1893

SHEO DENI RAM v. TULSHI RAM.

and if there has been an undervaluation, which we think there has not been, that undervaluation has not prejudicially affected the disposal of the suit or appeal on its merits. The first plea taken in appeal fails. The findings of fact by the lower appellate Court are fatal to the fourth plea, and these were the only two pleas argued before us. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Aikman.

1893
May 23.

BEHARI LAL AND ANOTHER (PLAINTIFFS) v. KODU RAM (DEFENDANT)*

Execution of decree—Attachment as joint family property of property in fact partitioned—Joint suit by holders of two shares to have their shares declared not liable to attachment—Misjoinder of causes of action—Civil Procedure Code, ss. 26, 31, 45, 53, 578.

A decree-holder in execution of a decree against one G. L. attached a house as belonging to G. L. and his two sons forming a joint Hindu family. The sons objected that the house had previously been partitioned and was held by them and their father in separate shares, but their objection was disallowed. They then brought a joint suit for a declaration that their respective portions of the house were not liable to attachment in execution of a decree against their father. No objection was taken to the frame of that suit, and the Court of first instance gave the plaintiffs a decree on the finding that partition had in fact taken place prior to the suit in which the defendant, judgment-creditor, had obtained his decree. On appeal by the judgment-creditor, the lower appellate Court dismissed the suit entirely, on the ground of misjoinder of causes of action. The plaintiffs appealed to the High Court.

Held on these facts that the plaintiffs should have been allowed to amend their plaint by striking out the name of one of them, and that under the circumstances s.578 of the Code of Civil Procedure would apply.

The facts of this case are sufficiently stated in the judgment of the Court.

Munshi *Jwala Prasad*, for the appellants.

Kunwar *Parmanand*, for the respondent.

---

*First appeal No. 193 of 1891 from a decree of R. Scott, Esquire, District Judge of Bánda, dated the 21st January 1891, reversing a decree of Munshi Mádho Lal, Subordinate Judge of Bánda, dated the 19th November 1890.

1893

BEHARI LAL v. KODU RAM.

EDGE, C. J., and AIKMAN, J.—The suit out of which this appeal arose was one for a declaration of title. It was brought by two Hindu brothers against a person named Kodu Ram, who was executing a decree against their father. The father was also made a defendant in the suit. Kodu Ram in execution of his decree against the father had attached a house. The plaintiffs filed an objection to the attachment, alleging that part of the property attached was theirs and not their father's. The objection was disallowed. They brought this suit. The first Court found there had been a separation in the Hindu family, and that some fourteen years prior to the suit one portion of the house was partitioned off to one of the plaintiffs, another portion of the house to the other plaintiff and the remainder to the father. The first Court gave the plaintiffs a decree. Kodu Ram appealed. Kodu Ram had not taken in his written statement or his memorandum of appeal any objection to the frame of the suit, but the District Judge, rightly considering that each plaintiff was suing on a separate cause of action, dismissed their joint suit. The plaintiffs have appealed. No doubt in the great majority of cases in which two or more plaintiffs sue in one suit in respect of causes of action which are not joint, it would be proper to return the plaint under s. 53 of the Code of Civil Procedure for amendment, and leave the plaintiffs to elect as to which of them should be struck out of the suit, but we doubt whether a Court should, without giving the parties an opportunity of amendment, absolutely dismiss the whole suit. That is what the District Judge did here. It has been contended on behalf of the respondent that reading ss. 31 and 45 of the Code of Civil Procedure, a suit like this is prohibited. Section 31 does not prohibit the suit. It can be implied from that section that persons having distinct causes of action should not join in one suit as plaintiffs in respect of those distinct causes of action. Neither is there any express prohibition in s. 45 against such a suit. It is a more difficult question whether such a suit as this is allowable under s. 26 of the Code. This is a very peculiar case. The house at one time was the joint family property of the plaintiffs and their father. It was attached by Kodu Ram as the property

1893

BEHARI LAL v. KODU RAM.

of the father, a joint objection to the attachment was made and not objected to on the ground of its being joint, but on the ground that it was too late. In one sense these plaintiffs were jointly interested in opposing the attachment and sale, although a sale would only have affected each man's separate interest. Their title was a common title, which was assailed by one and the same action of Kodu Ram. We can well understand that the plaintiffs or their legal advisers may have thought that the case came within the latter part of the first paragraph of s. 45 of the Code of Civil Procedure. No objection was raised by the defendant to the frame of the suit. The Court did not exercise its discretion under s. 53 of the Code. There is not the slightest doubt that the Court had jurisdiction to try either of the causes of action included in the plaint. There was undoubtedly an irregularity in the procedure of the first Court in trying the suit as it was framed, but that irregularity did not affect the merits of the case or the jurisdiction of the Court to deal with either of the causes of action. In our opinion s. 578 of the Code applied. We set aside the decree of the District Judge and remand the appeal under s. 562 of the Code to his Court to be decided on the merits. The costs of this appeal and of the hearing hitherto in the Court below will be borne by each side, *i. e.*, there will be no costs of this appeal and of the hearing hitherto.

Cause remanded.

Before Mr. Justice Burkitt.

1893
May 23.

DAULTA KUARI (PLAINTIFF) *v.* MEGHU TIWARI AND ANOTHER (DEFENDANTS).*

Hindu law—Hindu widow—Maintenance —Suit on a consent decree to recover arrears of maintenance—Unchastity of widow—Starving maintenance.

A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by the husband's relatives, either in a suit brought by them expressly for the purpose of setting aside the decree, or in answer to the widow's suit to enforce her right.

* Second appeal No. 420 of 1892 from a decree of Pandit Bansidhar, Subordinate Judge of Gházipur, dated the 6th February 1892, reversing a decree of Babu Ganga Prasad, Munsif of Gházipur, dated the 6th June 1891.