mention documents once, but not at present, in their possession. Therefore the Judge gave the plaintiffs further time to the 16th April, 1885, to amend these defects. On the 15th April, the plaintiffs filed before the Judge an affidavit purporting to be made by them personally, praying that "the Court may have it verified in the manner it thinks proper, provided petitioners' *pardah-nashin* is not interfered with." On the 27th April the Judge disposed of that petition and of the suit by his order which is now appealed to us. It runs as follows:—"The order of this Court not having been complied with, although ample opportunity has been given to the plaintiffs, and no sufficient ground for non-compliance having been shown, I have no alternative, much as I regret the necessity, but to exercise the power given me by s. 136, Act XIV of 1882, and to direct that the suit be dismissed for want of prosecution, and I now make an order to that effect, with costs, and the usual interest thereon."

Without going into the question of the sufficiency or insufficiency of the action of the plaintiffs with regard to the orders made under s. 129 of the Code, it is enough here to say that, looking at the disabilities of the plaintiffs and the circumstances of their suit, it appears to us that the case was not one in which it was expedient to enforce the liability to which they may have exposed themselves under the peculiar provisions of s. 136 of the Code.

We therefore allow the general plea of the appellants, and, decreeing this appeal, remit the case for trial to the Court below. The costs here will be costs in the cause.

Appeal allowed.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

BEHARI LAL (PLAINTIFF) v. HABIBA BIBI AND OTHERS (DEFENDANTS).*

Pardah-nashin—Execution of deeds.

A suit was brought upon a bond purporting to have been executed on behalf of two Muhammadan *pardah-nashin* ladies by their husbands, and to charge their immoveable property. The bond was compulsorily registrable, and it was presented for registration by a person who professed to be authorized by a power-of-attorney in that behalf. The only proof given by the plaintiff that this power-of-

* First Appeal No. 199 of 1885, from a decree of Rai Raghunath Sahai, Subordinate Judge of Azamgarh, dated the 31st July, 1885.

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