

1886

RAM SAHAI
v.
THE BANK OF
BENGAL.

wrongly obtained, as described above, by the respondent from the appellant, restitution of which is now secured by the operation of the final decree in the case. We allow the appellant's claim and decree his appeal with costs.

Appeal allowed.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

1886
April 30.

JUGAL KISHORE (PLAINTIFF) v. HULASIRAM AND ANOTHER (DEFENDANTS)*.

Partnership—Joint Hindu family—Suit by one member for debt due to family firm.

In a suit for money lent, brought by the father of a joint Hindu family who carried on jointly an ancestral money-lending business, the plaintiff stated, in examination, that he had ceased to take an active part in the management of the affairs of the firm, and that the control of its business was in the hands of his sons, whom he described as "maliks (1)."

Held that, under the circumstances, the plaintiff could not maintain the suit in his individual capacity, and without joining his sons as plaintiffs with him, his sons being his partners in the ancestral business, and he not being the managing member or proprietor.

THE plaintiff in this case, Jugal Kishore, and his five sons were members of a joint Hindu family, and carried on jointly an ancestral money-lending business. The plaintiff sued the defendants for money lent by the firm to them. The plaintiff was examined, and stated that he had made his sons the owners of the firm, retaining his interest in it to profits and losses, and that by reason of increasing infirmities he had ceased to take an active part in the management of the affairs of the firm, and that the active partners were his sons. Upon this the defendants objected that the plaintiff was not competent to sue alone, and his sons should have been joined as plaintiffs, and not having been so joined, the suit should be dismissed. The Court of first instance disallowed this objection, and trying the suit on the merits, dismissed it. The plaintiff appealed, and the defendants contended in support of the decree that the suit ought to have been dismissed, "because, on the showing of the plaintiff, the contract was made with his firm, and his partners were not parties to the litigation."

* Second Appeal No. 1350 of 1885, from a decree of T. R. Redfern, Esq., District Judge of Agra, dated the 4th May, 1885, affirming a decree of Maulvi Muhammad Said Khan, Subordinate Judge of Agra, dated the 24th December, 1884.

(1) "Proprietors."

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). *

1886
April 2.

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.

(1) "Proprietors."