

APPELLATE CIVIL.

Before Mr. Justice Hanerji and Mr. Justice Aikman.

THE MAHARAJA OF BHARTPUR (PLAINTIFF) v. KACHERU AND OTHERS DEFENDANTS.*

Civil Procedure Code sections 37, 432—Suit brought by an independent prince—Signature and verification of plaint—“Recognised agent—Procedure.

Section 432 of the Code of Civil Procedure was not intended to limit the scope of section 37 of the Code, and does not prevent the institution of a suit by an independent prince in his own name and through a recognised agent other than one appointed under section 432. *Beer Chunder Manikya v. Ishan Chunder Burdhan* (1) followed.

THIS was a suit brought on behalf of the Maharaja of Bhartpur in the Court of an Assistant Collector of Muzra for the recovery of arrears of rent for 1298 and 1299 Bashi. In the first court the suit was tried on its merits and a decree given for the plaintiff. The defendants appealed to the District Judge, and in his Court the plea was taken that the plaint and verification were not properly signed. The plaint was signed and attested by one Syed Muhammad, who held a power of attorney from the Maharaja of Bhartpur authorizing him to act on behalf of the Maharaja in suits filed on behalf of or against him; and the contention was that the provisions of section 37 of the Code of Civil Procedure were, in the case of independent princes, limited by section 432 of the Code, and that a person appearing in a Court in British India on behalf of an independent prince must be specially appointed by Government at the request of such prince or at the request of a person recognised by the British Government as a suitable agent and representative of such prince. The lower appellate Court accepted this contention, and, decreeing the appeal, dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

* Second Appeal No. 66 of 1895 from a decree of H. G. Pearce, Esq., District Judge of Agra, dated the 28th November 1894, reversing a decree of Muhammad Ibrar Hassan Khan, first class Assistant Collector of Muzra, dated the 23rd December 1892.

Pandit *Sundar Lal* and *Lala Sheo Charan Lal*, for the appellants.

Mr. *D. N. Banerji* and Pandit *Moti Lal*, for the respondents.

BANERJI and AIKMAN, JJ.—The suit out of which this appeal has arisen was brought on behalf of the Maharaja of Bharpur in the Court of an Assistant Collector, for the recovery of arrears of rent payable under a lease. The plaint was signed and verified by one Syed Muhammad, who holds a general power of attorney from the Maharaja, authorizing him to act on behalf of the Maharaja in suits filed on behalf of or against him. The suit was defended in the Court of first instance on the merits, and no objection was taken on the ground that the plaint did not comply with the requirements of law in the matter of presentation, signature, and verification. That Court granted a decree to the plaintiff. The defendants appealed, and for the first time it was urged on their behalf that, the plaintiff not having signed the plaint or the verification under it, the suit ought to have been dismissed in the form in which it had been brought. The learned Judge of the lower appellate Court has allowed this plea, and dismissed the suit. He has relied for his conclusion on the provisions of section 432 of the Code of Civil Procedure, and he was of opinion that that section provided a limitation to the general provisions of section 37 of the Code. The correctness of this opinion has been questioned in this appeal. The point is not free from difficulty. The plaint is in compliance with the provisions of section 107 of Act No. XII of 1881, but, as that Act is silent as to the rights of ruling chiefs to institute suits in British Courts, or as to their privileges as regards suits brought against them in such Courts, the general provisions of the Code of Civil Procedure would, according to the ruling of the Full Bench in *Madho Prakash Singh v. Murlī Manohar* (1), govern the suit brought in the Court of Revenue. We have therefore to consider what is the effect of section 432 of the Code upon the question now before us. It must be admitted that the language of that section is not as clear as it might have

1897

THE
MAHARAJA
OF
BHARPUR
vs.
KACHHU

1897

THE
MAHARAJA
OF
BHARTPUR
v.
KACHERU.

been. The section, so far as it bears upon the present question, is as follows:—"Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent in the opinion of the Government to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief." It is contended that, under this section, the only recognised agents by whom applications, acts and appearances may be made or done on behalf of a Sovereign Prince or ruling Chief are the persons referred to in the section, that is, the persons specially appointed by the order of Government at the request of the Sovereign Prince or ruling Chief, or of any person competent to act on behalf of such Sovereign Prince or ruling Chief, to prosecute or defend any suit on his behalf, and that this section limits the scope of section 37 of the Code of Civil Procedure. This contention would have been a valid contention had the section run thus:—"No persons other than persons specially appointed shall be deemed to be the recognised agents." That would have made the meaning of the Legislature perfectly clear. On the other hand, had the article "the" before the words "recognised agents" been omitted, we should have had no difficulty in accepting the contention of the learned Counsel for the appellant. As we are unable to conceive of any reason why the Legislature should have limited the rights of ruling Chiefs and Sovereign Princes with regard to the appointment of recognised agents which they had under section 37, it seems to us that the object of section 432 was to add, in the case of Sovereign Princes and ruling Chiefs, another class of recognised agents to those specified in section 37. The provisions of section 464 show that where the Legislature intended that Sovereign Princes or ruling Chiefs should be excepted from the operation of the general provisions of the Code, special provision was made in it

for that purpose. Had it been the intention of the Legislature to limit the scope of section 37 by the provisions contained in section 432, we should have expected similar provisions in the Code indicating that intention. It was held by the Calcutta High Court in *Beer Chunder Manikyā v. Ishan Chunder Burdhun* (1) that section 432 does not prevent the institution of a suit by an independent Prince in his own name and through a recognised agent other than one appointed under that section. The section was amended after that ruling was passed. If the law as laid down in the ruling was different from that which the Legislature contemplated by section 432, the section would in all probability have been amended in such a way as to make the meaning of the Legislature clear. Although, as we have said, the question is one not free from difficulty, we see no reason to put on section 432 an interpretation different from that placed on it by the Calcutta High Court. In our opinion the learned Judge below was wrong in holding that the plaint had not been properly signed and verified, and in dismissing the claim on that ground. We set aside the decree of the lower appellate Court and remand the case under section 562 of the Code of Civil Procedure to that Court with directions to readmit it under its original number in the register and dispose of it according to law. The appellant will get his costs of this appeal.

Appeal decreed and cause remanded.

Before Mr. Justice Know and Mr. Justice Burkitt.

FAUJI LAL (PLAINTIFF) v. CHANGA MAL (DEFENDANT).*

Act No. IX of 1887 (Provincial Small Cause Courts Act), Sch. ii, Art. 29(c)—Suit by a retired partner for the consideration due for his retirement—Jurisdiction—Small Cause Court.

A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement is not excluded from the jurisdiction of a Court of Small Causes.

* Second Appeal No. 152 of 1895, from a decree of Maulvi Aziz-ul Rahman, Subordinate Judge of Agra, dated the 17th November 1894, reversing a decree of Babu Hari Mohan Banerji, Munsif of Agra, dated the 30th June 1894.

(1) I. L. R., 10 Calc., 136.

1897

THE
MAHARAJA
OF
BHARPUK
V.
KACHHEV.

1897

June 2.
